

IN THE HIGH COURT OF JUDICATURE AT MUMBAI
CIVIL APPELLATE JURISDICTION
CIVIL REVISION APPLICATION NO.688 OF 2015

M/s. Shinde Associates through its Partners
Anil J. Shinde and another ... Applicants
Vs.
Rajendra Balkrishna Khole and another ... Respondents

Mr. Surel S. Shah for Applicants.
Mr. Amit Aagashe i/b. Mr. Sagar Jadhav for Respondent No.1.

CORAM : R. G. KETKAR, J.
DATE : 26TH FEBRUARY 2016

P.C. :

Heard Mr. Shah, learned Counsel for applicants and Mr. Aagashe, learned Counsel for respondent No.1 at length.

2. By this Application under Section 115 of the Code of Civil Procedure, 1908 (for short 'C.P.C.'), applicants have challenged the judgment and order dated 30.09.2015 passed by the learned Joint Civil Judge Senior Division, Pune below exhibit-35 in Special Civil Suit No.1477 of 2013. By that order, the learned trial Judge rejected the application made by the applicants, hereinafter referred to as defendants, under Order VII, Rule 11(b) of C.P.C. Respondent No.1, hereinafter referred to as plaintiff, has instituted the Suit inter alia for declaration that defendant No.1 has illegally encroached over the area of 125 sq.mtrs. on the north-east corner of plot No.A-10, in all admeasuring 3 Ares out of Survey No.42, Hissa No.4/14 at Village Mohammadwadi, Hadapsar, Pune (for short 'suit property'); for direction against defendant No.1 to restore back to the plaintiff the possession and occupation of the suit property; for perpetual injunction restraining defendants No.1 and 2 from claiming possession over or encroaching upon the suit property;

for mandatory injunction directing defendant No.1 to remove the tin shed fencing which is illegally put up inside the suit property. During the pendency of the Suit, defendants No.1, 1A and 1B took out application exhibit-35 praying inter alia for directing the plaintiff to pay Court fee on the market value of 3 Ares land and in case the plaintiff fails to pay the Court fee on the market value of 3 Ares land then the plaint may be rejected with heavy cost. By the impugned order, the learned trial Judge rejected the application.

3. Mr. Shah strenuously contended that perusal of paragraphs 12 and 18 to 20 as also prayer clause (A) of the plaint will clearly reveal that in effect and in substance, plaintiff is claiming declaration of ownership over plot No.A-10 admeasuring 3 Ares. Plaintiff, therefore, has to pay Court fee on the market value of plot No.A-10 admeasuring 3 Ares. However, the plaintiff has only paid Court fee on the basis that the suit property admeasures 125 sq.mtrs. and accordingly had paid the Court fees. He, therefore, submitted that the plaintiff may be directed to pay the Court fee on the market value of 3 Ares land.

4. On the other hand, Mr. Aagashe supported the impugned order. HE submitted that plaintiff had purchased plot No.A-10 admeasuring 3 Ares by registered sale deed dated 07.04.1992. It is the case of the plaintiff that out of this 3 Ares, defendants have encroached upon the area of 125 sq.mtrs. on the north-east corner and plaintiff is claiming relief only in respect of 125 sq.mtrs. land encroached by defendants and accordingly has paid the Court fees. He, therefore, submitted that no case is made out for interfering with the impugned order.

5. I have considered the rival submissions advanced by the learned Counsel appearing for the parties. I have also perused the material on

record. Perusal of paragraph 1 of the plaint shows that plaintiff has given description of property admeasuring 3 Ares out of Survey No.42, Hissa No.4/14 and bearing plot No.A-10. In paragraph 2, plaintiff has asserted that the subject matter of the Suit is the suit property i.e. the area of 125 sq.mtrs. on the north-east corner of plot No.A-10, which is encroached upon by the defendant No.1. In paragraph 31, plaintiff has valued the Suit at Rs.13,37,500/-, which is the market value of the suit property i.e. 125 sq.mtrs. of encroached area valued as per the Government Ready Reckoner 2013 issued by Government of Maharashtra. Perusal of prayer clauses (A) to (D) shows that plaintiff has claimed relief qua suit property which admeasures 125 sq.mtrs.

6. Mr. Shah submitted that plaint has to be read as a whole and in particular having regard to the assertions made in paragraphs 12 and 18 to 20 as also prayer clause (A), in effect and in substance, plaintiff is claiming declaration in respect of property admeasuring 3 Ares. There is no dispute with the proposition that the plaint has to be read as a whole. Reading of the plaint as a whole leaves no room for doubt that the suit property admeasures 125 sq.mtrs. and accordingly, plaintiff has claimed reliefs. Plaintiff has also valued the Suit on the basis that suit property admeasures 125 sq.mtrs. In view thereof, I do not find that the learned trial Judge has committed any error in rejecting the application. For the reasons recorded in paragraph 7 of the impugned order, application fails and the same is dismissed.

(R. G. KETKAR, J.)