

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

Civil Revision Application No.107 of 2017

Shri Ashok s/o Wasudeorao Wankhede

vs.

Shri Raghunath s/o Marotrao & another

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

Court's or Judge's Orders

*Mr. H.I. Kothari, Advocate for the Applicant.
 Mr. P.K. Mishra, Advocate for Respondent No.1.*

CORAM : M.S. KARNIK, J.
DATE : 20th APRIL, 2022.

This civil revision application is at the instance of original defendant No.1. Respondent No.1, who is the original plaintiff, had filed a suit before the trial Court seeking various reliefs, *inter alia*, for a declaration that the plaintiff is the absolute owner of the suit field, a declaration that the will dated 14/10/1999 made in favour of defendant No.1 in respect of the suit field is illegal etc.

02] Defendant No.1 filed written statement and contested the suit. When the suit was fixed for hearing, an application was made by defendant No.1 under Order VII Rue 11 of the Code of Civil Procedure (CPC) for rejection of the plaint. In the said application, it was contended that the suit is not properly valued as per the provisions of Section 6(iv)(d) of the Maharashtra Court Fees Act. The trial Court vide its impugned order dated 01/03/2017 passed below Exh.56 rejected the application.

03] Learned Counsel for the applicant contended that for the proper and effective adjudication of the matter, it is necessary for the plaintiff to value the suit property and pay the requisite court fees over the same within time. Learned Counsel further contended that unless proper court fee is paid, the plaint deserves to be rejected.

04] Learned Counsel further contended that the trial Court has not decided the application on merits. According to him, since an objection to the payment of proper court fee was raised on the settled principle that the suit cannot be proceeded unless proper court fee is paid, the order deserves to be set aside. It is further contended that an application under Order VII Rule 11 of CPC can be filed at any stage of proceedings and, therefore, the trial Court committed an error in rejecting the application on an erroneous consideration that the suit has proceeded and that such an application at that stage is delayed when the matter is pending for cross-examination of the witness.

05] My attention is invited by learned Counsel to the additional issues. I have gone through the impugned order and also heard the learned Counsel on behalf of the applicant. From the reading of the impugned order, it is apparent that the application [Exh.56] is not decided on merits. My attention is also invited to an order passed below Exh.55 framing additional issues. One of the additional issues framed is Issue No.9 - Whether the suit is properly valued?.

06] No doubt, an application under Order VII Rule 11 of CPC can be made for rejection at any stage of the proceedings. However, considering that the trial Court has now even framed a issue as to whether the suit is properly valued. It is obvious that the trial Court will go into the merits of the contentions raised by defendant No.1 even in the application below Exh.56. Order VII Rule 11(b) of CPC provides that where the relief claimed is under-valued, and the plaintiff, on being required by the Court to so correct the valuation within a time to be fixed by the Court, fails to do so, the plaint shall be rejected.

07] The suit is of the year 2011. It is at the stage of leading evidence and the plaintiff is under cross-examination. Considering that an Additional Issue No.9 is already framed by the trial Court “whether the suit is properly valued”, I see no reason to interfere at this stage as all the contentions raised by defendant No.1 regarding under valuation of the suit shall obviously be considered while deciding the additional issue.

08] Hence, I do not interfere with the impugned order of the trial Court. However, it is made clear that the trial Court shall decide the issue regarding valuation on its own merits in accordance with law without being influenced by any of the observations made by the trial Court in the order passed below Exh.56. All contentions raised are kept open.

09] Considering the fact that the suit is of the year 2011, the trial Court is requested to expedite the suit. The trial Court shall make an endeavour to decide the suit as expeditiously as possible preferably within a period of 18 months from today.

10] The civil revision application is disposed of.

JUDGE

**sandesh*