

(1)

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

WRIT PETITION NO. 228 OF 2015

1. Shrikant s/o Ashok Dandwate,
Age: 25 years, Occu: Agril.

2. Abhishek s/o Ashok Dandwate,
Age: 27 years, Occu: Agril.,

Both R/o Sakuri, Tq. Rahata,
Dist. Ahmednagar

..PETITIONERS
(Orig. Deft. No. 6 & 7)

VERSUS

1. Sau. Usha Vasant Gore,
Age: 54 years, Occu: Household,
R/o. Samratnagar, Sutgirni Road,
Near Water Tank, Tq. Shrirampur,
Dist. Ahmednagar

2. Uttam Indrabhan Maghade,
Age: 50 years, Occu: Labour,
R/o. A/p. Gangapur, Tq. Gangapur,
Dist. Aurangabad

3. Yadav Natha Bansolde,
Age: 59 years, Occu: Agril.,

4. Marthabai Madhukar Bansode,
Age: 57 years, Occu: Agril.,

5. Rajendra Laxman Khandizod,
Age: 36 years, Occu: Labour

6. Sanjay Laxman Khandizod,
Age: 35 years, Occu: Agril.

7. Sadhana Balu Kasbe,
Age: 31 years, Occu: Agril.,
Resp. No. 3 to 7 All R/o. Sakuri,
Tq. Rahata, Dist. Ahmednagar

..RESPONDENTS
(Res. No. 1 & 2 Orig. Plaintiff
& Resp. No. 3 to 7 ori. Deft
No. 1 to 5)

Mr S. B. Kadu, Advocate for petitioners;
Mr Sachin S. Deshmukh, Advocate for respondent No. 1 & 2

(2)

CORAM : N.W. SAMBRE, J.**DATE : 9th December, 2015****ORAL ORDER :**

Respondents no.1 & 2-original plaintiffs filed Regular Civil Suit No.692 of 2013, for declaration that they are having undivided share in the suit property and the settlement arrived at between defendants no.1 to 7 is not binding on them and sought injunction against defendants no.6 and 7 from alienating the suit property.

2. In the aforementioned suit, application Exh.19 came to be moved by defendants no.6 and 7, stating that the suit claim was undervalued as they have purchased the property in question for a valuable consideration of Rs.39,20,000/- and the respondents-plaintiffs should pay the court fee on the said amount, considering the same to be the basis for valuation in the suit. He would then urge that preliminary issue be raised in the matter, as regards pecuniary jurisdiction.

3. The application Exh.19 came to be rejected by order dated 10th October, 2014, passed by Civil Judge Junior Division, Rahata. Thus, the present petition.

4. Learned Counsel appearing on behalf of the petitioners, by relying upon two judgments of this Court, in the matter of **Mani Seervai vs.**

(3)

Tulsibai Hiranand Achhipalia & ors., reported in **2006 (2) Mh.L.J. 61** and **Rajan Dhansukhlal Vora vs. Dinesh Bacchubhai Parekh & ors.**, reported in **2012 (1) Mh.L.J. 696**, would urge that an issue of pecuniary jurisdiction, if raised, goes to the root of the matter and as such, be framed and decided as a preliminary issue. According to him, the Trial Court has committed an error of law in rejecting the application by considering that the issue of pecuniary jurisdiction need not be framed, as the application of the petitioners was misdirected.

5. Learned Counsel appearing on behalf of the respondents-plaintiffs would urge that the order passed by the Trial Court is just and proper and is passed after considering the claim as is raised in the plaint. According to the plaintiffs, there is no claim for possession of the suit property and as such, the valuation of the suit is just and proper. He, therefore, prayed for dismissal the petition.

6. With the assistance of the learned Counsel for the parties, I have perused the prayer made in the plaint. Respondents no.1 & 2 – plaintiffs have claimed that the suit property is an ancestral property and they are having undivided share therein. It is further claimed by them that the settlement took place on 15th October, 2012, between original defendants no.1 to 7, including present petitioners, is not binding on them and defendants no.6 and 7 be restrained from transferring the plots out of the suit property and as such, sought injunction to that effect.

(4)

7. On perusal of the plaint, it is clear that the suit is for declaration and injunction and there is no prayer for possession.

8. Based on the above, the plaintiffs have valued the suit, which aspect prevailed before the Trial Court while rejecting the application Exh.19.

9. The petitioners are right in pointing out the law in the matters of Rajan Dhansukhlal Vora and Mani Seervai (supra), however, it is required to be noted that the claim in the above referred cited cases, was not that of simpliciter declaration and injunction as in the case in hand.

10. In view of above, the judgments cited on behalf of the petitioners have hardly any application to the facts of the case in hand. In my opinion, the view taken by the learned Trial Court appears to be in accordance with law. No case for interference is made out. Writ Petition fails and stands dismissed with no order as to costs.

(N.W. SAMBRE, J.)

amj