

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

Civil Revision Application No.36 of 2016

(Vinod Arjundas Sahani and others

vs.

The Servants of Nagpur Homeless Co-operative Housing Society Limited, Nagpur)

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*Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.*

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Court's or Judge's Orders

CORAM : S.B. SHUKRE, J.
DATE : 8th DECEMBER, 2016.

Heard Shri Masood Sharif, the learned Counsel for the applicants. None for the respondent, though it is duly served and given sufficient opportunity to make submissions in defence.

The learned Counsel for the applicants submits that the applicants had initially taken two objections, one relating to locus of the respondent/plaintiff to file the suit and other relating to incorrect valuation of the subject matter of the suit. He submits that the applicants would not press the first objection relating to the locus of respondent/plaintiff. He further submits that a bare perusal of the pleadings in the plaint as well as relief sought by the plaintiff would indicate that the suit has been filed basically for declaration of the ownership of the respondent/plaintiff together with another declaration arising out of it, the declaration of the ownership

of the respondent and consequentially relief of injunction, although this is not stated in so many words. He, therefore, submits that the suit is susceptible to monetary valuation under Section 6(iv)(d) of the Maharashtra Court Fees Act. He places his reliance upon the case of **Samrat Furniture, Nagpur and others vs. Bhaurao Natthuji Mankar – 2001(3) Mh.L.J. 456.**

Although, nobody is present on behalf of the respondent, the written submissions filed on behalf of the respondent could be considered for appropriate adjudication of resolution of the controversy involved in this application. Accordingly, I have gone through the submissions of the respondent.

The written submissions of the respondent, it is seen, raise altogether different issues and so far as the issue involved in the present application is concerned, the reply of the respondent appears to be quite cryptic, when it is said by it that the prayer clauses in the suit are very specific, the plaintiff neither claims the possession of the land excluding the land Survey No.64 nor states that these applicants/defendants have encroached upon the plaintiff's land in suit and, therefore, the valuation of the suit has been properly made as per Section 6(iv)(d) of the Maharashtra Court Fees

Act.

The defence so taken by the respondent, however, does not appear to be correct. Even a cursory glance at the pleadings in the plaint and the reliefs claimed therein is sufficient to convince one that basically an adjudication upon ownership of the respondent/plaintiff has been sought from the Civil Court and, therefore, the suit is essentially for declaration of ownership together with other consequential reliefs such the declaration that the defendants/applicants did not have any right to claim any interest in the suit property and grant of permanent injunction against them. When a declaration in the nature that the defendants do not have any right to create interest in the suit property is sought, it necessarily follows that the declaration for the ownership of the plaintiff in respect of the suit property would have to be made by the Civil Court. Unless the issues of ownership for the plaintiff over the suit property is adjudicated upon, the kind of declaration sought for by the plaintiff in this suit could not be made by the Civil Court. Even, granting of relief of permanent injunction hinges upon the adjudication of the basic issue of ownership.

In the case of the *Samrat Furniture (supra)*, following the law laid down by the Hon'ble Apex Court in the

case of Corporation of the City of Bangalore vs. M. Papaiah and another - AIR 1989 SC 1809, the learned Single Judge, dealing with almost the same facts and situation, opined that even though a relief of declaration of ownership was not asked for in that suit, the pleadings in the plaint indicated that the plaintiffs therein were seeking an adjudication upon the issue of their ownership for the purpose of claiming permanent injunction and, therefore, that suit would have to be valued as the suit filed for declaration of ownership and the consequential relief of the permanent injunction. Same opinion has been reiterated by another learned Single Judge of this Court in the case of Kishorbhai Premchand Shah vs. Hirji Bhojraj & Sons Kutchi Oswal Jain Chhatralay Trust and others – 2014(2) Mh.L.J. 187. From what is already said earlier about the facts of the present case, it is clear that this is also a case where no relief has been expressly sought for declaration of the ownership, but the relief actually sought is also of the kind as could not be granted without adjudicating upon the issue of ownership. The suit would have to be valued as the one filed for declaration of the ownership and the other consequential relief, as sought for, in the present suit. Therefore, it cannot be said that the suit is not susceptible to monetary valuation rather it is very much

susceptible and would have to be valued in terms of Section 6(iv)(d) of the Maharashtra Court Fees Act. The learned Civil Judge, it seems, ignored the underlying basic features of the suit filed by the respondent/plaintiff in the instant case and, therefore, passed an erroneous order causing thereby miscarriage of justice. The impugned order, therefore, deserves to be quashed and set aside.

The application is allowed. The impugned order is quashed and set aside.

The suit filed by the respondent/plaintiff is susceptible to monetary valuation under Section 6(iv)(d) of the Maharashtra Court Fees Act and the valuation shall be corrected accordingly latest by 16th January, 2017, failing which, the plaint shall stand rejected.

Costs shall follow the event.

*sdw

JUDGE