IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO.173 OF 2021

Viraj Estates Pvt. Ltd. & Ors.	]	...	Applicant
Vs.			
Shri Nijjamuddin Rabbani Khatib & Ors.	]]	...	Respondents

ALONG WITH

CIVIL REVISION APPLICATION NO.186 OF 2021

Anvarhusen Mohamadsaheb Khatib	]	...	Applicant
Vs.			
Shri Nijjamuddin Rabbani Khatib	]	...	Respondent

…

Mr. R.D. Soni i/b Ram & Co. for the applicant in CRA No.173 of 2021.

Mr. Haridas R.M. for the applicant in CRA No.186 of 2021.

Mr. Ashok Tajane for respondent No.2.

…

CORAM : MRS. BHARATI DANGRE, J.

RESERVED ON : 12TH OCTOBER, 2021.

PRONOUNCED ON : 23RD NOVEMBER, 2021.

AJN

ORDER:-

1. The two Civil Revision Applications challenge the common order passed below Ex-39 and Ex-61 by the 2^{nd} Jt. Civil Judge (Senior Division), Nashik on 20/08/2021 in Special Civil Suit No.236 of 2020. By the said order, two applications moved by the two sets of defendants being defendant No.2 and defendant Nos.36 to 38 filed under Order 7 Rule 11 of the Code of Civil Procedure (**"CPC"**), seeking rejection of plaint, came to be rejected and the suit is directed to proceed further.

The applicants before me are these defendants, who are aggrieved by the aforesaid order.

2. Special Civil Suit No.236 of 2020 is instituted by one Nijamuddin Rabbani Khatib and 14 others against one Jahidhusain Mohammadsaheb Khatib and other members of Khatib family being 46 in number and the suit property was set out in the plaint as the immoveable property vide Survey No.648/B located in District Nashik vide City Survey No.6861 in Town Planning Scheme No.2 being Final Plot Nos.311 and 311A admeasuring 13776 square meters. The suit property covered an area of 12600 square meters after excluding an area of 1176 square meters belonging to Shekhensaheb Khatib and others. The case of the plaintiffs as set out in the plaint is to the

effect that the plaintiffs Nos.14 and 15 and predecessor of other plaintiffs executed two agreements for sale on 05/05/1994 and 02/09/1993 along with two power of attorneys in favour of one Rajendra Rasiklal Shah and Chandrashekhar Babulal Shah. The said duo sold the property on the basis of the agreements to sale and the power of attorneys in their favour, to defendant Nos.36 to 39 on 17/02/2016. In 2017, the plaintiffs filed an application before the revenue authorities for recording their names in revenue record when defendant Nos.36 to 39 raised an objection and at this point of time, the plaintiffs became aware of the alleged sale deed.

A suit was, therefore, instituted for partition and separate possession against the defendants by challenging the sale deed dated 17/02/2016 as well as the agreements to sale and also the power of attorney executed in favour of Rajendra Shah and Chandrashekhar Shah. It was prayed that the sale deed dated 17/02/2016 in favour of defendant Nos.36 to 38 was illegal and not binding upon the plaintiffs and their share in the property and a declaration was sought for its cancellation and to effect entries to that effect in the land record of the Deputy Registrar, Nashik. Partition was also claimed in respect of the suit property in favour of the plaintiffs and defendant Nos.42 to 46 and it was sought to be allotted to their share, after obtaining its possession from Defendant Nos.36 to 39. It was also prayed that defendant Nos.36 to 39 be restrained from creating any third party interest by sale or transfer of possession of the suit property or creating any interest/encumbrances. The suit of the plaintiff thus claimed partition and separate possession against the defendants.

Pleadings in the plaint aver that the agreement to sale dated 02/09/1993 and 05/05/1994 are executed in favour of one Mahavir Developers Private Limited, a company registered under the Companies Act, through Rajendra R. Shah, by Gulam Rabbani Pirsaheb Khatib. Copies of the agreements as well as the general power of attorneys are placed on record in the form of compilation, by learned counsel for the applicants and I have perused the same.

