

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR**

CIVIL REVISION APPLICATION NO. 42 OF 2020

Suhil s/o. Dhanraj Jakotiya and others

vs.

Motiram s/o. Bholaram Bangad and others

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders.

Mr. S. O. Ahmed, Advocate for applicants.
Mr. J. B. Kasat, Advocate for respondents.

CORAM : MANISH PITALE J.

DATE : 22/07/2022

By this revision application, the original defendants are before this Court challenging an order dated 03/02/2020 passed by the Civil Judge Junior Division, Ner, District Yavatmal, whereby an application filed by the applicants for rejection of plaint under Order 7 Rule 11 of the Civil Procedure Code (CPC), has been rejected.

2. The respondents have filed a suit for declaration, foreclosure, sale and recovery of amount against the applicants in the context of a “kabulnama”, said to have been executed by the predecessor of the applicants in favour of the

predecessor of respondents. It is claimed that by operation of the condition specified in the “kabulnama”, the respondents are entitled to specific reliefs claimed in the suit.

3. According to the applicants, the respondents wrongly valued the suit at Rs.20,000/- i.e. the loan advanced by their predecessor to the predecessor of the applicants and that if the prayers made in the plaint are to be properly appreciated, in the context of the “kabulnama”, valuation of the suit ought to be on the market value of the property in question i.e. 5 acres out of total of 10 acres specified in the said “kabulnama”.

4. The application for rejection of plaint filed on the aforesaid basis was opposed by the respondents and it was claimed that valuation was correctly stated in the plaint and that the application deserved to be rejected.

5. The Court below by the impugned order has rejected the contentions raised on behalf of the applicants, as a consequence of which the application stood rejected and hence, the applicants have approached this Court.

6. The learned counsel for the applicants invited attention of this Court to the aforesaid “kabulnama”, as well as the contents of the plaint, particularly prayer clause (3) of the plaint to support his contention that the suit was undervalued and therefore, the plaint ought to be rejected on a plain reading itself.

7. On the other hand, the learned counsel appearing for the respondents submitted that the suit was correctly valued, for the reason that charge on the property was in terms of the loan advanced, which was limited to Rs.20,000/- and a proper interpretation of the grievance raised in the plaint, read with prayer clause(3), particularly the alternative prayer made therein, in the context of the “kabulnama” would show that this was not a case of under valuation and that therefore, the impugned order did not deserve interference.

8. This Court has perused the “kabulanama”, which specifies that in lieu of amount of Rs.20,000/- taken as loan from the predecessor of the respondents, the predecessor of the applicants had agreed that 5 acres out of the total area of 10 acres would not be directly sold and that if the land is indeed sold, the entire consideration amount would

be handed over and further that no Gift Deed, Partition Deed or Mortgage would be executed in respect of the said area of land.

9. It is the grievance of the respondents that despite such stipulations in the “kabulanama”, a Gift Deed dated 26/03/2018, was executed by the predecessor of the applicants in favour of applicant No.4 (original defendant No.4), which gave cause of action for filing the aforesaid suit. A perusal of the plaint shows that the respondents have prayed for declaration that they have a charge over the suit field, they are entitled for a declaration that the said Gift Deed is not binding upon them, that a direction ought to be issued to the applicants to return the charge amount as per current market valuation of the suit field or in default a decree for foreclosure of the suit field be passed by selling the said field and the amount be refunded as per current market valuation to the respondents.

10. In the plaint, the suit is valued on the basis of the loan amount of Rs.20,000/- as according to the respondents that was the charge on the suit field. But, this Court is of the opinion that considering the specific relief at prayer clause(3) of the plaint, or the alternative prayer, whereby the

respondents have sought return of charge at current market valuation of the suit field, the valuation of the suit field ought to have been at the market value of the suit field, as on the date of the filing of the suit.

11. There is substance in the contention raised on behalf of the applicants that the suit was undervalued. But a perusal of the impugned order would show that the aforesaid aspect of the matter, in the context of the specific prayers made in the plaint, has not been appreciated in the correct perspective, as a consequence of which the application filed by the applicants has been erroneously rejected.

12. In view of the above, the Civil Revision Application is allowed.

13. The impugned order is quashed and set aside.

14. It is directed that the suit filed by the respondents shall be valued as per the market value of the suit field(5 acres), on the date of filing of the suit.

15. The respondents shall pay the deficit court fee accordingly within a period of **eight weeks**

from today; failing which the plaint shall stand rejected.

JUDGE