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

CIVIL REVISION APPLICATION NO. 96 OF 2019

Nana Nathuram Pawale ..Applicant
vs.
Vatsala Maruti Mankar & ors. ..Respondents

....
Shri T.D. Deshmukh for applicant.
Shri S.S. Panchpor for respondent Nos. 1 to 3.

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CORAM : M.S.KARNIK, J.

DATE : 9th SEPTEMBER, 2019

P.C. :

Heard learned counsel for the applicant.

2. The applicant is the defendant No.1. The plaintiffs filed a suit seeking declaration that they have undivided share in the suit land and entitled for a separate share. The plaintiffs claim to have 1/5th share each in the suit property. Further relief is claimed that the sale deeds executed by defendant No.1 be declared illegal, void, inoperative and the same be cancelled as they are not binding on the plaintiffs and their share.

3. Learned counsel for the applicant by inviting my attention to the order dated 14/2/2017 passed by the trial Court below Exhibit 42 which was an application made by defendant No.1 under Order VII Rule 11(b) and (c) of the Code of Civil Procedure for determination of valuation of the suit, pointed out that the said application was partly allowed. He would submit that in paragraph 14 of the said order the trial Court has categorically mentioned that the subject value of aforesaid 4 sale deeds are of Rs.20,25,000/-, Rs.35,04,000/-, Rs.17,00,000/- and Rs.7,84,875/- and that the plaintiffs have to pay 1/2 ad-volerem court fees according to the aforesaid value of the property.

4. Learned counsel for the applicant would submit that thereafter the plaintiffs did not correct the valuation but applied to the Superintendent and obtained false report of the Superintendent on 1st April, 2017. In the submission of learned counsel for applicant, the plaintiffs should have complied with the order dated 14th February, 2017 passed by the trial Court below Exhibit 42. It was not open for them to obtain valuation

report from the superintendent and then proceed to pay the deficit court fees based on the valuation of the superintendent. In any case learned counsel for the applicant would submit that the trial Court should have refused the request made by the plaintiffs for payment of deficit court fees based on the valuation made by the superintendent.

5. Defendant No.1 therefore filed application below Exhibit 70 for rejection of the Plaint under Order VII Rule 11 (b) and (c) of the Code of Civil Procedure. The trial Court rejected this application.

6. I have gone through the order passed by the trial Court. No doubt the trial Court, based on the subject value of the 4 sale deeds directed the plaintiffs to correct the valuation of the property in accordance with the provisions of Section 6(iv) (ha) and Section 6(v) of Bombay Court Fees Act and to pay deficit court fees within a period of one month. However, the plaintiffs approached the Superintendent of the Civil Court, Pune for a report and based on the said report corrected the

valuation. The plaintiffs are claiming declaration that the sale deeds are not binding on the plaintiffs to the extent of their share in the suit property. The trial Court considering the report came to the conclusion that it cannot be said that the plaintiffs failed to comply with the order passed below Exhibit 42. The trial Court further observed that the valuation can be corrected at any stage and plaintiffs can be directed to pay requisite court fees. I see no reason to interfere with the order passed by the trial Court.

7. It is however, made clear that in case the trial Court is of the view at later stage that the valuation is not correct, it can always on an application made by defendant No.1 consider the same on its own merits and in accordance with law.

8. With these observations, the application is rejected with no order as to cost.

(M.S.KARNIK, J.)