

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FIRST APPEAL NO.616 OF 2018
WITH
CIVIL APPLICATION NO.1867 OF 2018
WITH
INTERIM APPLICATION (ST.) NO.32118 OF 2022
IN
FIRST APPEAL NO.616 OF 2018**

Jayshri D. PatilAppellant

Vs.

Gulabbai Balaram Mhaskar and Ors.Respondents

Ms. Latika Belindage for appellant.

Ms. Shalu V. Tanwar a/w. Ms. Preeti Walimbe for respondent nos.1 to 12.

Mr. Jaydeep Deo for respondent nos.13 to 18.

**CORAM : K. R. SHRIRAM &
RAJESH S. PATIL, JJ.**

DATED : 23rd JANUARY 2023

PC. :

1 Since the issue in the appeal was very narrow, by consent of the parties, the appeal is taken up for hearing at the admission stage itself.

2 The appeal has been preferred impugning an order dated 5th August 2017 passed by the Civil Judge, Junior Division, Ulhasnagar. Some of the respondents, who were defendants in the suit, had taken out an application under Order VII Rule 11 (b) of the Code of Civil Procedure, 1908 praying for rejection of the plaint on the basis that the suit is undervalued and correct court fees has not been paid.

3 Before the impugned order was passed, admittedly the maximum court fees of Rs.3 lakhs has been paid. The suit filed is for partition of certain properties and Mr. Deo submits that even though maximum court fees of Rs.3 lakhs has been paid, the valuation of the suit will be very material because that will determine whether the suit will be heard by the Civil Judge, Junior Division or Civil Judge, Senior Division and whether the appeal would lie to the District Court or to the High Court and if to the High Court, then whether before a Single Judge or a Division Bench. Mr. Deo rightly submits that the valuation of the suit is very very material.

4 Ms. Belindage, counsel for appellant undertakes to complete the process of valuation of all the suit properties through an independent Valuer within four weeks from today. Ms. Belindage states that copies of the valuation report/reports will be filed before the Court of Civil Judge, Junior Division, Ulhasnagar and copies thereof would also be provided to defendants in that suit. Ms. Belindage further states that if the valuation report indicates the valuation different from what is already stated in the plaint, within two weeks, i.e., within six weeks from today, an application for leave to amend the plaint will be filed in the Court with copy to defendants therein. Ms. Belindage states that if the Court passes any order with regard to valuation, the order will be strictly complied with. Statements accepted as undertaking to this Court.

5 In view of the above, we hereby quash and set aside the impugned
order dated 5th August 2017. The suit is restored to file of the Trial Court.

6 Appeal disposed.

7 At this stage, on the suggestion made by the Court, counsels state
that their respective clients are ready and willing to go for mediation. All
counsels in unison suggest the name of Mr. Rajiv Patil, Senior Advocate, who is
present in Court. Mr. Rajiv Patil also consented to be appointed as Mediator.

8 Therefore, we appoint Mr. Rajiv Patil, Senior Advocate as
Mediator to mediate on all disputes between the parties. The fees and
administrative expenses of the Mediator to be shared equally between the
parties.

9 The Mediator is requested to complete mediation and submit a
report to the Trial Court by 28th February 2023. If any extension to complete
mediation is required, parties may apply to the Trial Court and the Trial Court
to consider the said application and pass orders as it deems fit.

10 The suit be listed for directions before the Trial Court on
3rd March 2023.

(RAJESH S. PATIL, J.)

(K. R. SHRIRAM, J.)