

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

CIVIL REVISION APPLICATION NO. 342 OF 2017

M/s. Radhika Realtors Partnership Firm & Ors.	...	Applicants
V/s.		
Arun Shamrao Patil & Ors	...	Respondents

- Mr.Mukul Taly a/w. Ms.Mallika Taly i/b. S. Mahomedbhai & Co. for the Applicants.
- Mr.Siddhartha R. Ronghe for Respondent Nos.1 to 4.

CORAM : DR.SHALINI PHANSALKAR-JOSHI, J.

DATE : 13th MARCH, 2018.

P.C. :

1] Heard learned counsel for the Applicants and learned counsel for Respondent Nos.1 to 4.

2] By this Civil Revision Application, filed under Section 115 of the Code of Civil Procedure (*for short, "C.P.C."*) the Applicants are challenging the order dated 8th February 2017 passed by the 2nd Jt. Civil Judge Junior Division, Palghar, below the Application at Exhibit-66 in Regular Civil Suit No.93 of 2010.

3] The Application at Exhibit-66 was filed by the present Applicants, who are the original Defendant Nos.14/1 to 14/4

challenging the valuation of the suit property and on that ground for rejection of the plaint as per provision of Order-7 Rule-11 (b) of C.P.C..

4] It was contended in the Application that by the present Suit, the Respondents/Plaintiffs are seeking the declaration that the sale-deed of the suit property, executed between Defendant Nos.1 to 8 and Defendant No.14 on 11th April 2011, is not binding on the Respondents. Hence, it was submitted by the Petitioners that, as the valuation of the suit property, as mentioned in the said sale-deed, is Rs.7 Crores, the Respondents/Plaintiffs should have valued the Suit as per Section 6(iv)(d) of the Maharashtra Court Fees Act and Court Fees Stamp of Rs.3 Lakhs was required to be affixed on the plaint. After such proper valuation, the suit is required to be transferred and presented to the Court of Civil Judge Senior Division, Palghar.

5] At the time of advancing submissions in this Civil Revision Application, learned counsel for the Applicants submits that, though in the Application it is mentioned that the Suit claim has to be valued as per Section 6(iv)(d) of the Maharashtra Court Fees Act, it should have been mentioned as Section 6(iv)(ha) of the Maharashtra Court Fees Act and hence as the proper Section 6(iv)(ha) of the Maharashtra Court Fees Act was not mentioned in the Application filed before the trial Court, therefore the matter may be remanded to

the trial Court for fresh hearing.

6] As against it, submission of learned counsel for the Respondents is that, the trial Court has considered the said Application from the perspective, as to, whether the Applicants, who are challenging the sale-deed, are executants of the sale-deed or not and it was held that, if the non executant is in possession and sues for a declaration that the deed is null and void and does not bind him or his share, he has to merely pay a fixed Court fee. Therefore, it is urged that the trial Court has not considered, either the provisions of Section 6(iv)(d) or of Section 6(iv)(ha) of the Maharashtra Court Fees Act but has considered the judgment of the Hon'ble Supreme Court in the case of *Suhrid Singh Alias Sardool Singh V/s. Randhior Singh & Ors.*, (2010)12 SCC 112, and rejected the Application filed by the Applicants.

7] Thus, it is apparent that neither the provisions of Section 6(iv)(ha) of the Maharashtra Court Fees Act were quoted in the application on the basis of which the valuation of the Suit claim is challenged nor the trial Court has considered the said provisions or the judgment(s) of this Court in the following cases, which are relied upon by the parties.

i) *Prism Reality, Pune V/s. Govind Yashwant Khalade*

& Ors., 2015(2) Mh.L.J. 472.

- ii) Surashtra Estate Pvt. Ltd. & Anr. V/s. Runja Laxman Lokhande & Ors., 2016 SCC Online Bom.9627,*
- iii) Ravindra Narayan Rajarshi & Ors. V/s. Rohini Ganpatrao Heblkar & Anr., 2017 SCC Online Bom.7025 and*
- iv) Niraj s/o.Narendra Walle V/s. Vijaya w/o. Narendra Walle & Ors., 2017(4) Mh.L.J.402.*

8] Hence, the interest of justice requires that the matter be decided afresh by the trial Court on fresh Application to that effect being filed by the Applicants, so that, it should not cause any prejudice either the Applicants or to the Respondents on this score.

9] Hence, the impugned order passed by the trial Court is set-aside. Liberty is granted to learned counsel for the Applicants to file a fresh Application within two weeks from the receipt of this order by the trial Court. The trial Court to decide the said Application in accordance with law within four weeks there from.

10] All the contentions raised by the parties hereto are expressly left open and trial Court is not to be influenced by the order or its earlier order.