

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.3599 OF 2013

Shri. Chandrakant B. Bhalekar and another .. Petitioners

Versus

Shri. Bhau Vailku Gavali .. Respondent

Shri. Sandesh D. Patil i/by Mrs. Tanu Khatri, for the Petitioners.

CORAM : R.M. SAVANT, J.

DATE : 23rd OCTOBER, 2015

PC.

1. The Writ Jurisdiction of this Court is invoked against the order dated 03.01.2013 passed by the Learned 3rd Joint Civil Judge Junior Division, Bhiwandi, by which order the preliminary issues raised by the Petitioners vide their application Exh.16 invoking Order VII Rule 11(d) and Section 9A of the CPC came to be answered against them in so far as pecuniary jurisdiction of the Trial Court is concerned. The suit in question being Regular Civil Suit No.106 of 2011 has been filed for removal of encroachment and for being handed over possession of the land beneath the structure. The valuation clause mentions that the Plaintiff has paid the Court fees at 200 times the assessment i.e. sum of Rs.1300/- and also Court fees of Rs.1000/- for the relief of injunction that is sought. At this stage, it would be relevant to note that the substantive relief sought in the

suit is the removal of the construction carried out by the Defendants and for handing over the vacant possession to the Plaintiff. The Defendants filed the instant application Exh.16 invoking Order VII Rule 11(d) as also Section 9A of the CPC on the ground that the suit has not been properly valued as the sum and substance of the case of the Defendants was that the structure which is put up by the Defendants has been valued at more than Rs.16 lakhs by the Valuer/Sub Registrar whose evidence was also adduced during the course of the adjudication of the said preliminary issue. The Trial Court considered the said application and as indicated above has ruled that the suit is maintainable before it. The Trial Court has adverted to the 7/12 extracts of the lands in question and held that admittedly the land in question is agricultural land and in terms of the provisions of Section 6(v) of the Bombay Court Fees the valuation would be in terms of the assessment. The Trial Court held that if that be so, the valuation of the suit is proper and that it had the jurisdiction to try and entertain the same.

2. The Learned Counsel appearing for the Petitioners Shri. Sandesh D. Patil would reiterate the case of the Petitioners before the Trial Court and contend that the suit as filed has not been properly valued having regard to the valuation which has been made by the Sub Registrar whose evidence was adduced by the Defendants before the Trial Court. In

my view, it is not possible to accept the said contention urged by the Learned Counsel in the light of the material which is on record and considering the substantive relief which has been sought by the Plaintiffs in the suit which as indicated above is for removal of encroachment and being put in possession of the land beneath the structure. In that view of the matter, no case for interference is made out. The Writ Petition is accordingly dismissed.

[R.M. SAVANT, J]