

FARAD CONTINUATION SHEET No.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

CIVIL REVISION APPLICATION NO. 13/2018
 (SMT.CHANDRABHAGA DASHRATH CHOPKAR **VERSUS** SURESH DASHRATH CHOPKAR &
 OTHERS)

 Office Notes, Office Memoranda of Coram,
 appearances, Court's orders of directions
 and Registrar's orders

Court's or Judge's orders

 Shri G.M. Shitut, counsel for the applicant.
 Shri V.A. Dhabe, counsel for the R-1.

CORAM : A.S. CHANDURKAR, J.

DATE : JULY 03, 2018.

In view of notice for final disposal issued earlier, the learned counsel for the parties have been heard at length.

The applicant is the defendant no.1 in the suit filed by the non-applicant no.1 herein. That suit has been filed seeking the relief of partition and separate possession of various properties which are claimed to be ancestral in nature. A declaration has also been sought that the gift-deed dated 17.10.2015 executed in favour of defendant nos.2 to 4 be declared as null and void. The defendant no.1 filed an application under provisions of Order VII Rule 11(A) of the Code of Civil Procedure, 1908, seeking rejection of the plaint on the ground that though in the suit it was claimed that the properties were ancestral in nature, in the documents filed along with the plaint, it was clear that the suit properties were self acquired properties of the grandfather Pandurang and thereafter his son Dashrath. The trial Court rejected that application by observing that unless the evidence was recorded, the contentions sought to be raised by the defendant no.1 as to the nature of the properties could not be accepted.

The learned counsel for the applicant submitted that in an application seeking rejection of the plaint, the documents filed along with the plaint can be taken into consideration. On consideration of those documents which included a communication dated 23.05.2016 issued by the plaintiff it was clear that the contents thereof were against the averments made in the plaint. The said document indicated that the suit properties were self acquired properties of his grandfather and father. It was then submitted that the trial Court erred in not rejecting the plaint on this count.

The learned counsel for the non-applicants supported the impugned order. According to him, there was a cause of action for filing the suit and unless parties lead evidence, it would not be possible to accept the contentions of the defendant no.1. He also referred to the gift-deed dated 17.10.2015 in that regard.

After hearing the learned counsel for the parties, I find that the rejection of the plaint is sought on the ground that the plaint does not disclose any cause of action. According to the defendant no.1, the suit properties were self acquired properties of his grandfather while in the plaint it was averred that the suit properties were ancestral properties. Though the applicant sought to take support of the contents of the communication dated 23.05.2016 to support his submissions, I find that unless the parties lead evidence, it would not be possible to hold that the suit properties were self acquired properties of his grandfather. Moreover, in the gift-deed dated 17.10.2015, it has been stated that part of the suit properties were ancestral properties. The plaint therefore, cannot be rejected in

part.

The trial Court did not commit any jurisdictional error when it rejected the application below Exhibit 10. By clarifying that it would be open for the parties to lead evidence in support of their respective pleadings and the trial Court shall consider the matter on its own merits, the civil revision application is dismissed. In the facts of the case, the proceedings in Regular Civil Suit No.16 of 2017 are expedited.

JUDGE

APTE