3. On the suit being filed, seeking relief mentioned above, defendant Nos.36 to 38 moved an application for rejection of plaint on the following grounds -

(i) that there is no cause of action for institution of the suit;

(ii) that suit is hit by principle of resjudicata;

(iii) that suit is not properly valued for the purpose of payment of court fees;

(iv) that suit is barred by law (by limitation).

Defendant No.2 also moved a similar application for rejection of plaint and dismissal of suit.

4. The defendants, in order to justify their claim, submitted

that originally the properties mentioned in the suit were owned by one Abdul Raheman Khatib and he left behind his sons Pirsaheb, Sadoruddin and Gulam Ali. Pirsaheb also expired and his legal representatives executed an agreement to sale on 02/09/1993 in favour of the previous firm of defendant No.38 viz. Mahavir Developers Pvt. Ltd. The power of attorney was also executed on the very same day and it was notarized. The consideration of the land mentioned in the documents was also paid at that time. Only a formal sale deed was remained to be registered because of various legal provisions and conditions prevailing at that time and this was registered in March, 2016, which was a mere formality. The defendants claimed that the rights of the legal representatives of deceased Pirsaheb ceased to exist on execution of the agreement on 02/09/1993 itself. Further, on 05/05/1994, Gulam Rabbani and Pirsaheb Khatib executed agreements to sale by accepting total consideration in favour of Mahavir Developers Pvt. Ltd. and it was submitted that he also executed one agreement to sale the properties gifted to him by Fatimabi Haji Saheb. The power of attorney also came to be executed on the same date in favour of the defendants. The defendants, therefore, claimed that the plaintiffs themselves and predecessor of the plaintiffs executed agreement to sale by accepting the total consideration in the year 1993-94 and both the sale deeds came to be registered on 18/03/2016 in the office of the Sub-Registrar, Nashik. The objection of the defendants is that the sale deed challenged by instituting a suit on 18/06/2020 was hopelessly barred by law as filed beyond the period of limitation prescribed. Further, the earlier Regular Civil Suit No.411 of 1999 filed by plaintiffs Nos.14 and 15 along with other co-owners and their predecessor for administration of total Survey No.648 in the larger part of the suit property being part of the very same survey number, which was dismissed on 02/08/2011, was pleaded to be hit by the principles of resjudicata. The defendants claim that they are the bonafide purchasers and on the aforesaid ground, the plaint is liable to be rejected on the ground set out in the application. It was also submitted that the plaintiffs being aware that they are not in possession of the property and since they have failed to take effective steps to secure the same, the attempts to camouflage the suit and the relief, which is barred by law of limitation, was held to be not maintainable.

Since the sale deed was executed on 17/02/2016 and the consideration mentioned in the sale deed was made over to the tune of Rs.5,36,56,600/-, it was submitted that the plaintiffs have not properly valued the suit and the stamp duty is deficit. Relying upon the provisions of Section 6(iv)(ha) of the Bombay Court Fee Act, it was prayed that the plaintiffs would be required to pay one half of the ad valorem fee leviable on the value of the suit property. Apart from these grounds, the cause of action was also pleaded to be lacking in the suit and the plaint was therefore, sought to be rejected.

5. I have heard Mr. Soni, learned counsel for the applicants in CRA No.173 of 2021 and Mr. R.M. Haridas for the applicants in CRA No.186 of 2021, who have advanced their submissions, while they challenge the impugned order, which rejected their applications. The submission is, the deficiencies pointed out, justified rejection of plaint which lacked cause of action and was barred by law and the suit not being valued properly. I have also heard Mr. Ashok Tajane, learned counsel for respondent No.2, who would support the impugned order by advancing his submission to the effect that the point of limitation is a mixed question of fact and law and it cannot be adjudicated at the preliminary stage, without affording an opportunity to the parties to lead evidence. Further, as far as RCS No.411 of 1999 is concerned, it is sought to be canvassed that the said suit was dismissed in default and thereby the rights of the parties were not adjudicated on merits. It is further argued that the right in the suit property is available to the plaintiffs even today and it cannot be said that dismissal of the earlier suit in default would operate as resjudicata. As far as the objection raised in regard to the valuation of the suit property is concerned, it is submitted that the plaintiffs have properly valued the suit on the basis of the share claimed by them. Learned counsel Mr. Tajane would submit that the rejection of the plaint would be permitted only on the grounds set out in Order 7 Rule 11 of the CPC and for deciding an application filed by invoking clauses (a) to (d) of Rule 11 of Order 7 of CPC and the averments in the plaint are

