

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 700 OF 2014

1. Sou. Vijaya w/o Ramkantrao Phulari,
Age: 38 years, Occ: Household & Agri.,
R/o. Latur, Now at Nanded, Dist. Nanded.
2. Smt. Shakuntalabai w/o Dattatraya Phulari,
Age: 65 years, Occ: Household & Agri.,
R/o. Latur, Dist. Latur.

...Petitioners

versus

1. Baburao s/o Dattatraya Phulari,
Died through L.Rs.
- 1(a) Padminibai w/o Baburao Phulari,
Age: 57 years, Occ: Household,
R/o. Chaudaghar math, Latur,
Tq. & Dist. Latur.
- 1(b) Sou. Sunita Ramesh Phulari,
Age: 40 years, Occ: Household,
R/o. Chaudaghar math, Latur,
Tq. & Dist. Latur.
- 1(c) Sou. Sarika w/o Arvind Phulari,
Age: 24 years, Occ: Household,
R/o. Phulari Galali, Udgir,
Tq. Udgir, Dist. Latur.
2. Babasaheb s/o Dashrath Jadhav,
died through L.Rs.
- 2(a) Smt. Ashalalta w/o Babasaheb Jadhav,
Age: 55 years, Occ: Service,
R/o. Behind Parijat Mangal Karyalaya,
Ausa Road, Latur.
(dead)
- 2(b) Ku. Varsha d/o Babasaheb Jadhav,
Age: 26 years, Occ: Student,
R/o. As above.
- 2(c) Ku. Megha d/o Babasaheb Jadhav,
Age: 24 years, Occ: Student,

R/o. As above.

- 2(d) Ku. Madhavi d/o Babasaheb Jadhav,
Age: 21 years, Occ: Student,
R/o. As above.
- 2(e) Ku. Santoshi d/o Babasaheb Jadhav,
Age: 19 years, Occ: Student,
R/o. As above.
3. Raghunath Malba Deshmukh,
(L.R. Respondent No.10 is
already on record)
4. Jagdish Kishanrao Mantri,
Age: 45 years, Occ: Business,
R/o. Mantri nagar, Latur
(lost the interest being sold
the suit property)
5. Bajang Madanlal Malu,
Age: Major, Occ: Business,
R/o. Latur
(lost the interest being sold
the suit property)
6. Harakchand Gulabchand Loya,
Age: Major, Occ: Business,
R/o. Latur.
(lost the interest being sold
the suit property)
7. Sahriniwas Sampatlal Bhutda,
Age: Major, Occ: Business,
R/o. Latur
(lost the interest being sold the
suit property)
8. Kamlesh Hemraj Thakkar,
Age: Major, Occ: Business,
R/o. Motinagar, Latur.
9. Vijay s/o Hemraj Thakkar,
Age: Major, Occ: Business,
R/o. Motinagar, Latur.
10. Netaji Raghunath Deshmukh,
Age: Major, Occ: Business & Agri.,
R/o. Kanheri, Tq. & Dist. Latur.

11. The State of Maharashtra,
Through Collector, Latur. ...Respondents

.....
Mr. S.S. Halkude, Advocate for petitioners
Mr. P.S. Chavan, Advocate for respondent Nos. 2(b) to 2(e)
Mr. R.V. Dasalkar, A.G.P. for respondent No. 11
.....

CORAM : N.W. SAMBRE, J.

DATE : 14th DECEMBER, 2015

ORAL ORDER :

The petitioners filed a suit bearing Special Civil Suit No. 209 of 1997 in the Court of Joint Civil Judge, Senior Division, Latur seeking the decree for declaration that they are entitled to half share in the suit property. It is the case of the petitioners that part of the property in question was acquired by the State Government for public purpose and award came to be passed in 1994. Learned Counsel for the petitioners would urge that on the date of filing of the suit, they were entitled for the amount of award to the extent of their entitlement in the property therein.

2. The claim for partition was, as such, amended in 2009 wherein the petitioners made prayer for recovery of compensation from the defendants to which they were entitled. The amendment came to be granted by learned trial Court.

