

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

WRIT PETITION NO.9142 OF 2015

Yeshwant @ Dagdu Govind Bhopale & anr. : Petitioners
versus
Kum. Sangeeta Govind Bhopale & ors. : Respondents.

Mr. V B Rajure for the Petitioners.

CORAM : R. M. SAVANT, J.
DATE : 21st September 2015

P.C.

1 The writ jurisdiction of this Court is invoked against the order dated 11/08/2015 passed by the learned 12th Joint Civil Judge, Junior Division, Kolhapur by which order the Application (Exhibit 58) filed by the Petitioners i.e. the Defendant Nos.1 and 2 for trying the issue of court fee and valuation of the suit as preliminary issue came to be rejected.

2 The suit in question has been filed by the Respondent No.1 i.e. the original Plaintiff for partition of her 1/6th share in the suit properties. The Plaintiff has valued her 1/6th share at Rs.One lakh as according to the Plaintiff, the total value of the suit properties is Rs.Six lakhs. The suit was originally filed in the year 2007 in the Court of the learned Civil Judge, Junior Division, Vadgaon, Dist. Kolhapur, however was transferred to the present Court in the year 2013. It seems that the issues have been framed in the suit, affidavit of examination-in-chief has also been filed on behalf of the Plaintiff. It is

thereafter that the instant Application (Exhibit 58) came to be filed. The said Application is founded on the fact that the total value of the suit property is Rs.Six lakhs out of which the Plaintiff is claiming her 1/6th share which is valued at Rs.One lakh. It is therefore the case of the Defendant Nos.1 and 2 that since the suit is one for partition and since the valuation of the entire suit property is Rs.Six lakhs, the same would not lie within the jurisdiction of the Trial Court. In fact across the bar it was contended by the learned counsel appearing for the Petitioners Shri Rajure that as per the ready reckoner the valuation of the suit property in its entirety is more than Rs.Twenty lakhs. The issue of court fee which is sought to be raised on behalf of the Defendant Nos.1 and 2 is a consequential issue to the issue of valuation of the suit property.

3 The Trial Court in view of the fact that the affidavit of examination-in-chief has been filed as also having regard to the fact that it is desirable to pronounce the judgment of all the issues held that since the issue of valuation is a mixed question of law and fact, the same would be tried with the other issues.

4 The learned counsel appearing on behalf of the Petitioners Shri Rajure would seek to draw this Court's attention to the valuation clause in the plaint and, as indicated above, would seek to contend that the valuation of the suit property in its entirety is more than Rs.Twenty lakhs and therefore the suit

as filed before the learned Civil Judge, Junior Division is not acceptable. In support of the said contention, the learned counsel for the Petitioners would seek to place reliance on the judgments of the two learned Single Judges of this Court reported in 2010(1) Mh. L.J. 966 in the matter of Suresh s/o Wamanrao Muley v/s. Anil s/o Chandrakant @ Shivajirao Muley and others and reported in 2005(3) Mh. L.J. 1009 in the matter of Deepak Dhansing Patil v/s. Girish Damodar Deo and another.

5 In my view, having regard to the observations made by the Trial Court in the impugned order, it is not necessary to go into the said aspect, lest the said issues are concluded by this Court against the Petitioners. The reliance placed on the judgments (supra) of the learned Single Judges of this Court does not further the case of the Petitioner in the instant case. Since the Trial Court has observed that the said issues would be tried along with the other issues, there is no warrant to interdict with the impugned order in the writ jurisdiction of this Court. The above Writ Petition is accordingly dismissed.

[R.M.SAVANT, J]

Certified to be true and correct copy of the original signed Order.