material and the pleas taken by the defendants in the written statement would not be required to be adverted to at the stage, when the rejection of the plaint is sought. It is only on an entire and meaningful reading of the plaint, if it is found to be manifestly vexatious, and meritless, in a sense of not disclosing a clear right to sue, the court should exercise its power under Order 7, Rule 11 of the CPC and the grounds justifying invocation of the said power shall be strictly adhered to, as it will have a drastic consequence of throwing the plaintiff from initiating a civil action at the threshold. If only on the face of it, the averments in the plaint discloses that the suit is barred by any law or do not disclose any cause of action, the application can be entertained.

6. In the light of the counter submissions and the authorities cited before me, I have perused the record including the documents relied in the proceedings, which have been appended to the application and also separately placed before me by way of compilation.

7. In case of ***Dahiben v. Arvindbhai Kalyanji Bhanushali (Gajra) & Ors.*** reported in ***(2020) 7 SCC 366***, the Hon'ble Apex Court has reiterated the position of law as regards exercise of power under Order 7, Rule 11(a) of the CPC and it has been held that if any of the grounds specified in clauses (a) to (e) are made out, the court is bound to reject the plaint. As far as the cause of

action contemplated under clause (a) in Rule 11 of Order 7 of the CPC is concerned, Their Lordships of the Apex Court have crystallized the position of law and it has been held that the remedy under Order 7 Rule 11 is an independent and special remedy, wherein a Court is empowered to summarily dismiss a suit at the threshold, without proceeding to record evidence, and conducting a trial, on the basis of the evidence adduced, if it is satisfied that the action should be terminated on any of the grounds contained in this provision. The underlying object of the provision has been emphasized, as if in a suit, no cause of action is disclosed, or the suit is barred by limitation under Rule 11(d), the Court would not permit the plaintiffs to unnecessarily protract the proceedings in the suit and, in such a case, the court is duty bound to put an end to the sham litigation, so that further judicial time is not wasted.

On the other hand, the court has also cautioned that the power to terminate a civil action is, however, a drastic one and the conditions enumerated in Order 7, Rule 11 of the CPC are required to be strictly adhered to, and while exercising said power, the Court would carefully discern whether the plaint discloses a cause of action by scrutinizing the averments in the plaint, read in conjunction with the documents relied upon or whether the suit is barred by law. When a document referred to in the plaint, forms the basis of the plaint, it should be treated as a part of the plaint and the court would determine if the assertions made in the plaint are contrary to statutory law, or judicial dicta, for deciding whether a case for rejecting the plaint at the threshold is made out. At this stage, the pleas taken by the defendants in the written statement and in the application for rejection of the plaint on the merits, would be irrelevant, and cannot be adverted to, or taken into consideration. The test that has been laid down in the words of Their Lordship of the Hon'ble Apex Court is as under:

> *"The test for exercising the power under Order 7 Rule 11 is that if the averments made in the plaint are taken in entirety, in conjunction with the documents relied upon, would the same result in a decree being passed."*

8. The position of law is also further elaborated by the highest court to the effect that it is not permissible to cull out a sentence or a passage, and to read it in isolation and it is the substance, and not merely the form, which has to be looked into. The plaint has to be construed as it stands, without addition or subtraction of words. If the allegations in the plaint *prima facie* show a cause of action, the court cannot embark upon an enquiry, whether the allegations are true in fact. If, however, on a meaningful reading of the plaint, it is found that the suit is manifestly vexatious and without any merit, and does not disclose a right to sue, or any cause of action or the suit is barred by any law, the court has no option but to reject the plaint. The provisions of Order 7 Rule 11 of the CPC are mandatory in

nature. Since it employs the word “shall”, the plaint shall be rejected if any of the grounds specified in clauses (a) to (e) are made out.

