

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CIVIL REVISION APPLICATION NO. 43 OF 2014

(MANOJ TULARAMJI BHANDE..VS..3RD CIVIL JUDGE, NAGPUR & OTH.)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. H.N.Potbhare, Advocate for Appellant.
Ms A.R.Taiwade, A.G.P. for Respondent Nos. 1, 4 and 5.
Mr. Anoop Dangore, Advocate for Respondent Nos. 2 & 3.

CORAM : Z.A.HAQ, J.
DATED : MARCH 10, 2015.

CIVIL APPLN.(CAA) NO. 8/2015.

Non-applicant Nos. 2 and 3 have filed application praying for grant of early hearing. Rule came to be issued in absence of the learned advocate for non-applicant Nos. 2 and 3. In paragraph 3 of the application it is stated that the learned advocate could not remain present when the matter was called out as he was held up before another Court.

Considering the facts of the case, the revision application is taken up for final hearing.

The application stands disposed of accordingly.

C.R.A.NO. 43/2014.

1. The Civil Revision Application is filed by original defendant No.1 challenging the order passed by the trial Court rejecting the application filed under Order 7 Rule 11 of the Code of Civil Procedure.

2. Non-applicant Nos. 2 and 3 / original plaintiffs filed civil suit praying for decree for declaration that the sale deed dated 11th November, 2011 is null and void and not binding upon them. Non-applicant Nos. 2 and 3 / original plaintiffs prayed for other reliefs.

3. Shri Dangore, learned advocate for non-applicant Nos. 2 and 3 / original plaintiffs has pointed out the order passed by the trial Court on 2nd February, 2012 directing the non-applicant Nos. 2 and 3 / plaintiffs to satisfy the Court on the point of payment of court fees. It is submitted that this order was passed pursuant to the objection raised by the office. The subsequent order dated 8th February, 2012 shows that the trial Court considered judgments reported in *AIR 2010 SC 2807* and *2011(3) ALL MR 39* and after being satisfied that the valuation of the suit and the payment of court fees are proper, the trial Court proceeded in the matter.

4. The applicant/ defendant No.1 filed application (Exh.18) under Order 7 Rule 11 contending that the plaintiffs are required to pay *ad-valorem* court fees on the valuation of the subject matter of the civil suit and as the plaintiffs have not paid the *ad-valorem* court fees, the plaint is required to be rejected.

5. The trial Court by the impugned order observed that the point raised by the applicant/ defendant No.1 is not open for reconsideration in view of the order passed by the trial Court on 8th February, 2012. The trial Court rejected the application filed by the applicant/ defendant No.1 under Order 7 Rule 11 of the Code of Civil Procedure. The applicant/ defendant No.1, being aggrieved by the above mentioned order, has filed this civil revision application.

6. Though the prayer as made by the applicant/ defendant No.1 in the application (Exh.18) cannot be granted at this stage, in my view, the learned trial Judge has committed an error in observing that the point is not open for reconsideration in view of the order passed on 8th February, 2012.

7. The issue about payment of court fees is required to be considered by the learned trial Judge at appropriate stage. In the facts of the present case and considering the objection as raised by the applicant/ defendant No.1, the learned trial Judge shall frame issue on the point of valuation and court fees and answer the issue according to law.

8. With these observations, the Civil Revision Application is disposed of. In the circumstances, the parties to bear their own costs.

JUDGE