



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

27 WRIT PETITION NO. 3624 OF 2023

1. Dnyandeo S/o Namdeo Gadakh,
Age: 50 years, Occup. Agriculturist,
R/o: Sonai, Ta. Newasa, At Post Sonai
District Ahmednagar
2. Changdev S/o Namdeo Gadakh,
Age: 38 years, Occup. Agriculturist,
R/o: As above
3. Kundlik S/o Namdeo Gadakh,
Age: 35 years, Occup. Agriculturist,
R/o: As above
4. Smt. Kesharbai W/o Namdeo Gadakh,
Age: 70 years, Occup. Agriculturist,
R/o: As above
5. Amrutrao S/o Sahebrao Gadakh,
Age: 40 years, Occup. Agriculturist,
R/o: Sonai, Ta. Newasa, At Post. Sonai
District Ahmednagar
6. Subhash S/o Sahebrao Gadakh,
Age: 38 years, Occup. Agriculturist,
R/o: As above
7. Smt. Sunita Suresh Shelke,
Age: 30 years, Occup. Agriculturist,
R/o: Shirdi, Ta. Rahata,
District Ahmednagar

...PETITIONERS
(Original Plaintiffs)

VERSUS

1. Sambhaji Murlidhar Gadakh
Deceased through his L.Rs

- 1-A Devendra S/o Sambaji Gadakh,
Age: 34 years, Occup. Agriculturist,
R/o: Sonai, Ta. Newasa, At. Post Sonai
District Ahmednagar
- 1-B. Smt. Gayatri Pramod Chaudhari,
Age: 37 years, Occup. Agriculturist,
R/o: Pathare Wasti Shingve Sakarwadi,
Ta. Rahata, District Ahmednagar
- 1-C. Smt. Poonam Sambhaji Gadakh
Age: 31 years, Occup. Household,
R/o: Dr. Pradeip Narayan Gandhale,
D-1 ICAR National Institute of High
Security Animal Diseases, Anandnagar,
Huzur Bhopa Madhya Pradesh-12
- 1-D. Smt. Priyanka Mitesh Dighe,
Age: 28 years, Occup. Agril & Household,
R/o: Hanumantgrao, Post. Pathare (Bk),
Tq. Rahata, District Ahmednagar
At present Flat No. FG-6 Agale
Co-operative Housing Society,
Agale Ground Floor, Fathorda,
Madgaon Goa
2. Smt. Sushila S/o Sambaji Gadakh,
Age: 50 years, Occup. Agriculturist,
R/o: Sonai, Ta. Newasa, At Post. Sonai
District Ahmednagar

....RESPONDENTS
(Original defendants)

Mr. Vijay B. Jagtap, Advocate for the Petitioners
Mr. Rahul R. Karpe, Advocate for Respondents Nos.1(a) to 1(d) and 2

CORAM : AJIT B. KADETHANKAR, J.
DATE : 24.08.2026

ORAL JUDGMENT :-

. Rule. Rule made returnable forthwith. By consent of the parties, the petition is taken up for final disposal.

2. In a suit filed by the petitioners against the respondents seeking recovery of the encroached portion of their property, the defendants filed an application under Order VII Rule 11 of the Code of Civil Procedure. The prayer clauses in the plaint show that the petitioners claimed a decree for recovery of possession from the defendants in respect of the properties described at Paragraph Nos.1B and 1D. Paragraph 1B refers to property bearing No.2671 out of Gat No.933 situated at Village Sonai, Tahsil Nevasa, District Ahmednagar, whereas Paragraph 1D refers to property bearing No.2676 out of Gat No.938 situated at Village Sonai, Tahsil Nevasa, District Ahmednagar.

2. The defendants appeared in the suit and filed an application at Exhibit-65 under Order VII Rule 11 of the Code of Civil Procedure. It was submitted by the defendants that the suit was not properly valued and was under-valued. It was contended that a constructed structure had been raised on the suit property, the valuation of which was approximately Rs.26,20,922/-. Despite such valuation, the suit was under-valued for only Rs.1,000/-. In view thereof, an application was filed seeking a direction to the plaintiffs/petitioners to properly value the suit and pay court fees

corresponding to the correct valuation and on failure, the plaint be rejected. The said application was opposed by the plaintiffs/present petitioners.

