



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

Civil Revision Application [CRA] No.112 of 2022

Shri Sandesh Satish Gujrathi and others

vs.

Sau. Anupama w/o Prasanna Saikhedkar and another

 Office notes, Office Memoranda of
 Coram, appearances, Court's orders
 or directions and Registrar's orders.

Court's or Judge's Orders

Mr. A.V. Bhide, Advocate for the Applicants.

Mr. V.M. Deshpande, Advocate for Non-Applicant No.1.

CORAM: ROHIT W. JOSHI, J.

DATE : 16th SEPTEMBER, 2025.

Non-applicant No.1 is the original plaintiff, who has filed a suit being Special Civil Suit No.21/2018 *inter alia* praying for declaration that the sale-deed dated 23/04/2018 executed by her in favour of the present applicants/defendants Nos.1 to 4 is obtained by practicing fraud and for cancellation of the said sale-deed on this ground and for injunction restraining the said defendants from creating any third party interest over the suit property.

02. Non-applicant No.2 is defendant No.5 in the suit. She was the co-owner to the extent of 50% share in the suit property. The remaining 50% share is owned by plaintiff-Anupama, her mother and two sisters. In this suit, defendant Nos.1 to 4, the purchasers, filed an application for rejection of plaint under Order VII Rule 11 of the Code of Civil Procedure (C.P.C.) vide Exh.30. The learned trial Court has rejected the said application vide order dated 04/08/2022. The said order is the subject matter of challenge in the present civil revision application. Vide interim order dated 08/12/2022, further proceedings in the said suit have been stayed.

03. Mr. A.V. Bhide, learned Advocate for the applicants/defendant Nos.1 to 4 states that the suit is filed without any cause of action. He contends that the plaint averments, even if accepted to be true and taken on their face value, do not disclose any cause of action. The learned Advocate has drawn attention to paragraphs 5, 6 and 7 of the plaint to contend that although it is alleged that the sale-deed with respect to 50% share belonging to defendant No.5 is stated to have been obtained without knowledge or consent of the plaintiff, the suit is not filed for enforcing alleged right of pre-emption. As regards fraud and coercion, the learned Advocate contends that merely by mentioning such words, a case of fraud and coercion cannot be made out. The learned Advocate draws attention to the Order VI Rule 4 of C.P.C. to contend that the material particulars with respect to alleged fraud and coercion are missing in the plaint. With respect to alleged discrepancies in mentioning the property number of the suit property in the power of attorney and sale-deed, the learned Advocate draws attention to paragraphs 7 of the plaint to contend that even after noticing the alleged discrepancy, the plaintiff has accepted part of sale consideration of Rs.25,00,000/- and, therefore, that by itself, cannot be a ground for cancellation of sale-deed.

04. *Per contra*, Mr. V.M. Deshpande, learned Advocate for non-applicant No.1-original plaintiff states that the sale-deed with respect to the suit property was obtained by making a false representation that two individuals, who were in occupation of the suit property, would usurp the same suit property and the plaintiff shall be embroiled in an unwanted litigation, if the suit property is not sold. He further contends that the sale-deed is executed on the basis of Power of Attorney and since the description of property in the Power of Attorney and the sale-deed does not tally, defendant Nos.1 to 4, the purchasers cannot claim to be lawful owners of the suit property. He further

contends that the suit property is a Nazul lease land, which is sold without obtaining prior permission from the competent authority and on this count also, the sale-deed is liable to be quashed. Mr. Deshpande further contends that the application raises mixed questions of law and facts and, therefore, the plaint cannot be rejected in view of the settled legal position that mixed question of law and facts cannot be entertained while dealing with an application under Order VII Rule 11 of C.P.C.

05. As regards the contention with respect to prior permission from the competent authority, the said contention cannot be entertained since the plaint does not state that the suit property is a nazul leasehold property, which is sold without prior permission from the competent authority. Such contention cannot be allowed to be raised for the first time in a revision preferred by the defendants. The sale-deed is not challenged on this count in the civil suit. The said contention is, therefore, liable to be rejected.

