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

CIVIL REVISION APPLICATION NO.102 OF 2023

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Miteshkumar Kishor Patel

... Applicant

V/s.

Paresh Savji Bhudia

... Respondent

Mr. Abhishek Chitnis for the applicant.

Mr. Sohan Gunjal i/by Mr. Ojas Deolankar for the respondent.

CORAM : AMIT BORKAR, J.

DATED : DECEMBER 19, 2023

P.C.:

1. The defendant in a suit for declaration and injunction filed an application under Order 7 Rule 11(a) of the Code of Civil Procedure, 1908 for dismissal of the suit which has been rejected by the impugned order.

2. The respondent/original plaintiff filed Special Civil Suit No.350 of 2021 seeking a declaration that the plaintiff be declared as absolute owner of the suit property and the defendant has no right, title and interest in the suit property. Further relief seeking direction against the defendant to execute correction deed by removing defendant's name from the deed of assignment is also sought. The suit is based on deed of assignment dated 30 August 2017.

3. According to the plaintiff, he paid entire consideration and, therefore, he become absolute owner of the suit property. Therefore, the relief as prayed for deserves to be granted.

4. In such a suit, the defendant filed an application under Order 7 Rule 11 of the Code of Civil Procedure, 1908 stating that the deed of assignment indicates name of two persons to be the purchasers. Therefore, both the persons are owners of the suit property. Hence, the claim of exclusive ownership is not sustainable.

5. On perusal of the plaint and the deed of assignment, it appears that the deed of assignment referred in the plaint indicates name of two persons, i.e. plaintiff and defendant. If ultimately during trial based on evidence adduced by the parties the Trial Court comes to the conclusion that the plaintiff has failed to prove exclusive ownership, it will always be open for the Trial Court to mould the relief for grant of lesser relief. However, at the stage of consideration of application under Order 7 Rule 11 of the Code of Civil Procedure, 1908, the plaint cannot be rejected on the ground of absence of cause of action. There is, therefore, no error of jurisdiction committed by the Trial Court.

6. The civil revision application stands dismissed. No costs.

(AMIT BORKAR, J.)