



IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD

CIVIL REVISION APPLICATION NO.86 OF 2023

1. Sham s/o Damodar Renavikar,  
age 61 yrs, Occ Business,  
R/o Lal Taki Road, Ahmednagar.
2. Sushma Sham Renavikar,  
age 59 yrs, Occ. And r/o. As above.
3. Akshay Sham Renavikar,  
age 31 yrs, Occ. And r/o as above. Applicants.  
(Orig deft 8 to 10)

Versus

1. Dr. Abdul Sattar s/o Mohd Salar,  
age 73 yrs, Occ. Medical Practitioner,  
R/o. Bungalow No.164, N-3,  
Cidco, Near Ajaydeep Complex,  
Aurangabad.
2. Syed Nashir Shamsheer Ali,  
age 46 yrs, Occ. Agri,  
R/o. Supa, Tq. Parner,  
District Ahmednagar.
3. Sachin Tukaram Jadhav,  
age 43 yrs, Occ. Agril,  
R/o. Kings Gate, Ahmednagar.
4. Sanjay s/o Bhagwan Budhwant,  
age 47 yrs, Occ. Agri and Business,  
R/o S.T. Colony, Surya Nagar,  
Aurangabad Road, Ahmednagar.
5. Ravindra Babasaheb Pisore,  
age 42 yrs, Occ. Agri and Business,  
R/o. 101, Anand Nagar Society,  
Savedi, Ahmednagar, Tq. & Dist. Ahmednagar.

6. Shrihari Constructions Partner,  
Daivshala Shivdas Doke,  
age 40 yrs, Occ. Business,  
R/o Pipeline Road, Savedi,  
Ahmednagar.
7. Shrihari Constructions Partner,  
Sow. Warsha Sanjay Kandekar,  
age 38 yrs, Occ. Business,  
R/o as above.
8. The Talathi, Wadgaon Gupta,  
Saza Wadgaon Gupta, Tq. And  
District Ahmednagar.
9. The Circle Officer,  
Savedi, Tq. Ahmednagar,  
District Ahmednagar.

Respondents.

(R-1 orig plaintiff, 2 to 7  
are orig deft.2to7 and  
resp 8,9 orig deft 11 & 12.)

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Mr. S.S. Thombre, advocate for applicants.

Mr. Y.M. Khan, advocate for respondent no.1.

Mr. S.V. Jadhavar advocate for respondent nos. 2 to 5.

Mr. S.R. Andhale advocate for respondent nos.6 and 7.

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**CORAM : S. G. CHAPALGAONKAR, J.**

**Date : 25<sup>th</sup> November, 2024.**

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**ORDER :-**

1. The applicants/original defendants no.8 to 10  
assails the order dated 4.2.2023 passed by 2<sup>nd</sup> Jt. Civil Judge  
S.D. Ahmednagar in Special Civil Suit No.89 of 2020 by which  
the applicants prayer for rejection of the plaint under

order VII Rule 11 of the Civil Procedure Code has been rejected.

2. Mr. Siddheshwar Thombre, learned advocate appearing for the applicants submits that respondent no.1 instituted Special Civil Suit no.89 of 2020 claiming relief of declaration and injunction. It is a case of the plaintiff that general power of attorney dated 21.2.2011 has been fabricated by defendant no.1 with aid of third person. He got knowledge of execution of the sale deed in respect of his land gat no.661 situated at Wadgaon Gupta on the basis of aforesaid power of attorney. The plaintiff therefore claims declaration that sale-deed bearing day book no.1276 dated 23.2.2011 is null and void and not binding to his right. The plaintiff has also raised challenge to the mutation entry and consequential sale-deeds executed by the defendant no.2 in favour of defendant nos. 3 to 5 and further sale-deed executed by defendant nos.3 to 5 in favour of defendant nos.6 and 7. The plaintiff has also claimed the relief of perpetual injunction against the defendants from causing interference in his possession over the suit property.

3. Mr. Thombre would submit that initially present applicants were not party to the suit. They have been brought on record as per the amendment under order dated 9.11.2021, passed below exhibit 35. After appearance of applicants before the trial court they filed application under order VII rule 11 of the CPC seeking rejection of plaint and pointed out that applicants purchased suit property on 11.7.2016 for consideration of Rs.1,92,00,000/-. Present market value of suit property is more than 2,38,07,724/-. The suit is undervalued. However, Trial Court erroneously rejected the application vide order dated 4.2.2023. Mr. Thombre in support of his contentions seeks to rely upon judgment of this Court in case of **Kishorbhai Premchand Shah Vs. Hirji Bhojraj and sons Kutchi Oswal Jain Chhatralay Trust and others reported in 2014 (2) Mh.L.J. 187.**

4. Mr. Thombre would further submit that plaintiff has cunningly suppressed market value of the land, although, he is seeking declaration as regards to sale-deed of applicants. The suit is not valued as per market value of suit property at the time of institution of suit. He would further submit that inspite of specific objection of defendants on the point of

valuation of suit, plaintiff failed to rectify defect and appropriately valued suit for the purpose of court fees and jurisdiction. Consequently, the trial court ought to have exercised the jurisdiction under order VII Rule 11 of the CPC and suit ought to have been rejected.

