

HARSHADA H. SAWANT
(P.A.)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL REVISION APPLICATION NO.161 OF 2024

Samir Babasaheb Koruche and Anr.

.. Applicants

Versus

Shobha Shantinath Gath

(Shobha Charudatta Koruche) and Ors.

.. Respondents

.....

- Mr. Kuldeep U. Nikam, Advocate for Applicants.

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CORAM : MILIND N. JADHAV, J.

DATE : MARCH 22, 2024

P.C.:

- 1.** Heard Mr. Nikam, learned Advocate for Applicants.
- 2.** This Civil Revision Application takes exception to the order dated 17.01.2024 passed in application filed below Exhibit-214 in Special Civil Suit No.72 of 2018.
- 3.** The suit is filed by the Plaintiff against 17 Defendants seeking partition of several properties as described in paragraph No.2 of the suit plaint. The limited objection of Defendant Nos.6 and 7 in the application filed below Exhibit-214 is to the fact that two out of various properties described in the suit plaint namely property bearing plot No.256 and property survey No.4589 have been incorrectly rather inadequately valued by the Plaintiff while ascertaining valuation of the suit properties.
- 4.** In that regard, Mr. Nikam has drawn my attention to paragraph No.11 of the suit plaint wherein the valuation clause has

been averred in respect of each of the suit properties by the Plaintiff. Mr. Nikam would point out that the aforesaid suit properties have been totally valued at Rs.29,59,500/- as stated therein.

5. It is further contended by Mr. Nikam that both the aforesaid properties are situated in industrial zone / area and command a substantial market value in excess of Rs.2.5 Crores. He would submit that land beneath the suit structures has been leased out to the parties for 99 years. The structures are valued at more than Rs.2.5 Crores. That the valuation of Rs.29,59,500/- is therefore less and hence there is deficit in the Court fee paid.

6. It is seen that the subject suit properties are ancestral properties belonging to deceased Balappa and his wife Shrimanti and Plaintiff is the third generation descendant / successor-in-title being the daughter of Charudatta. The family tree is at page No.57. Plaintiff is already in the witness box and under cross-examination before the Trial Court.

7. The necessity of filing the present Application arose in view of the cross-examination of Plaintiff held on 28.08.2023. That is appended at page No.76 of Civil Revision Application. Considering that this suit is for partition and division of the suit properties, it would enure to the benefit of all parties if the trial continues. I am of the view that no purpose shall be served by issuing notice and

conducting an enquiry about the valuation of the aforesaid properties which are the subject matter of this Civil Revision Application by this Court.

8. In so far as the aforementioned two properties are concerned, in view of the specific application filed by Defendant Nos.6 and 7 dated 19.12.2023 and the said Defendants having pointed out the valuation of the aforementioned two properties being in excess of Rs.2.5 Crores, the learned Trial Court is directed to re-determine and rehear the Application filed below the Exhibit-214 at the stage of final hearing of the suit proceedings. This is so because the trial should not be stayed and it should be taken to its logical end. This is not a case where no Court fee is paid. Some Court fee is paid, but it is not adequate is the dispute raised.

9. Hence, Trial Court shall complete the hearing of Exhibit-214 in accordance with law and as expeditiously as possible at the time of final hearing of the Suit and after conducting appropriate enquiry if the learned Trial Court finds that there is any deficit in the amount of Court fees paid by the Plaintiff, then it will direct payment of the deficit Court fee.

10. Learned Trial Court may pass appropriate directions while determining Application filed below Exhibit-214 strictly in accordance with law and on merits after hearing all parties. In view of these

directions, the impugned order dated 17.01.2024 is quashed and set aside without opining anything on merits of the matter. Application below Exhibit-214 is restored to the file and record of the Trial Court for fresh hearing as directed.

11. With the above directions, Civil Revision Application is allowed and disposed.

H. H. SAWANT

[MILIND N. JADHAV, J.]

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SAWANT

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SAWANT
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