9. In the wake of the aforesaid enunciation of law on the aspect of import of Order 7 Rule 11, the applications filed by the applicants deserve a consideration.

The Special Civil Suit No.236 of 2020 was instituted by the original plaintiff Nos.1 to 15 seeking the reliefs, to which a reference has been made in the foregoing paragraphs. Apart from seeking a declaration that the sale deed in favour of defendant Nos.36 to 38 executed on 17/02/2006 is illegal and is not binding upon the plaintiffs and their shares, a relief is alsos ought for cancellation of sale deed to the extent of the share of the plaintiffs. A relief was also sought to effect the partition of the suit property and segregation of shares of the plaintiffs and defendant Nos.42 to 46, by cancelling allotment in favour of defendant Nos.36 to 39. The plaintiffs claim that the suit property is admeasuring 8279.25 sq. meters out of total area admeasuring 13776 sq. meters excluding the area of 13776 sq. meters of Shekhensaheb Khatib and others admeasuring 1176 sq. meters from the area admeasuring 12600 sq meters at Final Plot Nos.311 and 311A is the subject matter of the suit as set out in para 1(a) and 1(b) of the plaint. In the plaint, the plaintiffs had described the shares of the respective parties and claim is staked to the effect that the plaintiffs claim the shares from the branch of one Abdul Rehman Gulamali Khatib. After narrating the *inter se* relationship between the parties, it is claimed that plaintiff Nos.8 and 9 and defendant Nos.42 to 45 are legal heirs of Chotesaheb Khatib. The plaint further aver that there was a tenant in the said property and the heirs of Pirsaheb, with the help of defendant Nos.40 and 41, initiated the work of suit property and obtained signatures of plaintiff Nos.14 and 15 as well as signatures of predecessor in title of plaintiff Nos.1 to 13 and defendant Nos.42 to 46. It was specifically pleaded that since the economic condition of plaintiff Nos.14 and 15 as well as the predecessor in title of plaintiff Nos.1 to 13 and defendant Nos.42 to 46 was precarious, defendant Nos.40 and 41 had advanced hand loan to them and obtained their signatures on some papers. The plaintiffs were unaware of the nature of the documents on which their signatures were obtained and being scarcely educated, they were unaware about the doings of defendant Nos.40 and 41.

10. The cause of action has been pleaded in the plaint in paragraph Nos.11 and 24 to the effect that the plaintiffs applied to the City Survey Office for recording the names of heirs of deceased Pirsaheb in the year 2017and when the mutation entry No.4778 of 2017 was taken, defendant Nos.36 to 38 objected to the said entry stating that they have purchased the entire property on 07/11/2017. It was pleaded that the objection was received by the plaintiffs on 18/01/2018 and at that time, the plaintiffs

came to know that defendant No.39 has executed sale deed dated 17/02/2016 on the basis of false and fabricated power of attorney of plaintiff Nos.14, 15 and the predecessor in title of plaintiff Nos.1 to 13 and defendant Nos.42 to 46 in favour of defendant Nos.36 to 38 and the same was registered vide document No.2662 of 2016 dated 18/03/2016.

11. The power of attorney, which was executed was claimed to be fraudulent and it is specifically averred in the plaint that defendant No.39 did not have any right to execute the sale deed in favour of defendant Nos.36 to 38 and there was no transaction or agreement on the basis of any transaction by the plaintiffs or their predecessor in title with defendant No.39. It was further claimed that no amount with regard to suit property has been received by the plaintiffs or their predecessor in title from defendant No.39 and there was no question of execution of power of attorney in favour of defendant No.39, which gave the rights of development/sale and acceptance of consideration. After giving the details of the shares of the parties in paragraph No.16 of the plaint and the amount received by them, which was stated in paragraph 17 of the plaint, it is specifically averred that the alleged sale deed dated 17/02/2016 did not mention the shares of deceased Ahmadsaheb Hasansaheb Khatib and the area of his heirs was not mentioned in the sale deed even though, some consideration was shown in the sale deed. It was specifically pleaded that the plaintiffs or their ancestors have not

entered into any transaction in respect of the suit property and not created any rights in favour of defendant Nos.36 to 41 nor had they executed any power of attorney in their favour for development or for transfer of rights in their favour. The plaint, therefore, alleges fraud and in view of which facts, the plaintiffs express in the plaint that they are not desirous of keeping the suit property and claimed partition and a declaration that the sale deed did not bind their shares.

