

***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION***

CIVIL REVN. APPLICATION NO. 465 OF 2016

1. Gajanan Babu Koli,
2. Ramesh Babu Koli
Both residing at Nakhwa Bldg.,
Plot No.H-7, Sector 14, Diwale Village,
CBD Belapur, Navi Mumbai.

... Applicants (Ori.Def.
Nos.7 and 8).

v/s

Damodar Shingya Koli
(since deceased through heirs & Lrs.)
1 A. Rajubai Damodar Koli & ors.

... Respondents

Mr.Rajesh Datar for the applicants.

Mr.V.K.Shinde along with Bhave for respondent No.2.

Coram: N.M. Jamdar, J.

Dated: 28 September 2016

ORAL ORDER:

The applicants have challenged the order passed by the learned Civil Judge, Junior Division, Vashi, dated 30 April 2016, rejecting the objection taken out by the Applicants/Defendants under Section 9A of the Code of Civil Procedure, taking objection to the pecuniary jurisdiction.

2 Heard learned counsel for the parties.

3 Learned counsel for the Applicants submitted that the suit is filed for a declaration that the Respondents/Plaintiffs and Defendant Nos.4 to 6 are the heirs and they are entitled to receive a plot as an heir of deceased Gana Vama Koli, from Defendant No.3 CIDCO. The learned counsel submitted that the learned Civil Judge has only taken the valuation of the suit of Rs.7,998.25, which is the compensation received and has not adverted the real claim made in the suit for his allotment of the plot. He submitted that, when the property was sold by the heir of Defendant No.5 in the year 2006, the share was quantified. He submitted, the conclusion by the learned Civil Judge that the claim in the suit is not susceptible for valuation, is not correct. Learned counsel for the Respondents/Plaintiffs submitted that the dispute is regarding the heirship rights and what is sought is only a direction to the CIDCO, for an allotment.

4 Going by the averments made in the plaint and the prayer sought by the Respondents/Plaintiffs, a direction to the allotting authority to recognize the Plaintiffs and Defendant Nos.4 and 6 as a rightful heirs and extend the benefits of policy to them is sought. It is pursuant to a policy that the allotment of plot is sought. The plot itself has not been identified or earmarked. The prayer in the suit is

for the benefit of the policy of allotment of alternate plots. It is also not placed on record that there is any schedule for grant of a particular plot of a particular size for a claim of specific nature. Therefore, as on today, which plot, if the Respondents/Plaintiffs are held to be heirs, is to be allotted to them, is not certain. Parties may themselves arrive at a private arrangement to quantify their share and sell the same to other, that does not mean that the relief sought in the suit can be quantified. Purely private arrangement between the parties is not the same as an allotment of a plot by CIDCO under its policy.

5 In the circumstances, it cannot be held that the order passed by the learned Civil Judge was in excess of his jurisdiction or it was a erroneous exercise of jurisdiction. The civil revision application, therefore, cannot be entertained and is rejected.

(N. M. Jamdar, J.)