

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

CIVIL REVISION APPLICATION NO. 292 OF 2017

Grampanchayat, Kudus & Anr.	...	Applicants
V/s.		
Ashfaq Muhammed Hussain Memon	...	Respondent

- Mr.Kailas Dewal a/w. Mr.Digvijay S. Sasangdhar i/b. Mr.Roshan S. Tanna for the Applicants.

CORAM : DR.SHALINI PHANSALKAR-JOSHI, J.

DATE : 29th JANUARY, 2018.

P.C. :

1] Heard learned counsel for the Applicants.

2] By this Civil Revision Application filed under Section 115 of Code of Civil Procedure, the Applicants are challenging the order dated 31st January 2017 passed by the Civil Judge Junior Division, Wada, below Exhibit-14 in Regular Civil Suit No. 119 of 2016.

3] The application at Exhibit-14 was preferred by the Applicants herein for framing of preliminary issues relating to pecuniary jurisdiction of the Court and also about the maintainability of the suit for want of necessary parties. The Applicants are the Original Defendants in the suit. The suit is filed by the Respondent for

injunction restraining the Petitioners from demolishing, the building constructed on the suit property, without due course of law.

4] According to learned counsel for the Applicants, in paragraph No.4 of the plaint, the Respondent/Plaintiff has stated that, he has constructed the building by incurring the expenses of Crores of rupees. In view of Article-7 of Schedule-I of the Maharashtra Court Fees Act, 1959, therefore as the suit is for prevention of monetary loss, Court Fees should have been paid on the amount of the monetary loss to be prevented and hence according to learned counsel for the Applicant, in the present case, the monetary loss which is tried to be prevented is of more than Crores of rupees, the suit claim should have been valued accordingly and if it was so valued, then it would exceed the pecuniary jurisdiction of the trial Court.

5] It is submitted that the trial Court has, however, rejected this contention on the ground that the suit being simpliciter for injunction, the valuation is properly made under Section 6(iv)(j) of the Maharashtra Court Fees Act, 1959. It is urged that, this finding of the trial Court cannot be called as legal and correct.

6] However, in my considered opinion, no fault can be found in the impugned order of the trial Court for simple reason that the suit

property is claimed to be owned by the Respondent/Plaintiff, who is also in possession thereof. As he has, only apprehension that the Petitioner-Grampanchayat may demolish the suit property, he is asking for the relief of simpliciter injunction and therefore, the suit is properly valued under Section 6(4)(j) of the Maharashtra Court Fees Act, 1959. The provisions of Article 7 of Schedule-I of the Act will not come into play.

7] Even as regards the second contention that the suit is bad for non-joinder of necessary parties, namely, the purchasers of the flats in the said building, the trial Court has rightly held that the Respondent has not sought any relief against those purchasers. In view thereof, their non-joinder does not become fatal to the maintainability of the suit.

8] The impugned order, therefore, passed by the trial Court does not call for any interference in the revisional jurisdiction. The Civil Revision Application, therefore, stands dismissed.

[DR.SHALINI PHANSALKAR-JOSHI, J.]