12. The plaint is sought to be rejected on the ground of absence of cause of action, which has been specifically pleaded in the plaint. It is settled proposition of law that the cause of action would consist of bundle of facts.

13. In case of ***ITC Ltd. v. Debt Recovery Appellate Tribunal***, reported in ***(1998) 2 SCC 70***, it is held that the basic question to be decided while dealing with an application filed under Order 7 Rule 11 of the CPC is whether the real cause of action has been set out in the plaint or something purely illusory has been stated with a view to get out of Order 7 Rule 11 of the C.P.C. Clever drafting creating illusions of cause of action are not permitted in law and a clear right to sue should be shown in the plaint. In ***T. Arvindandam V. T.V. Satyapal & Anr.*** reported in ***(1977) 4 SCC 467***, it was held as under:

> *"16. The trial court must remember that if on a meaningful - not formal - reading of the plaint it is manifestly vexatious, and meritless, in the sense of not disclosing a clear right to sue, it should exercise its power under Order 7 Rule 11 of the CPC taking care to see that the ground mentioned therein is fulfilled. And, if clever, drafting has created the illusion of a cause of action, nip it in the bud at the first hearing by examining the party searchingly under Order 10 of the C.P.C."*

14. It is settled position of law that the whole plaint has to be rejected and only a part of the plaint cannot be rejected and if no cause of action has been pleaded, the whole plaint must be rejected. The pleading has to be construed as it stands without addition or subtraction of words or change of its apparent grammatical sense. The intention of the party concerned is to be ascertained from the tenor and terms of his pleadings taken as a whole.

15. In the wake of the aforesaid, if the plaint is read as a whole, it cannot be inferred that it lacks the cause of action. The suit is filed for partition and separate possession. The plaint averred the cause of action, which is based on the facts which are pleaded in paragraph Nos.11 and 24 of the plaint. The cause of action has been disclosed as the plaintiffs gaining knowledge about the sale deed dated 17/02/2016 after receipt of the notice on 18/01/2018 on the objection taken by defendant Nos.36 to 38

on their application before the Revenue Authorities and that is how it is pleaded that the plaintiffs became aware of the agreement and the power of attorneys alleged to have been fraudulently entered into in the year 1993-1994. The plaint, therefore, in my considered opinion, has pleaded a cause of action on the basis of which, relief is claimed and has to be read in continuation of the pleadings.

16. As far as the objection that the plaint being barred by law of limitation is concerned, I am guided by the decision of the Apex Court in ***Saleem Bhai & Ors. v. State of Maharashtra & Ors.*** reported in ***(2003) 1 SCC 557***, wherein it was held as under:

> *"The relevant facts which need to be looked into for deciding an application thereunder are the averments in the plaint. The trial court can exercise the power under Order VII Rule 11 C.P.C. at any stage of the suit before registering the plaint or after issuing summons to the defendant at any time before the conclusion of the trial. For the purposes of deciding an application under clauses (a) and (d) of Rule 11 of Order 7 C.P.C. the averments in the plaint are germane; the pleas taken by the defendant in the written statement would be wholly irrelevant at that stage.*

17. In ***Shakti Bhog v. CBI*** reported in ***2020 SCC Online SC 482***, the three Judges' Bench of the Hon'ble Apex Court while dealing with a case, where the plaint was rejected by the trial

court under Order 7 Rule 11(d) of the CPC on the ground that it was barred by law of limitation as it was filed beyond the period of three years, in paragraph 20 of the judgment, observed as under:

