

HARSHADA H. SAWANT
(P.A.)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO.28 OF 2024

Kondiba Chandrappa Gawali and Ors. .. Applicants

Versus

Ganu Gopal Gawali (deceased) through legal
heirs Chandrakant Ganu Gawali and Ors. .. Respondents

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• Mr. Drupad Patil a/w. Mr. Suyash Sule, Advocates for Applicants.

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CORAM : MILIND N. JADHAV, J.

DATE : JANUARY 16, 2024

P.C.:

- 1.** Heard Mr. Patil, learned Advocate for Applicants.
- 2.** At the outset Mr. Patil has drawn my attention to the impugned order passed in Application filed below Exhibit-52 in Regular Civil Suit No.447 of 2023, which is at Exhibit-D, page No.45 to the Civil Revision Application and in respect of the finding returned by the learned Trial Court in paragraph No.8 thereof and thereafter referred to prayer clause (a) in the suit plaint.
- 3.** On perusal of prayer clause (a) which is at page No.31 of the Civil Revision Application and consequential pleading on valuation therefor on the previous page in paragraph No.10, it is clearly seen that the principal prayer is made for seeking relief of declaration in respect of the suit property as per prayer clause (a) but the same has not been valued adequately in the clause for valuation i.e. paragraph No.10 of the suit plaint. While returning the findings in paragraph

No.8 of the impugned order all that the learned Trial Court has stated is that the valuation is stated in paragraph No.10 but has given no reasons at all.

4. Further after recording the fact that contentions were advanced by the respective parties, the learned Trial Court has stated that the objection raised by the Defendants i.e. Applicants before me would require evidence on the aspect of valuation.

5. *Prima facie*, I find that the said finding in paragraph No.8 is clearly contrary to what is prayed for by the Plaintiffs in prayer clause (a) of the suit plaint which is referred to and alluded to hereinabove.

6. In that view of the matter, an arguable case has been made out by Mr. Patil for issuance of notice and stay of the impugned order dated 04.11.2023 as also stay of any further proceedings in Regular Civil Suit No.447 of 2023 before the Trial Court.

7. Hence, issue notice to Respondents. Applicants are directed to serve the Respondents. Humdast permitted. In addition to Court's notice, Applicants are permitted to serve the Respondents and inform them about the next date of hearing by any permissible mode of service and file appropriate affidavit of service with tangible proof thereof. Respondents are directed to file Affidavit-in-Reply to the Application.

8. Stand over to **20th February, 2024.**