

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

CIVIL REVISION APPLICATION NO. 76 OF 2018

Gajanan Vasantao Admane __ Vs. __ Sunil Vasantao Admane

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

Court's or Judge's orders

Mr. M.G.Sharma, Advocate for applicant
None for the non-applicant.

CORAM : AVINASH G. GHAROTE, J.
DATE : 07/10/2022

1] Heard Mr. Sharma, learned counsel for the applicant. None appears for non-applicant, though served.

2] At the outset, Mr. Sharma, learned counsel for the applicant does not press any other grounds, except the valuation of the claim in the suit. The suit is for declaration, injunction, removal of encroachment and damages and is valued at ₹.3,00,000/-. A plea is raised by way of an application under Order VII Rule 11b that the claimed suit is not properly valued.

3] A perusal of the prayer clause in R.C.S. No. 979/2017 indicates multiple reliefs have been claimed, which are as under :

“i. declare that the act of defendant of demolishing the common latrine+bath and staircase is illegal an ab-initio and he does not

possess any legal right to do so and as he had demolished the common utility which was enjoyed by both the parties to the suit, hence he is bound to pay an amount of Rs.3,00,000/- to the plaintiff which he incurred to construct the separate latrine+bath and iron staircase

ii. further declare that, the said defendant has illegally encroached upon the portion admeasuring 4x50 ft i.e. 200 sq. Ft at very western portion belonging to the plaintiff and hence, he should remove the said encroached portion and hand over the said encroached portion to the plaintiff in vacant position and also direct the defendant to demolish the wall which the defendant has illegally constructed at very front portion of the suit property admeasuring 10 fts. in length and 8 ft height and thereby obstructing the easementary rights of the plaintiff of enjoying the fresh air and sunlight.

iii. Further grant a decree and thereby direct he defendant to pay Rs.3,00,000/- to the plaintiff towards damages and construction work of latrine+bath and iron staircase, which had been carried out by the plaintiff from his own pocket and also direct the defendant to carry out all the repairing work which was damaged due to demolishing work carried out by the defendant;

iv. grant a decree of permanent injunction and thereby restrain the defendant, his agents, attorney and any other person acting on his behalf not to create any hurdles in enjoying the easementary rights of the plaintiff and also restrain from carrying out any illegal construction over the suit property and from encroaching upon the portion belonging to the plaintiff;

v. saddle the cost of the present suit on the defendant;

vi. grant any other relief which deems fit in the facts and the circumstances of the case in favour of the plaintiff in the interest of justice.”

4] The valuation in the plaint of the claims in the suit are listed in para 10, which is as under :

“That, for the purpose of declaration and injunction the suit is valued at Rs. _____ and Court Fee of Rs. _____ is paid herewith and for the purpose of removal of encroachment and damages, the suit is valued at Rs. _____ and Court Fee of Rs. _____ is paid herewith.”

5] The suit is valued at ₹.3,00,000/- and the Court Fee paid is ₹.10,430/- which would be on the amount of damages claimed. However, the relief for declaration in prayer clause (i) and (ii) and for permanent injunction in prayer clause (iv) have not been valued at all. The impugned order does not appear to have taken this position into consideration as is reflected from para 7 thereof, in view of which the impugned order so far as it relates to the rejection of the application under Order VII Rule 11 regarding the valuation of the suit claim, is hereby quashed and set aside and the application below Exh.19 is partly allowed by directing the non-applicant/plaintiff to value the suit claim properly, based upon the reliefs claimed in the suit and to pay the appropriate Court fee thereupon, within a period

(4)

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of 30 days from today, failing which the application at Exh.19 shall stand allowed under Order VII Rule 11b of the CPC.

6] Civil revision application is accordingly partly allowed. No costs.

JUDGE

Rvjalit