

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

CIVIL REVISION APPLICATION NO.541 OF 2016

Suryakant Annaso Sutar

... Applicant

Vs.

Sharad Vasantrao Jadhav and Ors.

... Respondents

.....

Mr. Ashutosh M. Kulkarni a/w Mr. Sarthak Diwan for the applicant.

None for the Respondents.

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CORAM : M. S. KARNIK, J.

DATE : 3rd OCTOBER, 2019.

P. C.:

1. Heard learned counsel for the applicant.
2. The applicant is the original plaintiff. The plaintiff filed a suit for declaration and injunction.
3. Defendant No.1 filed counter claim and prayed for specific performance against the plaintiff. In the counter claim one of the relief sought by the defendant No.1 is that the sale deed executed by the plaintiff in favour of defendant Nos.5 to 8 be declared as null and void. A further relief for specific performance of agreement dated 2.6.2011 is prayed for in the counter claim. Defendant No.1 also prayed for compensation of Rs.10,00,000/-

4. The plaintiff filed an application below Exhibit 159 raising objection under Order VII Rule 11 (b) (c) of the Code of Civil Procedure. According to plaintiff the relief claimed by the defendant No.1 by way of counter claim is under valued and there is non payment of requisite court fees.

5. Learned counsel for the applicant-plaintiff contended that the declaration is sought that the sale deed dated 5.9.2011 is not binding on the share of the defendant No.1 and therefore he is required to pay the court fees as per Section 6(ha) of the Maharashtra Court Fees Act and the total suit valuation must be Rs.61,50,000/- and Rs.10,00,000/- The Trial Court was of the opinion that in so far as the relief in respect of declaration that the sale deed executed on 5.9.2011 in favour of defendant Nos.5 to 8 is concerned the said relief is ancillary. The Trial Court was further of the opinion that at this juncture it cannot be said that the subject matter in dispute is susceptible of monetary evaluation and as such the provisions of Section 6(j) of the Act would not apply.

6. Learned counsel for the applicant submitted that essentially the relief sought by the applicant-plaintiff is avoidance of contract. In support of his submission he would rely upon the decisions of this Court in the case of **M/s. Prism Reality Versus Mr. Govind Yashwnt Khalade and Ors. in Writ Petition (Stamp) No.24111 of 2014** and **Goel Ganga Developers Pvt. Ltd. Versus Shatrunjay Constructions & Developers Pvt. Ltd. and Anr. in Writ Petition No.7926 of 2012.** Learned counsel for the applicant would submit that the said decisions could not be brought to the notice of the Trial Court when the impugned order came to be passed.

7. The respondents-original defendants have not appeared despite service of notice in terms of the order dated 16.9.2019 passed by this Court and affidavit of service has been filed stating compliance of the order dated 16.9.2019.

8. I have heard learned counsel for the applicant.

9. The defendant No.1 in the counter claim had prayed for declaration that the sale deed dated 5.9.2011 is not binding on him and the same may be declared as null and void.

10. Having regard to the facts of the present case, considering that the respondents have not appeared despite service of notice, it would be necessary for the Trial Court to reconsider the application made by plaintiff under Order VII Rule 11 in the light of the decisions relied upon by learned counsel for the applicant. The counter claim as is the contention of learned counsel for the applicant is for avoidance of contract.

11. In this view of the matter, impugned order calls for interference.

12. The impugned order is set aside.

13. The matter is remitted back to the Trial Court to consider the application Exhibit 159 afresh on its own merits and in accordance with law without being influenced by any observations made by me in this order.

14. The Civil Revision Application is partly allowed with no order as to costs.

(M. S. KARNIK, J.)