

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 1761 OF 2025

Vishal Madhukar Pujari

..Petitioner

Versus

Rabiyabi Issak Kaskar & Ors

...Respondents

Mr. M.L. Patil, for the Petitioner.

CORAM: N. J. JAMADAR, J.

DATED : 10th FEBRUARY 2025

P.C.:

1. Heard learned Counsel for the Petitioner.
2. This Petition calls in question the legality, propriety and correctness of an order dated 5th October 2024 passed by the learned Civil Judge, Khed, whereby the Application preferred by Defendant No.1 for rejection of Plaint under Order VII Rule 11(c) of the Code of Civil Procedure 1908 ("the Code") came to be rejected.
3. The Respondent instituted a Suit for declaration and injunction and, in the alternative, if the Court comes to the conclusion that Defendant No.1 is in possession of the suit property, a decree for possession.

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4. Defendant No.1 preferred an Application for rejection of the Plaint on the ground that the Plaintiff has not paid the requisite Court fees on the alternate relief of recovery of possession and, therefore, the value of the Suit claim be ordered to be corrected and the Plaintiff be directed to pay the deficit Court fees and, in the event of failure, reject the Plaint.

5. The learned Civil Judge was of the view that the suit claim has been properly valued as the principal relief in the suit is that of declaration and injunction and, in the alternative, the Plaintiff had sought the relief of possession in the event the Court finds that Defendant No.1 is in possession of the Suit property. The learned Judge was also of the view that in the event the Court ultimately finds the Plaintiff to be entitled to the alternative relief of possession, the Court can pass a direction to pay Court fees.

6. Mr. Patil, learned Counsel for the Applicant urged that the aforesaid approach of the trial court is not sustainable. The trial Court ought not to have deferred the issue of payment of Court fees.

7. From the perusal of the averments in the Plaint it appears that the Plaintiff claims to be the owner of the suit property and, based on the said claim of ownership, has instituted a suit for declaration and injunction, primarily. In the alternative, a decree for possession is sought. This being the nature of the suit, the approach of the learned

Civil Judge appears to be justifiable. At the most, if a contention of incorrect valuation is raised, the same can be tried as an issue. No case for rejection of the Plaint under Clause (c) of Rule 11 of Order VII of the Code is, thus, made out.

8. This Court, therefore, does not find any reason to interfere with the impugned order in exercise of the supervisory jurisdiction.

9. Petition stands dismissed.

[N. J. JAMADAR, J.]