



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
CIVIL REVISION APPLICATION NO. 195 OF 2024**

KAMLABAI VITTHALDAS BAJAJ AND OTHERS

VERSUS

**KAILAS SHESHRAO PUNGLE THRU. POA HOLDER VIJAY
KAILAS PUNGLE AND OTHERS**

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Advocate for the Applicants : Mr. V. B. Virdhe

Advocate for Respondent No.1 : Mr. N. N. Bhagwat

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CORAM : S. G. CHAPALGAONKAR, J.

Dated : January 13, 2025

PER COURT :-

1. The applicants/defendant Nos.8, 9, 13, 14 and 17 in Regular Civil Suit No.446 of 2021 pending before Civil Judge Senior Division, Aurangabad impugn order dated 26.09.2024 passed below Exhibit 25 whereby defendants' prayer for rejection of the plaint by invoking powers under Order VII Rule 11 has been declined.

2. Mr. Virdhe, learned Advocate appearing for the applicants submits that respondent no.1/original plaintiff instituted Regular Civil Suit No.446 of 2021 seeking relief of specific performance, mandatory injunction and perpetual injunction based on alleged agreement dated 19.10.2018. Mr. Virdhe submits that defendants had filed application under Order VII Rule 11 seeking rejection of plaint, firstly, on the ground that suit is barred by limitation,

secondly, suit was not properly valued and Court fees was not paid. The Trial Court failed to appreciate the contentions raised by defendants and erroneously rejected the application. Mr. Virdhe submits that he may not press the point as to the limitation at this stage. However, he would press into service prayer for rejection of plaint on the ground that suit was not properly valued. In furtherance of his contentions, he submits that essentially, the prayer in the suit is for specific performance of the contract in respect of the suit plots. It was, therefore, necessary for plaintiff to properly value the suit based on the market value of the plots as on the date of filing of the suit and pay the requisite Court fees. However, this objection is turned down by Trial Court recording erroneous reasons.

3. Learned advocate appearing for the respondent/plaintiff, however, submits that in fact the plaintiff had purchased the plot from the defendants. However, later on the layout plan was changed behind the back of plaintiff. As such, the plot which was sold to the plaintiff was not available. Consequently, the defendants entered into an agreement dated 19.10.2018 and agreed to transfer the plot from the new modified lay out. In that view of the matter, the plaintiff has filed the present suit. According to him, the suit is properly valued.

4. Having considered submissions advanced, it is apparent that the plaintiff is seeking the relief of mandatory injunction in terms of the agreement dated 19.10.2018. The plaintiff is specifically coming with a case that previously under sale deed

dated 11.08.1987, he had purchased plot no. 276 vide Sale Deed No.7244 of 1987. Later on, in the year 1999, certain portion of the land owned by defendants from Gut No.170 has been acquired. Therefore, previous layout plan was revised. In light of the revised layout plan, the plot which was purchased by plaintiff under registered sale deed dated 11.08.1987 was not available. Consequently, defendants vide agreement dated 19.10.2018 agreed for execution of the corrected sale deed. Now, plaintiff is seeking mandatory injunction for execution of the sale deed in pursuance to the said agreement.

5. Mr. Virdhe relies upon Clause (B) of Rule 11 of Order VII seeking rejection of plaint on the ground that the suit is under valued. According to him, suit ought to have been valued on the basis of market value and Court fees ought to have been paid. It is apparent that agreement dated 19.10.2018 is in the nature of the correction of the previous sale deed. Accordingly, alternate land was to be allotted to the plaintiff in lieu of plot purchased vide sale deed of 1987 due to change in the layout plan. The agreement does not stipulate that plaintiff is required to pay any additional amount for purpose of getting alternate plot. The plaintiff is seeking mandatory injunction for compliance of the agreement. Therefore, in strict sense, this cannot be treated as suit for specific performance of the contract based on agreement to sale. Even otherwise, Clause (B) of Rule 11 of Order VII would apply only when the Court requires plaintiff to correct the valuation within time frame and the plaintiff fails to comply such requirement. In this case, the Trial Court has rightly observed

that the suit has been appropriately valued and no further directions are required to be given to the plaintiff. In that view of the matter, even the ground which is put into the service by defendants seeking rejection of plaint would not be available. In that view to matter, there is no merits in Civil Revision Application.

6. Consequently, Civil Revision Application stands dismissed.

(S. G. CHAPALGAONKAR, J.)

RPB