5. Per contra, Mr. Y.M. Khan, learned advocate appearing for the respondent no.1/plaintiff would submit that objection as regards to valuation of the suit was previously raised in the scrutiny-sheet by the Superintendent of the Court. The Court passed order for correction of the valuation and removal of the objection. Thereafter, suit was appropriately valued and requisite court fees has been paid. Consequently, vide order dated 11.6.2020 passed by the Trial Court, the suit has been registered and numbered. He would submit that defendant nos.1 and 2 had previously raised similar objection by filing application below exhibit-38 in Suit. The Court after considering rival submissions approved correctness of valuation of suit and consequential payment of Court Fees in terms of section 6 (iv) and (ha) of the Maharashtra Court Fees Act. Therefore, subsequent application filed by defendant nos. 3 to 8 has been rightly dismissed.

6. To counter the aforesaid submissions, Mr. Thombre would submit that objection raised by defendant nos.1 and 2 vide application below exhibit-38 has been dealt with and decided on 28.10.2020 before impleadment. He would submit that sale-deeds of defendant nos.8 to 10 and market value of the suit land was not before the Court, the Court erroneously approved valuation of suit based on consideration shown in sale-deed of 2011. If the suit is instituted in the year 2020, it was for the plaintiff to pay court fees as per the market value as on date of filing of the suit. Therefore, according to him, suit is liable to be dealt with under Order VII Rule 11 (a and b) of the Code.

7. Having considered the submissions advanced and after going through the relevant record, it can be observed that respondent no.1 instituted suit seeking relief that the sale-deed day book no.898 of 2011 dated 21.2.2011 executed by the defendant no.1 in favour of defendant no.2 on the basis of alleged forged general power of attorney depicting authorization by plaintiff to defendant-Syed Nasir to transfer land of his ownership. According to the plaintiff, in the year 2020, it was revealed to him that false, bogus and fabricated

GPA in his name has been prepared by defendant no.1 and the sale-deed has been executed in name of defendant no.1. The plaintiff further contend that lateron defendant no.2 transferred suit land in favour of defendant nos.3 to 5 under registered sale deed dated 13.3.2013. The defendant nos.3 to 5 transferred the same land in favour of defendant nos.6 to 7 under registered sale-deed dated 16.1.2014 and lastly the same has been transferred in favour of defendant nos.8 to 12. The plaintiff therefore seeks relief of declaration that power of attorney dated 21.2.2011 registered vide day book no.898 of 2011 is fake document and also seeks declaration that sale deed dated 23.2.2011 is not binding on his right. The plaintiff has also claimed consequential declaration in respect of further sale-deeds.

8. Apparently, the suit is susceptible to monetary evaluation. If the plaintiff is claiming declaration, he is required to pay Court fees to the extent of  $\frac{1}{2}$  of the advalorem fees. It is not disputed before this Court that clause no.6 (iv) (ha) of the Court Fees Act is applicable in the present case.

9. This Court in case of **Niraj Narendra Walle Vs. Smt. Vijaya w/o Narendra Valle** relying upon the proposition of

law in case of Suhrid Singh @ Sardool Singh Vs. Randhir Singh and others observed that where the prayer for cancellation or declaration in regard to deed of transfer or conveyance is made by party to the sale-deed, who wants to avoid the same, the court fees would be chargeable differently. However, when the prayer is made by third party i.e. non-executant of the deed to avoid the sale-deed for declaration that same is invalid or void and not binding upon him, he has merely to pay court fees in terms of section 6(iv)(ha) of the Maharashtra Court Fees Act only on the first sale deed and not on the consequential sale-deeds.

10. In the present case, the plaintiff has revalued the suit in pursuance to objection raised by the Superintendent. Thereafter, as per the Courts order dated 10.6.2020 he paid court fees on sale consideration amount of first sale-deed. Thereafter, suit has been registered. The corollary of aforesaid discussion reveal that suit is properly valued. The objection as regards to valuation of suit has been appropriately dealt with. Even, objection on the same issue has been previously dealt with by the trial court while deciding exhibit-38 at the instance of defendant nos.1 and 2. Merely because defendant nos.8 to

10 are later on added, there was no reason to again deal and entertain same objection. Although defendants are claiming their right under sale-deed of 2016 which show consideration amount as Rs.1,92,00,000/- the plaintiff has rightly valued the suit based on valuation of property in first sale-deed of 2011 by which plaintiff can be said to be aggrieved. If the sale-deed of the year 2011 is declared as null and void or not binding on right of the plaintiff, no title would pass to subsequent purchasers. The plaintiff can simply ignore such sale-deeds.

11. Although, Mr. Thombre submits that valuation of the property as on date of filing of the suit has to be considered, in absence of prayer for recovery of possession, such arguments cannot be accepted. The plaintiff has made prayer of declaration as regards to sale-deeds being invalid and consequential prayer for perpetual injunction. Therefore, suit appears to be properly valued. In that view of the matter, no fault can be found in the impugned order. Civil revision application stands dismissed. No costs.

**( S. G. CHAPALGAONKAR )**  
**JUDGE**

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aaa/-