3. An application Exhibit-105 came to be moved on 04/03/2011 by the defendants-respondents seeking directions to the petitioners to pay court fees upon valuation of the claim, as according to them, Section 46 of Bombay Court Fees Act, 1959, which provides for powers to reduce and remit, has conferred power of exemption of payment of court fees in favour of woman litigants, however, restricted effect was given in 2000 to the extent of property involved in matrimonial dispute. According to them, as such, the plaintiffs were liable to pay court fees. Same was objected by the petitioners on the ground that the claim upon amendment is required to be considered on the date of filing of the suit and scheme of Section 46, which is social beneficiary legislation is to be interpreted in favour of the petitioners woman litigants, must be given benefit.

4. Said application Exhibit-105 came to be allowed by learned trial Court by an order dated 04/12/2013, directing the petitioners to pay Court fees, as such, present petition.

5. Learned Counsel for the plaintiffs, while relying upon the judgment of this Court in the matter of ***Mrs. Jyoti S. Doshi vs. M/s. Hindustan Hosiery Mills***, reported in ***2000(4) ALL MR 389*** and judgment of the Apex Court in the matter of ***P. Mahendran and others vs. State of Karnataka and others*** reported in ***AIR 1990 SC***

405(1), would urge that the claim though was amended in 2009, however, in view of compensation ordered in 1994, amendment that was permitted in 2009 has to be read as was existing on the date of filing of the suit. According to him, as on the date of filing of the suit i.e. 1997 there was exemption from payment of court fees, the entire claim was exempted from payment of court fee in view of provisions of Section 46. He relied upon the above referred judgment in the matter of Mrs. Jyoti (supra) for claiming exemption and judgment of the Apex Court in the matter of P. Mahendran (supra) so as to draw support to the above referred proposition as regards effecting amendment.

6. The claim is opposed by learned Counsel for respondents on the ground that amendment for claim of compensation is of 2009 and scheme of Section 46 has undergone change. The exemption, as was existing in 1994 by 2000 notification was restricted to such property which is covered under matrimonial dispute. Hence, petitioner claimed to be entitled for exemption is not sustainable. He has placed reliance upon the judgment of this Court in the matter of ***Girish Kanaiyalal Munshi vs. Nil*** reported in ***AIR 2008 Bombay 136*** and he would then urge that if monetary claim is sought to be inserted, same is liable under valuation of Bombay Court Fees Act, 1959 and the judgment of this Court in the matter of

Subai Mura Rabari vs. Paras Devraj Gundecha and others
reported in **2011(3) Bom.C.R. 678.**

7. Having considered the rival submissions, it is noted from the impugned order that the Court has allowed the application Exhibit-105 wherein the prayer for valuation of the claim and payment of court fees is made. While doing so, it is abundantly clear that the effect of notification, issued pursuant to which Section 46 of the Act is at all not looked into, particularly in the background of claim that is sought to be canvassed before this Court as discussed above. The effect of amendment carried out by the petitioners in 2009 by inserting monetary claim under the scheme of Section 46 is also not looked into by the Court below.

8. What is noticed from the order impugned is, the Court has passed vague order directing the petitioners to pay court fee which they are liable to pay. In my opinion, the order is vague so also the application Exhibit-105.

9. In my opinion, the trial Court may have dwell upon the issue as regards the date of amendment of the plaint, date on which the compensation was due and payable by the party to the land owners and entitlement of the petitioners to the same on such dates,

the effect of notification of 1994, 2000-03 under the Court Fees Act.

10. Hence, it will be appropriate, in my opinion, to quash the order impugned dated 04/12/2013 passed below Exhibit-105 directing the petitioners-plaintiffs to pay court fee without elaborating details of the claim on which such valuation is carried out. It will be appropriate, in my opinion, to direct learned trial Court to reconsider the application Exhibit-105 and in the light of above observations, having regard to the notification issued in 1994 and 2000-2003 under Section 46 of the Act extending benefit of exemption, restricting such benefit to a woman litigant in relation to matrimonial dispute be taken into account and then to decide the claim afresh and shall pass detail order, having regard to law as is sought herein above.

11. As such, the petition is partly allowed. The order impugned dated 04/12/2013 passed below Exhibit-105 is hereby set aside. The application Exhibit-105 stood restored to the file of concerned learned Judge, who is directed to decide it afresh after affording opportunity to the parties concerned.

[N.W. SAMBRE, J.]