

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

CIVIL REVISION APPLICATION NO. 131 OF 2022

Sau. Seema w/o Maheshkumar Chudiwal and another

vs.

Dilip s/o Shivchand Chudiwal (Dead) through LR.

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

Court's or Judge's Orders.

Shri. Madhur Deo, Advocate for applicants.
Shri. K. L. Dharmadhikari, AGP for respondent nos.3 & 4.

CORAM : SMT.M.S.JAWALKAR J.

DATE : 27/03/2023

Present application is filed by original defendant Nos.5 and 6, challenging order dated 15/03/2022, whereby the trial Court has rejected the application for rejection of plaint in Regular Civil Suit No.168 of 2020 below Exh.28.

2. Learned counsel for the applicant has drawn my attention to the copy of claim which is filed for declaration of ownership and a permanent injunction valued at Rs.1000/-. The defendant filed application Exh.28 for rejection of plaint under Order 7 Rule 11(d) of Civil Procedure Code.

3. It is contended that the property in question is worth of Rs.5 Crores, and if any declaration in respect of the immovable property which is susceptible of monetary evaluation in such case, the provision under Section 6(iv)(d) of the Maharashtra Court Fees Act is applicable. (Though in civil application the applicant submitted that Section 6(iv)(ha) of Maharashtra Court Fees Act is applicable)

4. Learned counsel for the appellant submits that Section 6(d) of the Maharashtra Court Fees Act would be applicable in the present case. Learned lower Court held that Section 6(iv)(j) of the said Act would be applicable, however, on going through the provision of Section 6(iv)(j), it will applicable only in suits where declaration is sought with or without injunction or other consequential relief and the subject-matter in dispute is not susceptible of monetary evaluation and which are not otherwise provided for by this Act. Learned trial Court is wrongly applied Section 6(iv)(j). Even though the applicant wrongly quoted Section 6(iv)(ha), it is the duty of the Court to apply right provision.

5. If Section 6(iv)(d) is perused, it is applicable in suits for declaration in respect of

ownership, or nature of tenancy, title, tenure, right, lease, freedom or exemption from, or non-liability to,.....

6. Thus, though the applicant submitted that the provision of Section 6(iv)(ha) is applicable in application below Exh.28, in my considered opinion, it ought to be 6(iv)(d) in view of the fact that suit is filed for declaration of ownership and permanent injunction. Thus, the order passed by learned trial Court below Exh.28 needs fresh consideration. The impugned order is deserve to be quashed and set aside, as the provision applied by the learned trial Court is not applicable to the suit when it is for declaration of ownership and injunction.

7. As such, the Civil Revision Application is partly allowed.

8. The impugned order dated 15/03/2022 passed below Exh.28 by the learned 5th Joint Civil Judge Senior Division, Wardha is hereby quashed and set aside.

9. The the learned 5th Joint Civil Judge Senior Division, Wardha is directed to decide the

application afresh, considering the provision of Section 6 of the Maharashtra Court Fees Act.

10. Parties to appear before learned 5th Joint Civil Judge Senior Division, Wardha on the date fixed by the said Court.

JUDGE