

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

940 CRA NO.29 OF 2022

**VIJAYKUMAR ALIAS TUKARAM NARAYAN GHOGARE
VERSUS
DNYANESHWAR NARAYAN GHOGARE AND ORS**

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Advocate for Petitioner : Mr. R. B. Deshmukh.

CORAM : MANGESH S. PATIL, J.

DATE : 10.03.2022.

PER COURT :

By way of this Revision the original defendant No. 3 in Regular Civil Suit No. 22/2016 on the file of the Joint Civil Judge Junior Division Udgir is challenging the order passed on his application (Exhibit 40) whereby he had prayed for rejection of plaint under Order VII Rule 11 of the Code of Civil Procedure for under valuation.

2. I have heard the learned advocate Mr. Deshmukh for the revision petitioner and perused the order as also the papers.

3. At the outset it is necessary to bear in mind that the question as to the valuation would be a mixed question of law and fact. Unless the issue as to the under valuation can be decided on facts which stand admitted the issue can not be decided at a preliminary stage. Admittedly, this application (Exh. 40) was moved at a preliminary stage and the issues are still to be framed.

4. Besides, as can be seen from the order, the suit was filed in the year 2016 and the valuation certificates of the properties were produced by the respondents/plaintiffs of that year. The revision petitioner procured the valuation certificates in the year 2019 and tried to demonstrate that the suit was under valued. Precisely for this reason by the order under challenge the

learned Civil Judge has rejected the application holding that the valuation made by the respondents/plaintiffs was in accordance with the valuation of the year 2016, when the suit was filed. The valuation certificates obtained by the revision petitioner were of no avail.

5. In view of the above state of affairs, at this stage the order cannot be said to be either illegal or perverse. Needless to state that the issue regarding valuation of the suit would always be open to be agitated and decided at the main proceeding.

6. There is no merit in the revision. The revision is dismissed in limine, however, keeping open the issue of valuation of the suit to be raised and decided in the main proceeding, that is the suit.

(MANGESH S. PATIL, J.)

mkd/-