

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

40 WRIT PETITION NO. 3028 OF 2015

**DHANSING SITARAM HARANE AND OTHERS
VERSUS
SUGANDHABAI ANKUSH HARNE AND OTHERS**

...

Advocate for Petitioners : Mr. Patil Ujwal Subhash

Advocate for Respondents : Mr. A. M. Nagarkar

CORAM : V. K. JADHAV, J.

DATE : 17th February, 2016

PER COURT :

1. Heard finally with consent of the parties at admission stage.

2. The respondents/original plaintiffs instituted the suit bearing RCS No. 831/2013 for partition and separate possession. The petitioners/original defendants, after filing their written statement in the said suit, filed an application below Exh. 19 under Order 7 Rule 11 of the Civil Procedure Code, contending therein that the respondents/plaintiffs under-valued the suit property. The defendants also filed Application Exh.25 for conducting inquiry regarding valuation of the suit plot. The respondents/plaintiffs resisted the said application by filing their say on the application itself. The trial court, by the impugned order dated 22.01.2015, rejected

the said application. Hence this writ petition.

3. The learned counsel for the petitioners/defendants states that the defendants have produced valuation of the adjacent plots. However, insptie of efforts, the petitioners defendants failed to produce valuation of the plots which are subject matter of the suit. The learned counsel submits that the trial court therefore required to conduct an inquiry in view of the provisions of Sections 8 and 9 of the Maharashtra Court Fees Act, 1959.

4. Learned counsel appearing for all respondents/original plaintiffs submits that the suit is properly valued.

5. As per provisions of the Section 8 of the Maharashtra Court Fees Act, 1959, if the Court is of opinion that the subject matter of any suit has been wrongly valued or if an application is made to the court for revision of any valuation made, the court may revise the valuation and determine the correct valuation and may hold such inquiry as it thinks fit for such purpose. Even as per provisions of Section 9, the court may conduct inquiry under section 8 by deputing or issuing

commission to any suitable person to make such local or other investigation as may be necessary and to report thereon to the court and such report and any evidence record by such person shall be evidence in the inquiry.

6. It appears from the impugned order that the trial court has observed that since preliminary issue is framed, the parties may lead evidence on it and accordingly rejected the application as not maintainable. The trial court should have directed inquiry in view of provisions of Sections 8 and 9 of the Maharashtra Court Fees Act, 1959, since the petitioner defendant is unable to produce valuation certificate in respect of the plots which are subject matter of the suit.

7. The learned counsel for the respondents/plaintiffs now submits that in case, after the valuation as directed by this Court, it is found that the relief claimed is under-valued, liberty may be granted to the respondents/original plaintiffs to pay the deficit court fees.

8. Hence following order:

O R D E R

i. The order dated 22.01.2015 passed below Exh.25 in

RCS No.831/2013 is hereby quashed and set aside.

- ii. The trial court is directed to decide application Exh.25 in RCS No.831/2013 afresh in the light of provisions of Sections 8 and 9 of the Maharashtra Court Fees Act,1959 within a period of four weeks from the date of this order. After inquiry, if it is found that the suit property is under-valued, grant liberty to the respondents/ plaintiffs to pay the deficit court fees.
- iii. Writ petition is disposed of accordingly. No order as to costs.

(V. K. JADHAV, J.)

JPC