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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO. 43 OF 2022

UPENDRA RAGHUNATH RANADE
AND ORS

....APPLICANT

V/s.

KAKASAHEB TATOBA SHINDE AND ORS

.....RESPONDENTS

Mr. Prajakt M. Arjunwadkar, Advocate for the Applicant

CORAM : NITIN W. SAMBRE, J.

DATE: MARCH 16, 2022.

P.C.:

1) Suit for declaration, cancellation of sale deed and possession based on recitals in Sale Deed dated 08/08/2016 was resisted by Applicant-Defendant on the ground that suit claim is under valued. As such provisions of Order VII Rule 11(b) of Code of Civil Procedure, 1908 (Hereinafter referred to as 'CPC' for the sake of brevity) is invoked which prayer is rejected vide impugned order dated 24/09/2021.

2) Submissions of Mr. Arjunwadkar, learned counsel for the Applicant are, claim of the Plaintiff in the Suit based on bundle of facts need to be appreciated. He would urge that Plaintiff himself has come out with a case that Suit property can be valued at an amount of Rs. 75 Lakhs. It was brought to the notice of the Court below that Suit property was valued by the Grampanchayat and the individual valuation of the each of the property of the Respondent is around Rs.1.25 Lakhs. As such, the Court below ought to have ordered valuation of the Suit claim by directing Plaintiff-Respondent to pay appropriate Court fees having regard to the fact that prayer for possession of the Suit property is also made.

3) Considered submissions.

4) The Court below while appreciating the same has rightly held that the aforesaid document will be of hardly of assistance in valuing the Suit claim. Court then proceeded to consider that once the evidence is brought on record, appropriate order in regard to valuation of the suit claim can be passed. Apart from above, this court is required to be sensitive to the fact that Respondent-Plaintiff is not a party to the Sale Deeds which are assailed in the Suit. That

being so, for the time being he is required to pay court fee on the value of the Suit property as reflected in the sale deed under challenge. Court has reserved its power to order payment of deficit court fees, if any, at appropriate stage.

5) Fact remains that while agitating the claim for rejection of the Plaintiff on the ground of Suit claim being not lawfully valued, Petitioner-Defendant has not submitted valuation report so as to assist the Court in substantiating the said claim. The claim of the Petitioner is without any lawful basis.

6) In that view of the matter, in my opinion, no fault could be noticed with the impugned order. Application as such fails, stands dismissed.

[NITIN W. SAMBRE, J.]