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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO. 311 OF 2024

Phoolkumar Sukhdev Singh

Applicant (Orig.
.. Defendant No.3)

Versus

Mr. Rajeshkumar Sukhdev Singh and Ors.

.. Respondents

-
- Ms. Nishtha Garg i/by Mr. Prathmesh Mhaskar, Advocate for Applicant.

.....

CORAM : MILIND N. JADHAV, J.

DATE : JUNE 19, 2024.

P.C.:

1. Heard Ms. Garg, learned Advocate for Applicant.
2. Ms. Garg has drawn my attention to the impugned order dated 17.02.2024 appended at Exhibit "A" - page No.23 of the Civil Revision Application passed in Application filed below Exhibit "30".
3. Defendant No.3 is the Applicant before me. Defendant No.3 filed Application under Order VII Rule 11 of the Civil Procedure Code, 1908 (for short "**CPC**") seeking rejection of the Suit plaint.
4. At the outset, I need to state that if the Suit plaint is seen, there are multiple prayers which are sought for by the Plaintiff which are appended at page Nos.39 and 40 of the Civil Revision Application.

5. Be that as it may, Ms. Garg has drawn my attention to the Application filed by Defendant No.3 at Exhibit “D”- page No.113 of the Civil Revision Application and would submit that admittedly the Suit property was purchased by a registered Sale Deed dated 20.03.2007 jointly by the Plaintiff and Defendant Nos.1 to 3, 5 and 6 on the one hand from the Bhoir family. Defendant No.4, though is the real brother of some of the parties to the proceedings, was not a party to the said Sale Deed.

6. She would submit that Plaintiff has filed the present Suit proceedings before the learned Trial Court seeking partition of the Suit property on the premise that sometime in June, 2020 Defendant No.3 started construction in the open space of the Suit property and in that view of the matter, partition and division of the Suit property was required to be done.

7. Ms. Garg would submit that the averment with respect to the cause of action is stated in paragraph No.13 of the Suit plaint on the basis of which substantive reliefs have been sought for by the Plaintiff. She would submit that Exhibit “5” Application is not moved before the Trial Court even till date, despite 5 years having been lapsed after filing of the Suit. She would draw my attention to reference made to Defendant No.4 in the Suit plaint as also in the reliefs prayed for by the Plaintiff and would submit that in view of the fact that the

Defendant No.4 was not be a party to the original Sale Deed dated 20.03.2007, the said Defendant No.4 is not entitled to receive any share out of the Suit property. Though strictly speaking and considering the multiple reliefs prayed for in the Suit plaint by the Plaintiff, Application filed under Order VII Rule 11 of the CPC cannot be granted in a strict sense, but an arguable case has been made out by Defendant No.3 with respect to the substantive right of Defendant No.4 in the Suit property which has incidentally not been considered by the learned Trial Court at all while determining the Application under Order VII Rule 11 of the CPC. All that the Trial Court has to peruse is the Sale Deed of acquisition of the Suit property.

8. In that view of the matter, issue notice to the Respondents. Humdast permitted.

9. In addition to Court notice, Applicant is permitted to serve a copy of the Civil Revision Application and this order on 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 on or before the next date.

10. After receiving notice, Respondents are directed to file their Affidavit-in-Reply on or before the next date, if so desired.

11. It is clarified that, this Civil Revision Application shall be disposed of on the next adjourned date at the stage of admission itself after hearing the parties.

12. Respondents are directed to remain present in Court on the next adjourned date either by themselves or through Advocate.

13. Stand over to 3rd July, 2024.

[MILIND N. JADHAV, J.]

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