> *20. For our purpose, Clause (d) is relevant. It makes it clear that if the plaint does not contain necessary averments relating to limitation, the same is liable to be rejected. For the said purpose, it is the duty of the person who files such an application to satisfy the court that the plaint does not disclose how the same is in time. In order to answer the said question, it is incumbent on the part of the court to verify the entire plaint. Order 7 Rule 12 mandates where a plaint is rejected, the court has to record the order to that effect with the reasons for such order."*

18. In paragraph 21 of the said judgment, the Apex Court has held that the cause of action for filing a suit would consist of bundle of facts and further, the factum of suit being barred by limitation, ordinarily, would be a mixed question of fact and law. On the aforesaid reason, the Hon'ble Apex Court held in the peculiar facts of the case that invoking Order 7 Rule 11 of the CPC was ruled out since in the said case, the assertion in the plaint clearly was to the effect that the appellant verily believed that its claim was being processed by the Regional Office and the Regional Office would be taking appropriate decision at the earliest. The Apex Court referred to the other averments in the

plaint and concluded by holding that whether this plea taken by the appellant is genuine and legitimate, would be a mixed question of fact and law, depending on the response of the respondents.

19. In the light of the aforesaid legal position when the objections raised by the defendants are meaningfully read, the claim of defendant Nos.2 and 36 to 39 is that the agreement to sell are of the year 1993-1994 and the period of limitation start running from the said year and the registration of the sale deed in the year 2016 is a mere formality and, therefore, limitation should not be counted from registration of the sale deed.

The plaintiffs, however, argued before the learned Judge that the limitation will start running from the registration of sale deed and ultimately this would be a mixed question of law and fact and, the plaint can be thrown out at this stage by taking recourse to Order 7 Rule 11 of the CPC. The plaintiffs had specifically averred in paragraph No.11 of the plaint that they became aware of the registration of sale deed in the year 2016 only after receipt of notice on 18/01/2018 and the suit is instituted on 18/06/2020.

The issue as to from what point of time, the limitation would start running would be a mixed question of facts and law and as has been held in the case of ***Shakti Bhog (supra)***, it is a triable issue and the said plea will not warrant rejection of plaint under Order 7 Rule 11 of the CPC.

20. Unless on an entire and meaningful reading of the plaint, it is found that the suit is manifestly vexatious and meritless in the sense of not disclosing any right to sue, the court should not exercise power under Order 7 Rule 11 of the CPC. The aforesaid analysis of the plaint does not persuade me to disturb the finding rendered by learned trial court, when it rejected the application filed for rejection of paint on the ground, that the plaint lacks a cause of action and it is barred by limitation.

21. Dealing with another ground on which the rejection of plaint was sought being hit by principles of *res judicata*, the said ground is outrightly misconceived, since the earlier suit, to which a reference has been made is not based on the cause of action, which has been pleaded in Special Civil Suit No.236 of 2020 and admittedly the said suit was dismissed for non appearance of the plaintiffs and, therefore, there was no adjudication of issues arising on merits so as to attract the bar of *res judicata*, which necessarily can be invoked when the former suit has been decided prior to the suit in question and the suit necessarily involves directly and substantially an issue in the later suit between the same parties. Since the earlier suit is dismissed in default and it did not determine the issues between the parties and there being no final adjudication, the principle of *res judicata* is not liable to be invoked.

22. Turning to the last objection of the defendants purportedly claiming as a ground for rejection of the plaint being that the suit is not properly valued for the purpose of payment of court fees, relying upon the decisions of this court in the case of ***Prism Realty, Pune v. Govind Yashwant Khalade & Ors.*** reported in ***2015 (2) Mh. L.J. 472; Abdulsattar Gulabbhai Bagwan v. Vaibhav Laxmangiri Gosawi*** reported in ***2012 (2) All M.R. 285*** and ***Abdul Gaffar v. Niranjan Kumar*** reported in ***AIR 2005 (Bom.) 259***, it was sought to be claimed that the plaintiffs are required to value the suit on the basis of market value of the properties mentioned in the sale deed. Per contra, the plaintiffs relied upon the decision of the Apex Court in ***Suhrid Singh @ Sardool Singh v. Randhir Singh & Ors.*** reported in ***AIR 2010 SC 2807***, where it was held that the plaintiffs are not required to pay the court fees on the basis of consideration mentioned in the sale deed.

