

Amberkar

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION (ST) NO. 5477 OF 2023

Vilas Dagdu Shete

.. Applicant

Versus

Nanda Namdeo Patil & Ors.

.. Respondents

-
- Mr. Drupad Patil for Applicant

.....
CORAM : MILIND N. JADHAV, J.

DATE : JANUARY 31, 2024

P. C.:

1. Not on board. Mentioned. Taken on board.
2. Perused the praecipe dated 31.01.2024. Heard Mr. Patil, learned Advocate for Applicant.
3. This Civil Revision Application takes exception to the order dated 03.12.2022 passed in Application filed under O. VII, Rule 11(a) of the CPC by the Applicant who is the purchaser of a part of the suit properties.
4. Mr. Patil would inform the Court that Suit is filed for partition of the several properties. He would submit that Application under O. VII, Rule 11 was filed on the ground of maintaining a challenge due to undervaluation as also challenging the transaction effected by some of the parties to the Suit with the Applicant at a belated stage. He would inform the Court that the entire subject suit properties are

admeasuring about 1 Hecter and the Applicant has purchased 40 Ares out of the aforementioned suit properties in a transaction with some of the parties to the Suit.

5. *Prima facie*, it is seen that until and unless the subject shares between the parties in the partition suit are determined in accordance with law, no substantial right which would otherwise flow to the subsequent purchaser can be pre-decided and in that view of the matter, the order rejecting Application under O. VII, Rule 11 is therefore correctly passed. In so far as the second ground of under valuation is concerned, Mr. Patil would submit that in view of the decision of the Division Bench of the Aurangabad Bench in Writ Petition No. 8968 of 2018 (Dilip P Jain Vs. Hardik Ramani), the said objection would now no longer survive since Plaintiffs were admittedly not a party to the transaction effected with the Applicant and it was a transaction between some of the Defendants and the Applicant.

6. In view of the above, the impugned order dated 03.12.2022 is sustained without opining on any merits of the case. Consequently the Revision fails.

7. Considering that the partition suit has remained pending for the last five years, this Court therefore requests the learned Trial Court to

decide and dispose of RCS No. 74/2020 within a period of one year from today strictly in accordance with law without being influenced by any of the observations and findings recorded in the impugned order and after following the due process of law.

8. With the above directions, Civil Revision Application is disposed.

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[MILIND N. JADHAV, J.]