

WRIT PETITION NO. 1442 OF 2011

Bhausahab s/o Sakham Navpute ... Petitioner

VERSUS

Ramrao s/o Banduji Navpute ... Respondent

Mr. S.S. Kazi , Advocate for petitioner
Mr. A.S. Gandhi , Advocate for sole respondent

CORAM : RAVINDRA V. GHUGE, J.

DATED : 17th FEBRUARY, 2015

PER COURT :

1. Contention of the petitioner is that R.C.S. No. 358 of 2012 filed by the respondent/ plaintiff may not be maintainable before the Civil Judge Junior Division on account of lack of pecuniary jurisdiction.
2. It is submitted that the suit property which is a house property has not been properly valued and, therefore, the suit has been preferred before the Civil Judge Junior Division. If proper valuation is made, the concerned Court is likely to lose jurisdiction and the matter would not be tenable before the said Court.

Petitioner, therefore, submits that the suit needs to be dismissed or returned on account of lack of pecuniary jurisdiction.

3. The petitioner submits that application Exhibit 27, 32 and 33 have been filed before the Trial Court. Application Exhibit 27 was filed on 26-11-2013 praying for necessary enquiry under Section 8 and 9 of the Maharashtra Court fees Act so as to assess the market value of the suit property as on the date of the institution of the suit. Application Exhibit 32 has been filed on 23-06-2014 seeking issuance of witness summons to the Chief Officer, Aurangabad Housing and Area Development Board. Exhibit 33 is an application requesting for a decision on Exhibit 27 and 32.

4. The petitioner submits that the impugned order dated 10-10-2014 has resulted in the rejection of applications Exhibit 27 and 32 and as such the Trial Court is proceeding with the matter under the presumption that it has jurisdiction. It is, therefore, submitted that the impugned order is unsustainable and application Exhibit 27 and 32 should have been allowed.

5. Learned Advocate appearing on the behalf of the sole respondent points out that the petitioner has been evading the

cross-examination of the respondent / plaintiff for more than a year. An application under Order VII Rule 11 of the Code of Civil Procedure (CPC) seeking return of the plaint on the ground of lack of pecuniary jurisdiction, had already been filed by the petitioner and the same was rejected. Rejection of the said application was not challenged by the petitioner before any superior Court. In the same cause, application Exhibit 27 has been filed. Regular Civil Suit has been filed on 04-02-2012. Since application Exhibit 27 was not decided, another application was filed seeking issuance of witness summons to an official of MAHADA since the suit house is of MHADA. The petitioner has attempted to delay the matter.

6. There are two issues which have been properly considered by the Trial Court while passing the impugned order.

7. Firstly, on the same ground of lack of pecuniary jurisdiction, the petitioner had moved an application under Order VII Rule 11 of the CPC seeking return of the plaint. Contentions of the petitioner similar to those in Exhibit 27 and 32, were advanced before the Trial Court seeking a direction to return the plaint to the plaintiff. The said application has been rejected. Thereafter, the petitioner has moved application Exhibit 27 practically seeking the

same relief. Request is made to cause an enquiry as to whether the Court lacks of pecuniary jurisdiction to entertain the suit.

8. Secondly, the petitioner has avoided cross-examining the plaintiff for more than a year. The petitioner could have brought evidence on record as regards lack of jurisdiction. Without doing so, an attempt is made to Exhibit 27 to seek relief which has been initially refused while rejecting application filed by the petitioner under Order VII Rule 11 of the CPC.

9. The Trial Court while delivering the impugned order has observed that the petitioner will have opportunity to lead evidence on the point of valuation. The Trial Court would considered the said aspect as regards pecuniary jurisdiction. With the said observations in paragraph 10 of the impugned order, the interest of the petitioner as regards the pecuniary jurisdiction. of the Court is protected.

10. In the light of the above, the petition is being devoid of merit and, therefore, dismissed.

(RAVINDRA V. GHUGE, J.)