23. Section 6(vii) of the Maharashtra Court Fees Act refers to computation of fees payable in case of a claim for share in joint property. The relevant provision can be gainfully reproduced as under:

> ***"6. Computation of fees payable in certain suits.*** *- The amount of fee payable under this Act in the suits next hereinafter mentioned shall be computed as follows:-*

xxx

> ***(vii) for share in joint property. -*** *In suit for partition and separate possession of a share of joint family property or of joint property, or to enforce a right to a share in any property on the ground that it is joint family property or joint property whether or not the plaintiff is in actual or constructive possession of the property of which he claims to be a co-parcener or co-owner according to the value of the share in respect of which the suit is instituted".*

24. The clause on which reliance was placed, seeking rejection of the plaint, was Section 6(iv)(ha) for avoidance of sale, contract for sale, etc. In suits for declaration that any sale, or contract for sale or termination of contract for sale, of any moveable or immoveable property is void, one half of ad valorem fee is leviable on the value of the property.

25. The decision of this court in case of ***Prism Reality (supra),*** when perused, in paragraph No.8, learned Single Judge of this Court has set out the distinction in Section 6(iv)(j) and Section 6(iv)(ha) of the Maharashtra Court Fees Act as under:

> *"8. Having heard the learned counsel for the parties and considering the rival contentions, the issue which arises for consideration in the instant case is Section 6(iv)(j) and Section 6(iv)(ha). The said two provisions are therefore,*

reproduced herein for the sake of ready reference.

"Section 6(ha) for avoidance of sale, contract for sale, etc.- *In suits for declaration that any sale, or contract for sale or termination of contract for sale, of any movable or immovable property is void [one-half] of ad valorem fee leviable on the value of the property;*

(j) for other declarations.- In suits where declaration is sought, with or without injunction or other consequential relief and the subject-matter in dispute is not susceptible of monetary evaluation and which are not otherwise provided for by this Act [ad valorem fee payable, as if the amount or value of the subject-matter was [one thousand rupees;]]

In all suits under clauses (a) to (i) the plaintiff shall state the amount at which he values the relief sought, with the reasons for the valuation;

9. In so far as Section 6(iv)(j) is concerned, the same applies to suits which have been filed for declaration other than those sought in the earlier sections with or without injunctions or other consequential relief and the subject matter in dispute is not susceptible of monetary evaluation and which are not otherwise provided for by this Act. In so far as Section 6(iv)(ha) is concerned, the same applies to suits for declaration that any sale, contract for sale or termination of contract for sale, of any *moveable or immoveable property is void. The said provision therefore, encompasses within itself suits that have been filed for avoidance of sale, contract for sale, etc.. In the light of the reliefs which have been sought in the instant suit vide prayer clauses (a) and (b), the suit as filed is undoubtedly for declaration in respect of the Development Agreement and the Sale Deed and by seeking the reliefs sought, what the plaintiffs in fact are seeking to do is the avoidance of the said sale or contract. Hence, in so far as the said reliefs are sought, the provisions of Section 6(iv)(ha) can be said to be applicable. The fact that according to the Plaintiffs the said documents are sham and bogus cannot be considered for computing or determining the valuation of the suit and the payment of the Court Fees in respect thereof. The Sale Deed which has been executed by the Defendants No.2 and 3 in favour of the Defendants No.4 and 5 is undisputedly a registered document and clause (4) thereof the consideration has been mentioned and also the fact that the vendors have accepted that payment of the said consideration has been made to them so also is the Development Agreement. Hence, merely because the Plaintiffs questioned the Sale Deed as being sham and bogus, the Plaintiffs cannot be exempted from the rigours of Section 6(iv)(ha) of the Court Fees Act in the matter of valuation of the suit and payment of the Court Fees."*

