



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

WRIT PETITION NO.398/2019

Dinanath @ Dinesh s/o Ganpatrao Shete (Bawane)

Vs.

Manohar s/o Ganpatrao Shete (Bawane) and others

Office Notes, Office Memoranda of Coram, Appearances, Court's orders or directions and Registrar's orders	Court's or Judge's orders
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Mr. P.S. Tiwari, Advocate for petitioner

Mr. R.R. Rajkarne, Advocate for Respondent Nos.1, 3 to 5

CORAM: AVINASH G. GHAROTE, J.

DATED : 27th OCTOBER, 2023

Heard Mr. Tiwari, learned counsel for the petitioner and Mr. Rajkarne, learned counsel for the respondent Nos.1, 3 to 5.

2. The petition challenges the order dated 01/11/2018 by which the application under Order 7 Rule 11 of Code of Civil Procedure has been allowed by directing the plaintiff / petitioner to correct the valuation as per the market value mentioned in the sale deed dated 28/6/2005.

3. Mr. Tiwari, learned counsel for the petitioner takes an exception to the said order on the ground that the relief claimed in the plaint is that the sale deed is not binding on the petitioner / plaintiff and, therefore, is not required to be valued

at the market rate. Reliance is placed upon **2022 mhlj Online 36 Dilip Khushal Jain and others Vs Hardik Ramani**. It is therefore submitted that the impugned order needs interference.

4. The application is opposed by respondent Nos.1, 3 to 5. None appears for other respondents though served.

5. It would be necessary to consider the relief claimed by the petitioner / plaintiff in the suit, which is as under :

“i. To pass a decree for partition and separation of the share of plaintiff in the land fully described in the SCHEDULE and sent a precept of the same to the Collector u/s 46 of C.P.C.”

6. The contention is that the sale deed dated 28/6/2005 was not executed by the petitioner and therefore, he is entitled to value the suit claim not on the market value but on a notional basis regarding his share. Mr. Tiwari, learned counsel for the petitioner was kind enough to tender the documents i.e. sale deed and power of attorney across the bar, a perusal of which indicate that the plaintiff is a party to the sale deed dated 28/6/2005 through his power of attorney holder, which power of attorney is dated 16/9/2002. It would, therefore, be apparent that the petitioner is party to the sale

deed dated 28/6/2005 and therefore, what has been held by the learned Division Bench in **Dilip Jain** (supra), would clearly not be applicable to the case of the petitioner / plaintiff. In that light of the matter, I am not inclined to interfere in the matter. The petition is dismissed. No costs.

JUDGE

MP Deshpande