



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

CIVIL REVISION APPLICATION NO. 12 OF 2024

Smt. Ujjwala wd/o. Vijay Lekurwale,
Aged about 56 yrs. Occu. Household,
R/o. Plot No.17, L.I.C. Colony, R.P.T.S.
Road, Nagpur - 440015

... **APPLICANT**
(Ori. Defendant on R.A.)

...VERSUS...

Shri. Ajay s/o. Wamanrao Gadge,
Aged about 61 yrs., Occu. Retired,
R/o. Plot No.118, Surendra Nagar,
Nagpur – 440015.

...**NON-APPLICANT**
(Ori. Plaintiff on R.A.)

Mr. Subhash Kalbande, Advocate for Applicant.
Mr. J. M. Gandhi, Advocate for Non-applicant.

CORAM : MRS. VRUSHALI V. JOSHI, J.
JUDGMENT RESERVED ON : 15.07.2025
JUDGMENT PRONOUNCED ON : 22.07.2025

JUDGMENT :

1. **Rule.** Rule is made returnable forthwith. Heard finally by consent of learned Counsel appearing for the parties.

2. The applicant is challenging the order passed on 18.09.2023 by the 3rd Jt. Civil Judge Junior Division, Nagpur thereby rejecting the application filed by the defendant under Order VII Rule 11(b) and (c) of the Code of Civil Procedure.

3. The facts in brief are as under :

The non-applicant in this application has filed the suit for Declaration, Permanent, Perpetual, Prohibitory and Mandatory Injunction against the defendant i.e. the applicant. According to the applicant, the plaintiff is seeking declaration of ownership and possession over the suit property under the Will executed by late Smt. Kaushalyabai Gadge. By clever drafting, he has prayed for mandatory injunction and not paid the court fee of prayer for possession. The plaintiff has prayed for the mandatory injunction and negative declaration is prayed, second prayer is, as defendant has no right, title or interest in the property and by way of mandatory injunction, direct the defendant to remove herself along with her children from the suit house. By these prayers, the plaintiff is indirectly praying for possession of the suit property. Therefore, he is to pay the required court fee according to Section 6(v) of the Bombay Court Fees Act, 1959 and according to market value of the suit property. The objection is that the plaintiff has not valued the suit property and not paid the proper court fee according to the market value. The another objection raised by the applicant in his application is that the matter is pending before the Civil Judge Junior Division and the suit valued is more than one crore, which exceeds the pecuniary jurisdiction of the Judicial Magistrate First Class Court and, therefore, the Court has no pecuniary jurisdiction to decide the issue of possession of the suit property.

4. The non-applicant has opposed the application stating that though the defendant is in possession of the suit property, she is a trespasser, she has no any right, title over the suit property. The trespasser is trying to claim the rights against the true owner and therefore, the said trespasser cannot be entertained.

5. The learned Counsel for the non-applicants has stated that in the entire plaint, the plaintiff has nowhere admitted the possession of the suit property and has stated about the status of the defendant as a trespasser. Hence, prayed to reject the application.

6. Heard both the learned Counsel for the parties.

7. The applicant has come with the contention that the plaintiff is praying for possession. He has relied on the judgment of this Court in the matter of *Madhavrao Sitaram Kohali and Ors. Vs. State of Maharashtra* reported in **1978 Mh.L.J. 379**, wherein it is observed in paragraph No.23 as under :

“23. These observations I think, are apposite in the present case also, and the real nature of the relief which the plaintiff is seeking and which is the whole substantive and main relief is the relief for possession. The declaration that he has title or subsisting title to the property in question, or that the subject matter of the suit is not covered by the provisions of M. P. Abolition of Proprietary Rights Act is not a declaration which is necessary or obligatory before the relief for possession can be had. As I have pointed out, a person suing for possession has to prove not only the title on which he is suing, but that the said title still subsists. If the M. P, Abolition of Proprietary Rights Act

has the effect of extinguishing the plaintiffs' title, the foundation of the plaintiffs' claim itself would be knocked out. In that event the plaintiffs will not be entitled to possession. But it is unnecessary for him to ask for any declaration, and he has not asked for any such declaration, touching the effect of the M. P. Abolition of Proprietary Rights Act. Besides, as I have pointed out, this Court as well as the Supreme Court having held that this was a suit for possession of land, and, therefore, covered by section 6(i)(v) of the Act, the Trial Judge could not travel beyond those findings and hold that the nature of the suit was different. All that it had got to find out was the mode or method of valuation of the land.”

8. He has also relied on the judgment of this Court in the matter of *Harshita Shivdasani Vs. Vijaykumar Shivdasani* reported in **2013(6) Mh.L.J. 447**, wherein it is held in paragraph Nos.14 and 15 as under :

“14. Consequently when the Plaintiff fails to value the relief of possession, he would have to value it as on the date of the valuation if he desired to prosecute the same suit/petition for that relief also. It would be an abuse to allow the suit to be pending for as long as 13 years and then allow the plaintiff to value it as on the date of filing of the suit.

15. The suit was filed on fixed Court fee of Rs.100/- which was available to plaintiff for the relief of declaration of nullity of his marriage alone. The learned Judge has correctly held that the prayer of possession is required to be separately valued and that it is to be valued as per market rate of the suit property. Since it was never valued, it would have to be valued as on the date of the valuation. It is an abuse of Court process for a party to smuggle in a prayer for possession in a petition for declaration of nullity of marriage for which alone the fixed Court fee is specified.”

9. The Trial Court has considered the judgment of the Hon’ble Apex Court in the matter of *Bharat Bhushan Gupta Vs. Pratap Narain*

Verma and Anr. reported in **(2022) 8 SCC 333**, wherein the Court has considered that for the relief of mandatory injunction, a suit can be filed by the title-holder for recovery of possession or it can be one of ejectment of an ex-lessee or for mandatory injunction requiring a person to remove himself or it can be a suit as under Section 6 of the Specific Relief Act to recover possession.

10. He has also relied on the judgment of the Hon'ble Apex Court in the matter of *Madan Mohan Singh Vs. Ved Prakash Arya* reported in **(2021) 5 SCC 456**, wherein the Hon'ble Apex Court has stated that, "*Permanent and mandatory injunction restraining defendant from using premises in question and directing defendant to restore possession thereof to plaintiff – Respondent – defendant not in possession of premises in his own right either as a tenant or a licensee, his possession is only as an employee of plaintiff – Held, appellant-plaintiff entitled to decree of mandatory injunction*".

11. On perusal of the application, it appears that, it is filed only objecting pecuniary jurisdiction. The prayer of the applicant is that the Court has no pecuniary jurisdiction to entertain the suit. Nowhere it is mentioned that it is for possession of the suit property. On perusal of the plaint, it appears that the applicant is occupying the suit premises as a permissive occupier. The suit property is owned by the plaintiff on the basis of Will, which was executed by the paternal aunt of the plaintiff.

The defendant is the wife of the nephew of one Kaushalyabai, who entered the house to take care of said Kaushalyabai and thereafter, she continued to stay in the premises. She has also denied the Will. It is the settled position of law, being third person, she cannot challenge the Will. As the plaintiff can ask for the mandatory injunction to remove from the suit premises, it is not for possession, therefore, the question of valuation of the suit property does not arise. I agree with the observations made by the Trial Court and the suit is property valued, the Civil Revision Application stands dismissed.

Rule is discharged.

(MRS. VRUSHALI V. JOSHI, J.)