26. In case of ***Abdulsattar Gulabbhai Bagwan (supra)***, the following observations are relevant:-

> *15. The submission of the learned counsel for the Petitioner that in the said suit what was sought was the declaration of the agreement in question as void which relief is covered by Section 6(iv)(ha) of the said Act. However, in the instant case, the Petitioner is not seeking any such relief in the suit but only claiming a declaration that the sale deed dated 15/12/2008 is not binding upon him. In my view, the same would not make any difference as what in effect the Plaintiff is seeking by way of prayer clause A(1) is the avoidance of the said agreement dated 15/12/2008, and therefore, Section 6(iv)(ha) would be attracted. As observed herein above, even if prayer clause A were to be granted to the Plaintiff, nevertheless the agreement in question in favour of the Defendant Nos.3 to 5 would have to be set aside, and therefore, the relief sought by way of prayer clause A(1) would have to be valued in terms of Section 6(iv)(ha).*
>
> *xxx*
>
> *17. It was sought to be contended by the learned counsel for the Petitioner that the Defendant Nos.1 and 2 by playing a fraud and mis-representing the Plaintiff have got the agreement executed from them, and therefore, it would be unjust if the Plaintiff would have to pay ad-valorem court fees on the subsequent agreement executed by the Defendant Nos.1 and 2 in favour of the Defendant Nos.3 to 5. In my view, that cannot be a consideration for*

> *deciding as to whether the suit in question is to be valued in terms of Section 6(iv)(ha) or 6(iv)(j). The same would have to be considered, as contended by the learned counsel for the Defendants, in the context of the reliefs sought in the suit. The Plaintiff, as can be seen in effect is seeking avoidance of the sale deed executed by the Defendant Nos. 1 and 2 in favour of the Defendant Nos.3 to 5, and therefore, the Plaintiff would have to value the said suit in terms of Section 6(iv)(ha) and not in terms of clause 6(iv)(j) as has been done by him.*
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> *18. The trial Court therefore has rightly by the impugned order held that the Plaintiff would have to properly value his suit and shall pay half of the ad valorem court fees on Rs.24,00,000/-"*

27. In the wake of the aforesaid, the reliefs by the plaintiffs being perused, it is clear that the plaintiffs, who are seeking declaration that the agreement in question as well as the power of attorneys being void, provisions contained in Section 6(iv)(ha) is liable to be invoked since the suit filed by the plaintiffs is not only for partition and claim of share but is also for avoidance of the sale of the immoveable property being prayed to be declared as void.

The learned Civil Judge in the impugned order, however, is not correct in holding that in suit for partition and separate possession, the court fee is to be paid on the value of the share in respect of which the suit is instituted and an attempt is made to distinguish the case of ***Prism Realty (supra)*** and ***Abdulsattar Gulabbhai Bagwan (supra)*** on the ground that the plaintiffs have filed the suit for partition and separate possession though incidental relief of declaration is also sought, the primary relief being partition, the valuation of the property as per Section 6(vii) has been held to be proper. I am unable to concur with the said view in the light of the fact that the plaint seeks a relief not only of partition and separate possession, but vide prior clauses (a) and (b), declarations are also sought to the effect that the sale deed vide document No.2662 of 2016 is illegal and not binding upon the plaintiffs and so also the power of attorneys dated 02/09/1993 and 05/05/1994 be declared as illegal and fraudulent and forged and not binding upon the plaintiffs. In the wake of these reliefs sought in the plaint, the plaintiffs are liable to pay court fees in terms of Section 6(iv)(ha) which, however, did not deserve rejection of plaint, but call for payment of court fees and, accordingly, the trial court shall direct the plaintiffs to pay one half of the ad valorem fees leviable on the value of the property. With the aforesaid modification, the impugned order passed by the Civil Judge, Senior Division, Nashik, on 20/08/2021 is allowed. The plaintiffs shall make the payment of court fees as directed above, within a period of six weeks from today.

28. Civil Revision Applications are partly allowed by modifying the impugned order to the limited extent as above.

[SMT. BHARATI DANGRE, J.]

AJN