

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL REVISION APPLICATION st. No.20873 OF 2018**

Shri Naresh Jagdish Sharma

... Applicant

Vs.

Shri Rajaram Kanha Patil & Ors.

... Respondents

Mr.Siddesh Bhole i/b Haresh Jagtian and Associates for the Applicant

Mr.V.V. Nene for the Respondent Nos.1 & 2

Mr.J.M. Joshi for Resp. Nos.3 to 21

**CORAM: Mrs.MRIDULA BHATKAR, J.
DATED: AUGUST 6, 2018**

P.C. :

1. Learned Counsel for the applicant files an undertaking of the applicant – Shri Naresh Jagdish Sharma i.e., defendant No.21, dated 4.8.2018. It is taken on record and marked exhibit A. A copy of the said undertaking is already served upon the respondents. However, respondent Nos.1 and 2 are not ready to even negotiate with the applicants.

2. In this Civil Revision Application, the order dated 13.6.2018 passed by the learned Civil Judge Senior Division, Link Court, Bhiwandi, passed below exhibit 24 in Special Civil Suit No.141 of 2015 rejecting the application filed by defendant No.2 i.e., the

applicant, is challenged. The applicant is defendant No.21, who has purchased an undivided share in the suit land from defendant Nos.3 to 20. However, respondent Nos.1 and 2, who are the original plaintiffs, are not party to the sale deeds. They filed suit for partition and cancellation of the sale deeds and injunction. In the said suit, the applicant appeared and filed an application which is marked exhibit 24 and prayed that the decree of partition be passed and the suit lands be partitioned among the plaintiffs and the defendants. The said application was contested by the plaintiffs and it was rejected by the learned trial Judge and hence, this application.

3. Learned Counsel for the applicants submitted that his application was rejected on two counts by the learned trial Judge – one, that the plaintiffs have sought cancellation of the sale deed and the said prayer is not admitted by defendant No.21 and; secondly, defendant No.21 has not admitted to demolition of the construction standing on the land. He submitted that the learned Counsel for the applicants relies on the undertaking of the applicants which is filed today before this Court and submitted that he accepts that the plaintiffs have undivided share in the entire suit

property and he admits the share of the plaintiffs as prayed in para 18A of the suit. He submitted that he is ready to demolish the construction which is standing on the suit land, if some land is given to the share of the plaintiffs. He undertakes that he will not claim any equity or right against the land which is going to be apportioned as per the shares claimed in para 18A. However, he prayed that the suit land is to be partitioned.

4. Learned Counsel for respondent Nos.1 and 2, the main contesting parties, submitted that he claims $1/8^{\text{th}}$ and $1/16^{\text{th}}$ share for each plaintiff. He submitted that in the total land of approximately 115 gunthas, coming to the share of each plaintiff. He further submitted that the applicant has not admitted all the facts which are pleaded. He submitted that the other pleading that the sale deed is not binding on the plaintiffs, is not admitted by defendant No.21. He further submitted that it is necessary for defendant No.21 first to demolish all the illegal construction of the godowns which stand at the edge of the highway, which will draw highest price in market. He submitted that he is apprehending that the because of this construction of the godown, the Collector may not give him the said land but he will give him a land far away from

the Mumbai-Nasik Highway. Therefore, he is opposing this application.

5. In view of the undertaking, the trial Court may pass the order under Order 12 Rule 6 of the Civil Procedure Code. It is made clear that the sale deed will not be binding on the plaintiffs to the extent of their respective shares in the said land. It is to be made clear by the trial Court that the godowns, which are constructed on the suit land, where the plaintiffs are having undivided share, should not be considered as a criterion for the measurement and shall not come in fixing apportionment by the Collector and accordingly, directions are to be given by the trial Judge.

6. In the circumstances, the order passed by the learned trial Judge is set aside and the matter is remanded for reconsideration of application below exhibit 24 in view of the undertaking and the order passed by this Court. Parties to appear before the trial Court on 23.8.2018.

7. Civil Revision Application is disposed of accordingly.

(MRIDULA BHATKAR, J.)