06. As regards the discrepancy in description of property in the Power of Attorney and the sale-deed, it is undisputed that the property sold is a property which was jointly owned by the plaintiff, her mother and two sisters along with defendant No.5. The plaint averments clearly disclose that the suit property, which was jointly owned as aforesaid, is sold to defendant Nos.1 to 4. Perusal of the plaint will demonstrate that it is not the contention of the plaintiff that any other property was sought to be sold to defendant Nos.1 to 4 or that any other property was jointly owned by the plaintiff, her mother and sisters with defendant No.5. It is also apparent from reading of paragraph 7 of the plaint that even after noticing the said mis-description, the plaintiff has accepted a sum of Rs.25.00 lakhs from defendant No.1 to 4-purchasers vide demand draft. It is obvious that

the amount is credited to the bank account of the plaintiff on the demand draft being deposited with the banker of the plaintiff. The contention raised with respect to mis-description of property is, therefore, liable to be rejected.

07. The sale-deed is also challenged on the ground that defendant No.1 to 4 had purchased 50% undivided share of defendant No.5 without knowledge or prior intimation to the plaintiff. The said contention is not relevant since the suit is not filed for enforcing alleged right of pre-emption. The sale-deed executed by defendant No.5 is also not under challenge.

08. As regards the contention that the sale-deed is obtained by fraud and coercion, the plaint averments are insufficient to make out such a case. What transpires from reading of paragraph 5 of the plaint is that, according to the plaintiff, defendant No.1 to 4 represented that two individuals, who were in occupation of the suit property would embroil the plaintiff in some litigation and ensure that the plaintiff does not get her rightful share in the suit property and on such representation, the plaintiff, her mother and sisters have sold the suit property to defendant Nos.1 to 4. It is not the case of the plaintiff that the property was not in possession of the two individuals named in paragraph 5 of the plaint. Meaningful reading of paragraph 5 will reveal that as the plaintiff, her mother and sisters were aware that the property was in possession of third persons and that they were advised that since the property in possession of some third persons, it will be in their interest to sell the suit property. The pleadings in paragraphs 5 and 6 do not make out a case of fraud and coercion or misrepresentation.

09. The learned Advocate for non-applicant No.1/plaintiff has placed reliance on the judgments in the cases of Vinod Kumar vs. The

State of Madhya Pradesh - AIR OnLine 2022 MP 353 and *Anand Kumar Singh vs State of Uttar Pradesh and another - AIR OnLine 2018 Allahabad 1496*. Both these judgments reiterate the settled legal position that mixed question of law and facts cannot be looked into while dealing with an application under Order VII Rule 11 of C.P.C. and further that while dealing with an application under Order VII Rule 11, the plaint averments have been taken on their face value and defence of defendants cannot be looked into. There cannot be any quarrel with said legal proposition. The plaint averments taken on their face value do not make out any cause of action. The entire plaint averments even if accepted to be true, are not sufficient to pass a decree for cancellation of sale-deed impugned in the suit.

10. For the reasons aforesaid, in the considered opinion of this Court, the learned trial Court has erred in rejecting the application for rejection of plaint and by virtue of the same, proceeding with adjudication of her suit, which is not maintainable. The order, therefore, thus discloses a jurisdictional error on the part of the learned trial Court. For the reasons aforesaid, the present revision application is allowed in the following terms.

11. The order dated 4th August, 2022 passed by the learned Joint Civil Judge Senior Division, Khamgaon on application at Exh.30 in Special Civil Suit No.21/2018 is quashed and set aside; application at Exh.30 is allowed and plaint in Special Civil Suit No. 21/2018 on the file of the learned Joint Civil Judge Senior Division, Khamgaon is rejected. The parties to bear their own costs.

JUDGE