



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

12 CRA NO. 79 OF 2024

ABDUL KALIM KHAN S/O ABDUL RAZZAK KHAN
VERSUS
KHATILJA BEGUM @ KHUTEJA BEGUM W/O MOHD. YOUNUSUDDIN
FAROOQUI AND OTHERS

...
Advocate for the Applicant : Mr. Syed G. R.
...

CORAM : S. G. CHAPALGAONKAR, J.
Dated : 11.02.2025

PER COURT :-

1. Applicant/Original defendant No. 2 impugns order dated 31.01.2023 passed below Exh. 32 in RCS No. 474 of 2022, pending before the 6th Civil Judge Junior Division, Nanded by which his application seeking rejection of plaint under Order VII Rule 11 (a), (b) & (c) of Code of Civil Procedure has been rejected.
2. Respondent/plaintiff instituted said suit seeking relief of declaration and perpetual injunction as regards to suit properties. Applicant/defendant No. 2 filed an application under Order VII Rule 11 (a), (b) & (c) of CPC contending that no cause of action is pleaded in suit so also suit is not valued as per market price and Court fees is not paid accordingly.
3. Learned trial Court rejected application observing that cause of action to file suit has been specifically pleaded in paragraph No. 2 of the plaint and also observed that since defendants are making transaction under cancelled power of attorney executed by plaintiff, she wants declaration that defendants have no right to deal with property based on power of attorney and need not pay Court fees based on valuation of suit.

4. It appears lateron plaintiff has amended plaint, wherein, plaintiff has shown correct valuation of the suit in tune with consideration amount shown in the sale deed.

5. In the aforesaid circumstances, objection as to valuation of suit may not survive at this stage, however, defendant No.2 would be at liberty to raise objection if plaintiff fails to pay appropriate court fees in tune with valuation shown in amended plaint. So far as objection as to the cause of action is concerned, trial Court has rightly observed that cause of action has been specifically pleaded in the plaint and on meaningful reading of the plaint, plaintiff has cause of action to file suit. In that view of the matter, no case is made out to interfere in the impugned order.

6. In result, Civil Revision Application stands dismissed with liberty in favour of applicant to raise objection in case plaintiff fails to pay proper Court fees.

(S. G. CHAPALGAONKAR)
JUDGE

mahajansb/