

rrpillai

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 3513 OF 2016
WITH
INTERIM APPLICATION NO. 2668 OF 2026**

Radhabai Sukir Keni ... Petitioners/Applicants
and Others

Vs.

Brijlal Thakurlal Jain ... Respondents
(Deceased) and Others

Mr. Sachin Punde a/w. Mr. Suraj Jadhav for the Applicants/
Petitioners.

Mr. Idris M. Vohra for Respondent No. 1A.

Mr. Rohit Sakhadeo for Respondent Nos. 2, 3 and 4.

CORAM : GAURI GODSE, J.

DATE : 16th APRIL 2026

ORDER :

Interim Application No. 2668 of 2026

1. A copy of the application tendered by the learned counsel for the petitioners is taken on record. This application is for bringing on record names of heirs and legal representatives of deceased respondent no. 1. The proposed respondents are served and are represented through advocates.

2. In the facts and circumstances of the case, the application is allowed in terms of prayer clause (a). Amendment to be carried out forthwith in the court.

Writ Petition No. 3513 of 2016

3. Learned counsel for the added respondents i.e. heirs of the original plaintiff waives notice.

4. This petition is filed by the defendants to challenge the order passed by the trial court keeping their application filed at Exhibit-29 for inquiry under Section 8 of the Maharashtra Court Fees Act, 1859 ("Court Fees Act") in abeyance to be decided at the time of final hearing of the suit. The suit is filed for a declaration that the agreement dated 28th September 2006 executed between plaintiff and defendant nos. 1 to 15 is binding upon the defendants.

5. There is also a prayer for handing over possession of the plot already allotted for the purpose of development. The plaintiff has valued the suit under Section 6(xi)(a) of the Court Fees Act and paid court fees based on the security amount mentioned in the agreement.

6. The petitioners objected to the valuation on the ground

that the consideration in the agreement is 35% of the constructed area. Hence, according to the petitioners the valuation of the suit is required to be done based on the valuation of the proposed constructed area. The trial court has kept the application in abeyance to be decided at the time of final hearing of the suit in view of the terms and conditions of the contract.

7. Learned Judge has recorded a statement on behalf of the plaintiff that he would pay the court fees based on the higher valuation, if any, made by the court. In view of the statement made on behalf of the plaintiff, the trial court has kept the application in abeyance to be decided at the time of final hearing of the suit.

8. I have perused the prayers in the plaint. For the purpose of deciding the correct consideration as per the terms and conditions of the contract it will be necessary for the court to ascertain the valuation as per the terms and conditions based on the proposed construction. Hence, such issue can be decided by the court at the time of final hearing of the suit by framing appropriate issue.

9. In the event at the time of final hearing, the court

comes to any conclusion that higher court fees is required to be paid by the plaintiff, the court can always pass such direction even at the time of passing final order in the suit. The suit is pending before the Civil Judge, Senior Division. Hence, there would not arise any question of pecuniary jurisdiction.

10. In such circumstances, I do not see any illegality or perversity in the impugned order warranting interference in exercise of the discretionary jurisdiction under Article 227 of the Constitution of India.

11. The writ petition is therefore rejected.

12. All rival contentions on the correct valuation of the suit are kept open to be decided at the time of trial and final hearing of the suit.

[GAURI GODSE, J.]