

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

CIVIL REVISION APPLICATION NO. 69 OF 2019

Sagar s/o Narendra Gandhi and another

vs.

Kishore s/o Wamanrao Pande 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. R. R. Shrivastava, Advocate for applicants.
Mr. N. A. Gaikwad, Advocate for respondents.

CORAM : MANISH PITALE J.

DATE : 15/07/2022

By this application the original defendants are before this Court challenging order dated 13/06/2019, passed by the Court below, whereby an application filed on their behalf under Order 7 Rule 11 of the Civil Procedure Code (CPC) was partly allowed.

2. According to the applicants, the Court below has erred in appreciating the pleadings in the plaint, while passing the impugned order. The respondents have filed a suit for declaration, injunction and cancellation of the Sale Deed or in the alternative for recovery of money against the applicants. In the prayer clause, the respondents

have referred to a particular clause in the Sale Deed registered on 14/05/2015, but they have sought a declaration that the Sale Deed be declared as void and a specific direction be given to the Sub Registrar-II at Nagpur to take note of cancellation of Sale Deed as sought by the respondents.

3. The applicants moved the aforesaid application under Order 7 Rule 11, claiming that the suit was undervalued and that deficit Court fee was not paid and on this ground, sought rejection of the plaint. Apart from this, the applicants also raised grounds of limitation and no cause of action in the said application.

4. By the impugned order, the Court below partly allowed the application only on the aspect of valuation of the suit and issued the impugned direction that valuation of the suit be made according to the sale value of only 250 sq.ft. under the said Sale Deed and to deposit court fee as per Section 6(iv)(ha) of the Maharashtra Court Fees Act, 1959, failing which the plaint would be liable to be rejected.

5. Mr. Shrivastava learned counsel appearing for the applicants invited attention of this Court to the contents of the said Sale Deed and also a specific

clause i.e. clause No.(2) pertaining to a portion of the land that was subject matter of the Sale Deed, in respect of which it was recorded that the payment commensurate to that area would be made after pending litigation is decided finally and possession is actually received by the applicants. It was then submitted that if the prayer clauses in the plaint were to be perused, although reference was made to the said clause of the Sale Deed in prayer clause (1), a proper reading of prayer clauses (1), (2) and (3) would show that the respondents i.e. original plaintiffs were seeking cancellation of the entire Sale Deed and that therefore, they were obliged to value the suit accordingly and to pay court fee in accordance with law.

6. According to the learned counsel for the applicants, limiting valuation of the suit and payment of court fee only on 250 sq.ft. was erroneous on two counts; firstly that the area ought to be 1200 sq.ft. and secondly that since cancellation of the entire Sale Deed was sought, the valuation of the suit ought to have been as regards the entire property, which was the subject matter of the Sale Deed, its valuation and then payment of court fee under Section 6(iv)(ha) of the said Act.

7. On the other hand, Mr. Gaikwad, learned counsel appearing for the respondents submitted that if the pleadings in the plaint were appreciated in the correct perspective, the grievance of the respondents was primarily in respect of clause No.(2) of the Sale Deed and that this aspect was indeed taken into consideration by the Court below while passing the impugned order. On instructions it was submitted that if this Court was to accept the submissions made on behalf of the applicants, leave could be granted to the respondents to suitably amend the plaint, if so advised.

8. This Court has perused the material on record. On a proper reading of the plant, the prayers made therein and the said Sale Deed would show that the prayers as they stand are not limited to grievance pertaining to clause No.(2) in the Sale Deed and that evidently declaration and cancellation is sought in respect of the entire Sale Deed.

9. In the light of the same, the learned counsel for the applicants is justified in contending that court fee would have to be paid on the valuation of the property, which was subject matter of the Sale Deed and not limited to the area as specified in the operative portion of the impugned order. There

appears to be no grievance about application of Section 6(iv)(ha) of the said Act for determination of the court fees, but the grievance is indeed about the limited area specifically mentioned in the operative portion of the impugned order.

10. This Court is in agreement with the contentions raised on behalf of the applicants and material placed on record. Hence, interference in the impugned order is necessary and appropriate modification needs to be made.

11. In view of the above, the revision application is partly allowed.

12. The application filed by the applicants under Order 7 Rule 11 of the Civil Procedure Code stands partly allowed with a direction to the respondents to deposit requisite court fee on the value of the property which is subject matter of the Sale Deed for the relief of declaration as per Section 6(iv)(ha) of the Maharashtra Court Fees Act, 1959, within a period of two months from today, failing which the plaint shall be liable to be rejected.

13. Insofar as the leave sought on behalf of the respondents, the order passed today by this Court

will not be an impediment for the respondents to move an appropriate application for amendment before the Court below. If such an application is filed on behalf of the respondents, it shall be decided in accordance with law.

14. It is further clarified that although reference is made by the Court below on the aspects of limitation and absence of cause of action in the impugned order, it would not come in the way of the Court below to frame issues in that regard when the suit is taken up for consideration on merits.

JUDGE