

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL REVISION APPLICATION NO. 265 OF 2011**

Shri. Surendra Yashwant Deole,
Since deceased through his heirs
and legal representatives

1. Smt. Sunanda Surendra Deole
Age : 54 yrs, Occ : Housewife,

2. Ms. Sayali Surendra Deole
Age : 28 yrs, Occ : Service

3. Tejas Surendra Deole
Age : 24 yrs, Occ : Education
All R/at. 484/103, Mitra Mandal
Colony, Parvati, Pune-411 009.

....Applicants

: V E R S U S :

1. Shri. Sudhakar Vinayak Sharangpani
Age : 68 yrs, Occ : Business

2. Sou. Usha Sudhakar Sharangpani
Age : 59 yrs, Occ : Housewife,
Both residing at : 484/103, Mitra
Mandal Colony, Parvati, Pune-411 009.

3. Pune Municipal Commissioner
Having Office at Pune Municipal
Corporation Bhavan, Shivaji Nagar,

Rane

2/14

CRA-265-2011 (sr.4)
25.6.2019

Pune-411 005.

....Respondents

APPEARANCES :

Mr. S.S. Kanetkar, Advocate for the applicants.

Mr. Jaydeep Deo, Advocate for respondent no.2.

CORAM : SANDEEP K. SHINDE, J.

Tuesday, 25th June, 2019.

ORAL JUDGMENT :

1. Heard learned Counsel for the parties.
2. Applicants who are the defendants in the Regular Civil Suit No. 780 of 2009 instituted by respondents no.1 and 2 (hereinafter called as “the plaintiffs) had questioned valuation of the suit and amount of fees payable under Section 6 of the Bombay Court Fees Act (now, Maharashtra Court Fees Act) vide

application dated 2nd December, 2009 and requested the trial Court to reject the plaint under Order VII Rule 11 clause (b) of the Civil Procedure Code, 1908. Clause (b) reads as under :

“11. Rejection of plaint.-

(b) where the relief claimed is undervalued, and the plaintiff, on being required by the Court to correct the valuation within a time to be fixed by the Court, fails to do so;”

3. The learned Judge rejected the said application on 19th November 2010, against which this Civil Revision Application under Section 115 of the Civil Procedure Code, 1908 is preferred.

4. Heard learned Counsel for the parties, perused the plaint, application and reply filed by the plaintiffs and also the impugned order.

5. The plaint narrates that, the plaintiffs were the tenant of Smt. Sudha Yashwant Deole in respect of Flat No.4, Bungalow-Neelmani situated on Survey No.484, Pune. Plaintiff states that, out of love and affection, Smt. Sudha Yashwant Deole (hereinafter called “the landlady” for short) in her registered Will dated 13th August, 1990 expressed her wish and thus permitted the plaintiff to construct one room on the terrace above Flat No.4. It is the plaintiff's case that, another Flat No.5 adjoining to Flat No.4 was lease out by the landlady to the plaintiff no.1 vide registered lease deed dated 20th November, 1991 and the plaintiffs were authorised and permitted to construct and utilise the space above Flat No.5 also. The plaintiffs relied on Clause-9 of the lease deed dated 20th November, 1991, which reads as under :

“It is agreed that the terrace and the additional F.S.I. upon the said Flat No.5 shall always be deemed to be leased out perpetually under this agreement in favour of the tenant. The tenant shall have right to make additional permissible construction upon the said terrace. In case of any demolishing of the said building by any misfortune or act of God or by any reason, the tenant shall have right to reconstruct the said flat as his own accords and without any permission of the landlord.”

6. Plaintiffs would assert that, the landlady appointed plaintiff no.1 as Executor of her Will and expressed her desire in the Will that defendant no.1 shall not make construction in and on open space around the bungalow, “Neelmani”. Plaintiffs would further assert that, defendant no.1 contrary to the wish of the landlady sought permission of the Municipal Corporation to raise

the construction in and around the Bungalow, “Neelmani” vide Commencement Certificate dated 10th July, 2008. Plaintiffs were thus, apprehending circumvention of their rights to utilise the space on the terrace, above Flats No.4 and 5. It is under these circumstances, they instituted the suit and sought the following reliefs :

“(i)defendant no.1 has no right to make construction over the property described in para-1(a) and above Flats No.3, 4 and 5 which are housed in Bungalow, “Neelmani”.

(ii) It may be declared that the plaintiffs alone have a right to construct a room and open terrace above Flats No.4 and 5

(iii)that the plan sanctioned by the defendant no.2 (Corporation) be cancelled.

(iv) that the defendant be restrained from making construction on an open space of the property described in para-1(a) i.e. bungalow, Neelmani.

7. It may be stated that the plaintiffs are asserting their right to utilise the terrace above Flats No.4 and 5 in terms of the Will and the lease deed executed by the landlady in their favour.

