

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL REVISION APPLICATION NO.495 OF 2013**

Manskhilal Depar Khimashiq

..Applicant

Vs

Mr. Ramshankar Kalikaprasad
Mali and Ors

.. Respondents

Mr. Rupesh Lanjekar, Advocate for Applicant.

**CORAM : R.G.KETKAR,J.
DATE : 14/03/2016**

PC:

1. Heard Mr. Rupesh Lanjekar, learned counsel for the applicant at length.
2. By this Application under Section 115 of the Code of Civil Procedure, 1908 (for short, 'C.P.C'), the applicant has challenged the judgment and order dated 31.1.2013 passed by the learned 3rd Jt. Civil Judge, Jr. Dn., Vasai below Exhibit-14 in Regular Civil Suit No. 294 of 2011. By that order, the learned trial Judge rejected the application made by the applicant, hereinafter referred to as defendant no.1, under section 9-A of C.P.C. for dismissing the suit on the ground that the Court of Civil Judge, Jr. Dn., Vasai has no pecuniary jurisdiction to entertain and try the suit.
3. Mr. Lanjekar submitted that respondents no.1 and 2, hereinafter referred to as 'plaintiffs', have instituted Regular Civil

Suit No.294 of 2011 against the applicant (defendant no.1) and respondent no.3, hereinafter referred to as 'defendant no.2' for declaration that the agreement for development dated 21.11.2009 in respect of the suit property bearing CTS No.35, Hissa No.1, Survey no.40, Hissa No.5, admeasuring about 10.4 Gunthas, situate at revenue village More, Taluka Vasai, Dist-Thane, is null and void and the same is not binding on the plaintiffs; for perpetual injunction restraining the defendants, their servants/agents/persons claiming through them, from entering/disturbing/claiming the suit property. He submitted that in paragraph 32, the plaintiffs valued the suit for the purpose of court fees and jurisdiction at Rs.1000/- for prayers (a) and (b) and paid court fees under section 6(iv)(j) of the Maharashtra Court Fees Act (for short, 'Act'). He submitted that the plaintiffs executed Development Agreement in favour of defendant no.1 for developing the area admeasuring 10.4 Gunthas of Survey no.35 Hissa no.1 and Survey no.40 Hissa no.5. He submitted that though the learned trial Judge rightly held that the plaintiffs have to value the suit under section 6(iv)(ha) of the Act and accordingly they are liable to pay court fees, still in paragraph 9, the learned trial Judge observed that as the Development Agreement is valued at Rs. 5 Lacs, the same is within pecuniary jurisdiction of the Court of Civil Judge, Jr. Dn. and, therefore, the

Court has jurisdiction to entertain and try the suit.

4. Mr Lanjekar submitted that the learned trial Judge failed to properly construe Section 6(iv)(ha) of the Act and ought to have held that the plaintiffs are liable to pay court fees on the basis of market value of the suit property. He, therefore, submitted that the impugned order is liable to be set aside, thereby, holding that the court of Civil Judge, Jr. Dn., has no pecuniary jurisdiction to entertain and try the suit.

5. I have considered the submissions advanced by Mr Lanjekar. I have also perused the material on record. Perusal of the Development Agreement and in particular clause (1) thereof shows that the plaintiffs agreed to grant development rights to defendant no.1 to the extent of its build-able potential for a lump sum consideration of Rs. 5 Lacs.

6. Section 6(iv)(ha) reads thus:

6. Computation of fees payable in certain suits:

The amount of fee payable under this Act in the suits next hereinafter mentioned shall be computed as follows:

(i) to (iv)(a) to (h) xxx xxx

(ha) **for avoidance of sale, contract for sale, etc.-** In suits for declaration that any sale, or contract for sale or termination of contract for **sale, of any movable and immovable property is void - one-half of ad-valorem fee leviable on the value of the property".**

(emphasis supplied)

Perusal of Section 6(iv)(ha), extracted herein above, shows that in a suit for declaration that any sale, or contract for sale or termination of contract for sale, of any movable and immovable property is void, one-half of ad-valorem fee **leviable on the value of the property** is payable. Perusal of this Section shows that one half of ad-valorem fee is leviable on the value of the property and not market value of the property as on the date of institution of the suit. In the present case, clause 1 of the Development Agreement provides for consideration of Rs. 5 lacs for which the plaintiffs have agreed to grant development rights of the suit property to defendant no.1. In para 8 of the impugned order, the learned trial Judge has correctly observed that the plaintiffs are liable to value the suit as per section 6(iv)(ha) of the Act and not under section 6(iv)(j) as claimed in paragraph 32 of the plaint. At the same time, in paragraph 9 the learned trial Judge observed that even if the plaintiffs are required to value the suit property under section 6(iv)(ha), having regard to consideration mentioned in the Development Agreement which is of Rs. 5 lacs, it is certainly within the pecuniary limits of the Court of Civil Judge, Junior Division. In view thereof, I do not find that the learned trial Judge has committed any error in rejecting the application filed by defendant no.1 under section 9-A of C.P.C. Hence, Application fails and the same is dismissed.

7. As the learned trial Judge has held that the plaintiffs are liable to value the suit under section 6(iv)(ha) the plaintiffs shall pay one half of ad-valorem fee leviable on Rs. 5 lacs. Defendant no.1 is at liberty to make such application in the trial Court and the trial Court is requested to pass appropriate order for payment of requisite/deficit court fees.

8. Liberty is reserved to defendant no.1 to file application under section 8 of the Act for holding inquiry. If such application is made, all contentions of the plaintiffs are expressly kept open and the learned trial Judge will decide the said application in accordance with law and uninfluenced by the observations made in the impugned order and in this order. Order accordingly.

(R.G.KETKAR, J.)