

MHPU090008492012

**R.C.S.No.73/2012**

Anusaya Richard Thoras

Vs

Balkrushna Thirumalai Nadar

ORDER PASSED BELOW EXH. No.181(Passed on 21st November of, 2023)

The present application is moved for framing preliminary issue regarding valuation of the suit. The grounds taken for said issue are that the defendant No.3 has filed his written statement and pleaded that valuation of the suit is not as per government ready recknor. The suit property is above 60 lakh but the plaintiff has paid the Court fees of Rs.01,50,000/- only. Further, other ground taken is that the plaintiff has been claiming possession of the suit property and thereby also the plaintiff has to pay proper Court fees. It is also submitted by the applicant that this Court has no jurisdiction to try the suit.

02. The plaintiff filed say to the present application of the defendant No.3 and opposed it by contending that this Court has already framed the issues. The plaintiff has adduced affidavit of examination in chief and the matter is for cross-examination. And, in this circumstance there is no necessity to frame the preliminary issue and the application is liable to be rejected. It is further submitted by the plaintiff that, the present suit has been returned to this Court for want of jurisdiction on 15.03.2004 by the Hon'ble Civil Judge Senior Division Court, Pune. The Defendant No.2 came to impleaded on the ground that as during the pendency of suit, the suit property was sold to said defendant. The defendant No.2 was summoned but he failed to appear before the Court. And thereby, the suit against him proceeded ex-parte. Meanwhile, the pecuniary jurisdiction of Civil Judge, Junior Division was enhanced from Rs.1 lakh to Rs.5 lakh and it resulted in to transfer

to the present suit to this Court. The suit is now re-registered as RCS No.73/2012. The interim applications are allowed by this Court already. Further, it is submitted that due to Covid-19 the matter could not be proceeded further. Further, the defendant No.3 came to be impleaded as party on the application moved by the plaintiff. The defendant No.3 appeared and filed Written statement. The plaintiff filed additional affidavit of evidence of examination of chief on 27.07.2023. The valuation is correct one and the application is liable to be rejected.

03. Heard both sides. Perused the record. Sec. 9-A of Code of Civil Procedure provides that-"*Where at the hearing of application relating to interim relief in a suit, objection to jurisdiction is taken, such issue to be decided by the Court as a preliminary issue.*"

(1) Notwithstanding anything contained in this Code or any other law for the time being in force, if, at the hearing of any application for granting or setting aside an order granting any interim relief, whether by way of stay, injunction, appointment of a receiver or otherwise, made in any suit, an objection to the jurisdiction of the Court to entertain such a suit is taken by any of the parties to the suit, the Court shall proceed to determine at the hearing of such application the issue as to the jurisdiction as a preliminary issue before granting or setting aside the order granting the interim relief. Any such application shall be heard and disposed of by the Court as expeditiously as possible and shall not in any case be adjourned to the hearing of the suit.

(2)-Notwithstanding anything contained in sub-section (1), at the hearing of any such application, the Court any grant such interim relief as it may consider necessary, pending determination by it of the preliminary issue as to the jurisdiction."

04. From the said Sec.9-A provisions, it is clear that the Court has frame to the preliminary issue at the time of hearing of application relating to interim relief, appointment of receiver or otherwise. In the present matter this Court has already decided the applications of interim relief vide order below **Exh.35 & 52** dt.26.11.2013. Further, further the issues have already been framed and the matter is now for evidence of the plaintiff. Considering the stage of the matter, the application moved seems to be not tenable at this stage and it liable to be rejected. And I proceed to pass the following order:-

ORDER

Application stands rejected.

Place : Pimpri,
Date : 21.11.2023.

sd/-
(M. G. More)
3rd Jt. C.J.J.D., Pimpri, Pune.

CERTIFICATE

I affirm that the contents of this PD.F. file Order are the same, word to word, as per the original Order.

Name of the Stenographer :-	P. D. Kadam [Steno III]
Name of the Court :-	M.G. More 3 rd Jt. J.M.F.C., Pimpri Pune.
Date :-	21.11.2023.
Order signed by the Presiding Officer on	:- 21.11.2023.
Order uploaded on	:- 23.11.2023.