

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

CIVIL REVISION APPLICATION NO.580 OF 2019

M/s. Shree Ayyappa Constructions ..Applicant
Versus
Smt. Nalini Vidyanand Oak and Ors. ..Respondents

Ms. Gauri Godse, for the Applicant.
Mr. Vishal L. Kolekar, for Respondent Nos.1 & 2.

CORAM : NITIN W. SAMBRE, J.

DATE : 18th JANUARY, 2022

PC.

1. Defendant No.10 in Special Civil Suit No.43 of 2017 which is for declaration, cancellation of document and perpetual injunction invoked jurisdiction of this Court questioning the orders passed below Exhs.27 and 28. Two applications moved under the provisions of Order VII Rule 11(a)(d) of the CPC and under Order VII Rule (b) r/w Suit Valuation Act and Bombay Court Fees Act, 1959 praying rejection of plaint. Vide orders impugned dated 2nd March, 2019 both these applications are rejected.

2. Ms. Gauri Godse, learned counsel appearing for the applicant/original defendant No.10 would invite my attention to the pleadings in plaint, so also the application Exhs.27 and 28 so as to canvass that the cause of action in the plaint is not disclosed so as to

make out or depict a specific cause for questioning the legality of the document executed way back in 2002. According to her, the bundle of facts in support of the cause of action alleged prompts that the suit is barred by limitation and artificial cause of action is pleaded by narrating events of 2016 for bringing into action the suit in 2017. Further contention is considering the nature of relief claimed particularly the declaration, injunction and cancellation of document, the suit is undervalued. For substantiating said contention, she has invited attention of this Court to the pleadings in application Exh.28.

3. While countering the aforesaid submissions, learned counsel for the non-applicant/plaintiff would support the orders impugned. According to him, contention in both these applications are dealt in detail in the impugned order. No error of law could be noticed. According to him, application as such is liable to be rejected.

4. Considered submissions.

5. The suit is in relation to the immovable property. The pleadings in the suit depict that the declaration of ownership and protection from dispossession is sought in relation to the suit property alleging that the respondents/plaintiffs are in possession of the said property which is an agricultural land. A further declaration is sought that the registered Development Agreement dated 30th

December, 2002 entered into between defendant Nos.1 to 4 and predecessor in title of defendant Nos.5 to 9 is without any lawful authority and same is illegal, unlawful, bad in law and liable for cancellation. A similar relief is claimed in relation to the Power of Attorney dated 20th January, 2003, a Sub-Development Agreement dated 22nd May, 2012 out of the aforesaid Development Agreement dated 30th December, 2002 registered on 20th January, 2003. A similar relief of declaration of substituted Power of Attorney dated 22nd May, 2012 is also sought. Certain other ancillary reliefs are claimed in addition to the aforesaid main relief in the suit.

6. As such, it is apparent that the last document in the transaction alleged in the plaint is of 22nd May, 2012 in relation to which the relief is claimed. Apart from above, it is alleged that on 7th February, 2016 the applicant's partner with aid of anti-social elements and gundas tried to encroach upon the suit property which has given rise to cause of action to the plaintiffs to initiate the suit.

7. As I have observed herein-above that with the assistance of both the learned counsels, I have perused the pleadings in the plaint, the bundle of facts narrated therein *prima-facie* demonstrate that the cause of action pleaded as that of arising in 2016 is in continuation of the other factual matrix which reflects cause of action in the plaint. That being so, the Court below justified in recording finding that the suit claim is very much within limitation and the cause of action could be inferred from the bundle of facts

pleaded in the plaint.

8. As far as the issue as regards non-payment of the court fee on the suit claim is concerned, the suit is for the purpose of declaration and injunction. The perusal of the prayer in the plaint reflects that relief of declaration of lawful ownership, possession and occupation in addition to certain declaration in regard to Development Agreement, Sub- Development Agreement, Power of Attorneys and other ancillary reliefs are claimed. Based on such relief of declaration and injunction, the suit is valued. Requisite court fees of Rs.75,000/- is paid. Though my attention is invited to the fact that the court fee for the purpose of declaration of Development Agreement dated 30th December, 2002 as illegal and cancellation of the same, the valuation under Section Section (6) (iv)(ha) of the Maharashtra Court Fees Act is wrongly made, however, in my opinion, the Court below has specifically recorded and has ruled in favour of the plaintiffs on the issue of payment of court fees on proper valuation of the suit claim.

9. This Court is required to be sensitive to the fact that the payment of inadequate court fees is curable defect and unless opportunity to rectify the same is given to the plaintiffs, order of rejection of plaint cannot be passed. Once the Court below has noticed that the suit claim is properly valued and rejected the prayer moved for rejection of plaint, this Court in my opinion, should not go ahead and further make an observation the suit claim was

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undervalued particularly when specifically the Court below has dealt with the issue of valuation of the suit in accordance with provisions of Section 6 of CPC.

10. In the wake of above, I hardly noticed any illegality in the impugned orders which warrants interference in the extraordinary jurisdiction of this Court. The revision application as such stands rejected.

[NITIN W. SAMBRE, J.]