

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO.632 OF 2017

Bhalchandra Anant Bhanage ... Applicant
vs.
Nirmala @ Narmada Dasharath Shelke and Ors. ... Respondents

Mr. Vaibhav Gaikwad, for the Applicant
Mr. Pradeep Gole, for Respondent No. 1.

CORAM : M. S. SONAK, J.

DATE : MARCH 13, 2019

P.C.:

. Heard Mr. Gaikwad, learned counsel for the Applicant and Mr. Gole, for Respondent No.1 (original Plaintiff).

2. The challenge in this Petition is to the order dated 1st September, 2017 by which the learned trial Judge has rejected the Petitioner's Application under Order 7 Rule 11 of the Code of Criminal Procedure complaining that the Plaint should have been rejected on account of undervaluation.

3. Mr. Gaikwad submits that this is a Plaint where the Plaintiff seeks declaration of right of preemption to purchase the suit property after a sale deed already executed in favour of the

Applicant. He submits that if relief is to be granted in such a suit, then the same would entail setting aside the sale deed in favour of the Applicant and the execution of fresh sale deed in favour of the Plaintiff. Mr. Gaikwad therefore submits that the suit was required to be valued in terms of Section 6(iv) (ha) of the Court Fees Act at Rs. 3,75,000/-. Since this is not done, he submits that the suit is undervalued. The learned trial Judge was duty bound to reject the Plaintiff in exercise of powers conferred in Order 7 Rule 11(b) and (c) of Code of Civil Procedure or at least to call upon the Plaintiff to pay the deficit Court fees and in case not paid within the prescribed period to reject the Plaintiff.

4. Upon due consideration of aforesaid contentions and on perusal of the record as well as the provision of Maharashtra Court Fees Act, according to me, there is no case made out to interfere with the impugned order.

5. The learned trial Judge has rightly referred to the provision of Section 6(vi) of the Court Fees Act and held that since there is a specific provision made under the said Act in relation to suit to enforce right of preemption, there is no question of placing any

reliance on the provision in Section 6(iv)(ha) of the said Act. The record indicates that the suit has been correctly valued as per the provision contained in Section 6(vi) of the Maharashtra Court Fees Act .

6. From the perusal of the provision in the Maharashtra Court Fees Act, it can not be said that any distinction is made in the matters of valuation of suits, is instituted prior to execution of the sale deed and after the execution of the sale deed.

7. Accordingly Civil Revision Application is liable to be dismissed and is hereby dismissed.

8. There shall be no order as to cost.

(M. S. SONAK, J.)