8. The plaintiffs valued the suit at Rs.2,000/- for reliefs and jurisdiction and paid the court-fees amount accordingly. The defendants disputed the valuation and requested the trial Court to hold enquiry under Section 8 of the Suit Valuation Act, 1987. It is the case of defendants that, the plaintiffs are seeking specific performance of the lease-deed dated 20th November, 1991 and ought to have valued the suit for court-fees and

jurisdiction in terms of Section 6(xi) of the Bombay Court Fees Act. Their next objection is that, since the plaintiffs are seeking declaration of their right to utilize the open space above the Flats No.4 and 5, suit ought to have been valued for court-fees and jurisdiction under Section 6(d) of the Bombay Court Fees Act.

9. Thus, I am required to answer the following issues;

(i) is the suit instituted by the plaintiffs is for specific performance of contract or for declaration of their rights.

(ii) whether the enquiry under Section 8 of the Suit Valuation Act, 1987 is deserved to be directed as sought by the petitioners-defendants ?

10. What plaintiffs are seeking herein is a declaration of their right to utilise the space above Flat No.4 and 5 as per the wish of the landlady, expressed by her in will; and utilise the space above Flat No.5 as per Clause (9) of the lease-deed.

11. In this case, the plaintiffs are neither seeking specific performance of contract of sale nor of contract of mortgage nor of contract of lease nor of award as contemplated in Clause (xi) of Section 6 of the Bombay Court Fees Act.

12. So far the first prayer in the suit is concerned, the plaintiffs are seeking declaration that, defendants do not have a right to utilise the open space

around the bungalow, "Neelmani". This prayer is obviously founded on the basis of contents of the Will of the landlady. Therefore, here the plaintiffs are not staking the claim in the property nor seeking enforcement of rights therein.

13. So far as the second prayer is concerned, the plaintiffs are seeking declaration of their right to utilise the open space above Flat no.4 in accordance with the desire and wish of landlady as expressed, in her Will. The plaintiffs are also seeking declaration of their right to utilise the space above Flat No.5 in terms of Clause (9) of the lease-deed executed by the landlady. Admittedly, the landlady lease out Flat No.5 to the plaintiffs in November, 1991 and since then plaintiffs are using and occupying the said flat. It appears, vide Clause (9), (reproduced

hereinabove), the landlady permitted the plaintiffs to make additional permissible construction upon the terrace of Flat No.5. It is the plaintiff's case that, contrary to the wish of the landlady, the defendants secured permission for construction and thus they were apprehending evasion of their rights to make permissible additional construction on the terrace of Flat no.5. It is in these circumstances, they sought a declaration of their right with injunction.

14. It is therefore not a suit for specific performance but for declaration with injunction and other consequential reliefs. In other words, the suit is neither subject to court-fees in terms of Clause-(iv)(d) read with (v) nor subject to Clause (xi) of Section 6 of the Bombay Court Fees Act, but is subject to the provisions of Clause

6(iv)(e) and (j) of the Bombay Court Fees Act. The Issue no.1 is answered accordingly.

15. So far as the enquiry as under Section 8 of the Suit Valuation Act is concerned, it is clear from the provisions of Section 8 that it divides the suit into two Classes; one class of suits are those suits which are referred to in paragraphs (v), (vi), (x) and Clause (d) of paragraph (xi) in Section 6 of the Bombay Court Fees Act, 1959. These are the suits for possession of land, houses and gardens, suits to enforce right of pre-emption, suits against mortgages for recovery of the mortgaged properties and suits for specific performance of awards. The other class of suits is that, all suits other than that mentioned above.

16. This Court in the case of **Smt. Shantabai Mishra V/s. Kamalkant Laxmikant, 1970 Mh.L.J. 679** has explained the scope of Section 8 and has thus held :

“8. Court-fee value and jurisdictional value to be the same in certain suits

Where in suits other than those referred to in [Paragraphs (v), (vi) and (x) and clause (d) of paragraph (xi) in section 6 of the Bombay Court Fees Act, 1959 court-fees are payable ad valorem under the Bombay Court Fees Act, 1959] the value as determinable for the computation of court-fees and the value for purposes of jurisdiction shall be the same.”

17. Thus, the subject suit is neither for specific performance of contract nor for declaration in respect of ownership or for declaration envisaged under sub-clause

(d) of Clause (iv) of Section 6 of the Bombay Court Fees Act. The present suit falls under other category of suits and therefore value as determinable for computation of court-fees is the same value for the purposes of jurisdiction. It is for these reason, the enquiry under Section 8 of the Bombay Court Fees Act is not required to be ordered.

18. That for the reasons recorded hereinabove, no material irregularity is committed by the trial Court in exercise of its jurisdiction and therefore the revision deserves no consideration and it is dismissed accordingly.

(SANDEEP K. SHINDE, J)