

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO.580 OF 2022

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SATISH
RAMCHANDRA
SANGAR

Sou.Vandana Sanjay Chavan

Age : 45 Years, Occupation : Housewife,
Residing at : CTS No.2100-C/286, Plot No.21,
Mahadik Vasahat, E Ward, Kolhapur.

...Applicant

Versus

Shri.Rajendra Vilasrao Chavan

Age : 54 Years, Occupation : Nil,
Residing at : Dharmaraj Apartment,
Flat No.F-1, 1st Floor, Survey No.284/2A,
Plot No.12, Mahadik Vasahat, E Ward,
Kolhapur.

...Respondent

Mr.Aditya S. Raktade:-

Advocate for Applicant.

CORAM : S. M. MODAK, J.

DATE : 25th OCTOBER 2024

P. C. :-

1. In fact, I have heard this matter on 16th October 2024. The trial Court as per the order dated 26th August 2022 has rejected the Application filed by the Original Plaintiff under the provisions of Order 7, Rule 11 of the Code of Civil Procedure, 1908 ("CPC"). Their

prayer was to reject the Counter Claim filed by the Defendant. The Plaintiff is on Page No.15. Whereas, the Counter Claim is on Page No.32.

2. The Application is on Page No.40. The said Application was filed on three grounds. They are:-

- (a) There is no cause of action.
- (b) The Counter Claim is barred by law of limitation and
- (c) the valuation is not done properly.

3. The trial Court rejected all the contentions for the following reasons:-

- (a) The Counter Claim was filed on 1st February 2020. Whereas, the cause of action mentioned in the Counter Claim in Para No.9 refers about notice given by the Plaintiff on 19th December 2018 and replied by the Original Defendant on 14th January 2019. This is the cause of action. Clause (a) mentions about absence of cause of action. Whether that cause of action is proper or not cannot be decided by filing an Application under Order 7, Rule 11 of CPC. The findings are correct.
- (b) The trial Court observed that the Suit is filed on the basis of the notice reply given by the Defendant on 14th January 2019. The prayers in the Counter Claim are about declaring the sale-deed dated 27th December 2004 as illegal and prayer

for injunction. The trial Court observed that the evidence has to be adduced. (Para No.14). I agree with this reasoning.

- (c) About the valuation, the trial Court observed, the valuation of the Suit property is between Rs.22,00,000/- (Rupees Twenty Two Lakh) to Rs.25,00,000/- (Rupees Twenty Five Lakh) but the Original Plaintiff has not filed any documents to show valuation of the Suit property. The valuation in the Counter Claim is Rs.4,50,000/- (Rupees Four Lakh Fifty Thousand) and accordingly, the trial Court has not accepted the objection about the valuation.

4. It is true that in the Counter Claim, two reliefs are sought. One is, about declaration that the sale-deed is illegal and second is, the injunction. The Plaintiff has paid Court Fee of Rs.2,000/- (Rupees Two Thousand). But, if we read the provisions of Section 6(iv)(ha) of the Maharashtra Court Fees Act, 1959, the valuation is one half of *ad valorem* fee leviable on the value of the property. The value of the property as per the Plaintiff is Rs.4,52,000/- (Rupees Four Lakh Fifty Two Thousand). Naturally, we have to see the *ad valorem* fee mentioned in Schedule-I of the Court Fees Act. This Court feels that the trial Court has not dealt with this issue properly. Hence, on this ground, I am inclined to remand the matter.

5. In fact, this came to notice when I have gone through the papers while signing the earlier order. Earlier, I was not inclined to interfere in the impugned order. This was dictated on 16th October 2024. Today, I have heard learned Advocate for the Petitioner on this aspect. Hence, following direction is given:-

DIRECTION

- (i) The impugned order dated 26th August 2022 passed by the Court of 6th Joint Civil Judge Senior Division, Kolhapur is set aside.
- (ii) The trial Court is directed to reconsider the objection about valuation.
- (iii) The trial Court to hear both the parties and then to pass an appropriate order.

6. In view of that, **Civil Revision Application stands disposed of.**

[S. M. MODAK, J.]