3. Mr. Jagtap, learned Advocate for the petitioners would vehemently submit that the application was misconceived. He has taken me through the prayer clauses of the plaint which show that no relief is claimed in respect of property bearing No.2672. He would submit that the alleged construction is standing on property bearing No.2672 in respect of which no relief is claimed in the plaint. Hence, the petitioners cannot be said to have wrongly valued the suit or that the suit suffers from inadequate or deficient valuation. Mr. Jagtap, learned Advocate submits that the suit is for recovery of possession of a particular area and not in respect of any structure standing thereon whether the same is situated on property bearing No.2672, 2671 or 2667. Mr. Jagtap, learned Advocate, therefore, prays for allowing the writ petition.

4. Mr. R. R. Karpe, learned Advocate representing the respondents/defendants would submit that the objection was rightly raised under Order VII Rule 11 of the Code of Civil Procedure. He would submit that the learned Trial Court has rightly considered the scope of Order VII Rule 11 of the Code of Civil Procedure and has issued appropriate directions. It is lastly submitted that it is incumbent upon the plaintiffs to comply with the

directions issued by the learned Trial Court under Order VII Rule 11 of the Code of Civil Procedure by correctly valuing the suit and paying proper court fees failing which the plaint would be liable to be rejected. With this, learned Advocate for the respondents/defendants prays for dismissal of the writ petition. He points out the pleadings in the plaint contending construction at property bearing No. 2671 and would justify the application.

5. I have heard both the learned Advocates for the respective parties extensively. Apparently, from the copy of the plaint produced before me, it appears that the plaintiffs/petitioners have claimed a decree against the defendants in respect of only the properties described at Paragraph Nos.1B and 1D out of the properties mentioned at Paragraph 1 of the Exhibit-A i.e. the plaint.

6. Now, coming to the application filed by the defendants, it is sought to be submitted that the plaintiffs/petitioners have referred to certain construction carried out at the behest of the present defendants on property bearing No.2671. In view thereof, it is sought to be submitted that the plaintiffs/petitioners having brought on record the fact that there is a construction on the property ought to have properly valued the suit and accordingly, paid the court fee in accordance with the valuation of the suit property.

7. It is pertinent to note that this is a case of encroachment. The plaintiffs/petitioners have contended that the respondents/defendants have encroached upon their land and therefore, a decree for recovery of possession has been sought. Even going by the pleadings of the plaintiffs as contended, it is after causing encroachment that the defendants have erected some structure on the encroached portion at their own behest.

8. The learned Judge of the Trial Court has observed that property No.1958/15 is situated in Gat No.2672, the valuation of which stands at Rs.26,20,922/- as per the valuation report, and for which the plaintiffs ought to have paid court fees.

9. May it be, this Court agrees with the contention of the learned Advocate for the petitioners that if the suit is restricted only to the extent of the properties described at Paragraph Nos.1B and 1D, those properties do not refer to property bearing No.2672 as recorded by the learned Judge of the Trial Court for which the valuation report was submitted. More so, when a suit for recovery of possession is filed on the basis of the averments as to encroachment by the defendants, the plaintiffs may not be required to pay court fees on the valuation of the structure which has been erected on the encroached portion at the behest of the defendants. The application under Order VII Rule 11 of Civil Procedure Code needs to be adjudicated only on the

basis of the pleadings in the plaint. Defence raised in written statement does not give rise to a prayer for rejection of the plaint under Order VII Rule 11 of Civil Procedure Code. During the hearing, this could be an issue, but for invoking Order VII Rule 11 of Civil Procedure Code, improper valuation/deficit valuation must be evident from the plaint itself. Such is not the case in hand. On the basis of the defence, the provisions of Order VII Rule 11 of Civil Procedure Code are sought to be invoked. I do not subscribe to such contentions.

10. In view of the above, I find that the petition deserves to be allowed and the impugned order is liable to be quashed and set aside.

11. Accordingly, the Writ Petition stands allowed.

12. The impugned order dated 21.01.2023 passed by the learned Civil Judge Senior Division, Nevasa in Regular Civil Suit No.595 of 2009 on an application below Exhibit-65 is hereby quashed and set aside.

13. The suit shall proceed in accordance with law.

14. Rule is made absolute in above terms.

[AJIT B. KADETHANKAR, J.]