

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

WRIT PETITION NO. 8634 OF 2011

M/s. D.S.Argade Promoter and Builders ...Petitioner

Versus

Shri. Laxman Dagadu Ghule & Ors. ...Respondents

WITH

**CIVIL APPLICATION (ST.) NO. 23988 OF 2016
IN
WRIT PETITION NO. 8634 OF 2011**

Shr.Laxman Dagdu Ghule
Mrs.Hirabai Laxman Ghule
(since deceased) through their Legal Heirs
Smt.Sanjivani Balu Ghule & Ors. ...Applicants

Versus

M/s. D.S.Argade Promoters and Builders ...Respondent

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Mr.Ajit J.Kenjale a/w Mr.Kaustubh Kandpile for the Petitioner.
Mr.Madan L.More for Respondent Nos.1 to 4.

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**CORAM: Mrs.MRIDULA BHATKAR, J.
DATED: JULY 3, 2017**

P.C. :

1. Rule. Rule made returnable forthwith. By consent, petition is heard finally and disposed of at the stage of admission.

2. This petition is directed against the orders dated 12.10.2010 and 03.03.2011 passed by the learned Jt. Civil Judge, Senior Division, Pune on Deputation (Additional Judge) below Exhibit 52 and Exhibit 59 respectively in Special Civil Suit No. 1644 of 2006.

3. The respondents/plaintiffs had filed the Suit for a declaration and cancellation of Development Agreement dated 17.04.2006 executed between the parties is to be declared as null, void and illegal and also for damages and injunction. It was a Development Agreement for Rs. 76,50,000/-, out of which as per the case of the respondents/ plaintiffs, an amount of Rs. 49,00,000/- was paid and the remaining amount has not been paid by the petitioner/defendant. Pursuant to the said Development Agreement, the respondents/plaintiffs had paid ad-voleram court fees on the amount i.e. Rs. 49,00,000/- received by them and not on the total consideration of Rs. 76,50,000/-. The petitioner/defendant had moved an application under Order 7 Rule 11 (c) of the Code of Civil Procedure stating that the Suit is not properly valued. The learned trial Judge has rejected the said application, vide order dated 12.10.2010 and held that the valuation is made under Section 6 (iv) (j) of the Bombay Court Fees Act, 1959 is correct and the provisions of Section 6 (iv) (ha) of the Bombay Court Fees Act is not applicable to the present Suit, as the respondents/plaintiffs have claimed

the relief of declaration and injunction in the Suit. Thereafter, the petitioner/defendant again moved an application below Exhibit 59 for review of the order dated 12.10.2010. The trial Court has rejected the said application, vide order dated 03.03.2011 and held that no case is made out to review the order under Order 47 Rule 4 of Code of Civil Procedure

4. The learned counsel for the petitioner/defendant has submitted that the challenge is given to the entire Development Agreement where the consideration amount was Rs. 76,50,000/-. The Suit ought to have been valued as per Section 6 (iv) (ha) of the Bombay Court Fees Act and not as per Section 6 (iv) (j) of the said Act. He has relied on the judgment in the case of **Prism Reality V/s. Govind Yashwant Khelade & Ors.** reported in **2015 ALL MR (5) 620**.

5. The learned counsel for the respondents/plaintiffs has submitted that the respondents/plaintiffs have not challenged any agreement of sale or contract, which is a requirement under section 6 (4) (ha) of the Bombay Court Fees Act. He has further submitted that the respondents/plaintiffs were cheated by the petitioner/defendant. The respondents/plaintiffs had paid the court fees on Rs.49,00,000/- which was received by them. He has further submitted that the said

Development Agreement is to be declared as null and void, so it is not a declaration of agreement of sale or sale deed.

6. Heard submissions. The respondents/plaintiffs and the petitioner/defendant are the parties to the Development Agreement is not disputed. The respondents/plaintiffs have claimed for the recovery of amount under damages though it is a Development Agreement. It is in nature of the Agreement of Sale where the possession of the land was handed over to the petitioner/defendant and 50% of the agreement amount has been paid. The Suit is filed for a declaration in respect of the Development Agreement by seeking relief that the said agreement is to be declared as null and void. In fact, the respondents/plaintiffs seek cancellation of the Development Agreement, so far as the said relief has sought, the provisions of Section 6 (4) (ha) are applicable to the Suit.

7. In view of set of the facts, the order dated 12.10.2010 passed by the learned trial Judge below Exhibit 52 is set aside. However, the order dated 03.03.2011 of reviewing the order dated 12.10.2010 passed by the learned trial Judge below Exhibit 59 is correct and it does not require any interference.

8. The Writ Petition is partly allowed. Rule made absolute in respect of order dated 12.10.2010 and the respondents/plaintiffs are directed to

pay the review court fees as per Section 6 (iv) (ha) of the Bombay Court Fees Act, as the Suit is valued under Section 6 (iv) (ha) of Bombay High Court Fees Act.

9. In view of the above, Writ Petition is disposed of.

(MRIDULA BHATKAR, J.)