



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL WRIT PETITION NO. 12242 OF 2024

John Baptist Francis Fernandes

...Petitioner

vs.

Kamal Kishore Verma and Ors.

...Respondents

Mr. R. R. Salvi, Ms. Suvarna B. Telgote	Advocate for the Petitioner
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CORAM : S. M. MODAK, J.

DATE : 12th NOVEMBER 2024

P. C. :-

1. Heard learned Advocate for the Petitioner/Defendant No. 2.
2. Originally, suit was filed only against the sole defendant/present defendant No. 1. This defendant is joined as party subsequently. The reliefs sought in the plaint is for declaration that the agreement dated 09.11.2009 for flat with defendant no. 2 and agreement dated 09.11.2009 for shop with defendant no. 3 is not binding on the Plaintiff. Both these agreements were executed by Defendant No. 1.
3. This Petitioner has filed an application under provision of the

Order VII Rule 11 of the Civil Procedure Code. **The grounds are as follows:-**

(i) The valuation of the suit is not proper.

(ii) The suit is barred by law of limitation.

4. After hearing the averments in the plaint and after going through the observations of the trial Court, **I do not find that the observations about pecuniary jurisdiction is erroneous.** In the plaint when the Plaintiff has sought for cancellation of the agreement, the valuation has to be done on the basis of the consideration mentioned in those agreements. It is Rs. 3,50,000/- for the flat and Rs. 1,90,000/- for the shop. This is as per the provisions of Section 6 (iv) (ha) of the Maharashtra Court Fees Act. This is proper.

5. **On the point of limitation,** my attention is invited to the observations in para no. 6 of the Order. The trial Court has opined the averments in the plaint only needs to be considered and other documents cannot be considered. This is proper reasoning. However, it is contended that the present Petitioner is joined as party subsequently meaning thereby not at the time of filing of suit. The agreement under challenge is of the year 2009 and suit is filed in the year 2012. It needs

to be seen what are the observations of the trial Court while allowing the amendment.

6. Learned Advocate seeks time to file copy of the Order allowing the amendment.

7. Matter be kept on **03rd December 2024, first on board.**

[S. M. MODAK, J.]