

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Civil Revision Application NO. 381 OF 2010

SOU LAXMIBAI KUNDLIK NALE
AND OTHERS

...Applicants

Versus

SOU MANJULA POPAT MALI(KOLHE)
AND OTHERS

...Respondents

....

Mr. Ashok B. Tajane, Advocate for the Applicants.

Mr. Prashant R. Suryawanshi i/b. G.M. Savagave, Advocate for Respondent No.1.

Mr. Sharad Bhosale, Advocate for Respondent No.2.

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CORAM : R. G. KETKAR, J.

DATE : 03rd MARCH, 2016

P.C.

1. Heard Mr. Ashok Tajane, learned Counsel for the applicants, Mr. Prashant Suryawanshi, learned Counsel for respondent No.1 and Mr. Sharad Bhosale, learned Counsel for respondent No.2, at length.

2. Mr. Tajane states that applicant No.1 expired on 6.12.2010 leaving behind applicant Nos.2 to 4 as the only legal heirs and representatives. As they are already on record, he seeks permission to delete applicant No.1. On the oral application made by Mr. Tajane, leave to delete applicant No.1 is granted as her legal heirs and representatives are already on record. Amendment

shall be carried out forthwith.

3. By this Application under Section 115 of Code of Civil Procedure, 1908 (for short, 'CPC'), the applicants, hereinafter referred to as the 'defendants', have challenged the judgment and order dated 22.3.2010 passed by learned Joint Civil Judge, Junior Division, Barshi below Exh.27 in Regular Civil Suit No.428 of 2009. By that order, learned trial Judge rejected application made by the defendants under Order VII Rule 11 of CPC for rejecting the plaint on the ground that the plaintiff has not paid court fees as per Section 6(iv) of the Maharashtra Court Fees Act, (for short, 'Act'). Defendants contended that the price of the suit property is Rs.2,90,00,000/- and the plaintiff paid court fees on only Rs.97,034/-. Learned trial Judge rejected the application by observing that if during the course of evidence, it comes on record that the price of the suit property is Rs.2,90,00,000/- as per the defendants contention, necessary orders will be passed at that time.

4. After arguing the matter for quite sometime, Mr. Tajane upon taking instructions from applicant No.2 Shri Machindra Kundlik Nale, who is present in the Court, seeks permission to withdraw this application with liberty to file application under

Section 8 of the Act. He has tendered a photocopy of PAN Card of applicant No.2, which is taken on record and marked "X" for identification. He submits that within two weeks from today, the defendants will take out application under Section 8 of the Act and serve copy in advance on the other side. He submits that if such an application is made, learned trial Judge may be directed to decide that application in accordance with law uninfluenced by the observations made in the impugned order. Mr. Suryawanshi states that within two weeks from receipt of the application made by the defendants, reply will be filed on behalf of the plaintiff and copy will be served in advance on the other side. Statements made by learned Counsel appearing for the parties are recorded.

5. On oral application made by Mr. Tajane, application is allowed to be withdrawn with liberty as prayed for. If such an application is made, learned trial Judge is requested to decide said application within eight weeks from receipt of such application by holding necessary enquiry and in accordance with law. Rule is discharged with no order as to costs. Order accordingly.

(R. G. KETKAR, J.)