

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

WRIT PETITION NO. 5585 OF 2016

Smt. Pankawar Vijaykumar Gandhi ... Petitioner

Versus

Laxman Vishnu Palshikar ... Respondent

.....
Mr. L. B. Palod, Advocate for petitioner

.....

CORAM : SUNIL P. DESHMUKH, J.

DATE : 04th JULY, 2016

ORDER :

1. Heard learned counsel for the petitioner.
2. Petitioner is before this court, purportedly aggrieved by order dated 28th January, 2016 passed by 3rd Joint Civil Judge, Senior Division, Ahmednagar, on Exhibit-16 in Regular Civil Suit No. 214 of 2015, whereunder, his request pursuant to Order VII, Rules 3 and 11 of the Code of Civil Procedure, for rejection of plaint has been turned down.
3. Mr. Palod, learned counsel for the petitioner submits that, Order VII, Rule 3 mandates an appendage of sketch map about encroachment and the same has been found wanting in the present case. In such a case, taking into

account aforesaid provision, the trial court ought to have allowed the application.

4. He further contends that while the market value of the land claimed to have been encroached over has been far more and the same ought to have been referred to in the claim by the plaintiff and as such, it was incumbent that proper court fee ought to have been paid pursuant to the provisions of Maharashtra Court Fees Act, 1959. However, the payment of court fee has been not in the tune with provisions of said enactment.

5. Perusal of the impugned order shows that the court had considered compliance of Order VII, Rule 3 is directory and that there has been an application moved for making up with the deficiency and further that since defendant is not claiming any relief against said sale-deed, the objection regarding payment of court fee may not be sustainable.

6. As far as contention with regard to Order VII, Rule 3 is concerned, in the face of corrective action being taken, having regard to further that application has been moved, does not deserve any consideration.

7. The reliance being placed on a case of *Aman Harishkumar Vij Vs. Shantabai Anandrao Patil* reported in 2015 (3) ALL MR 527 does not assist petitioner contextually in present matter.

8. The contention of Mr. Palod with reference to payment of court fee, at this stage appears to be on a very vague and tenuous contention as appearing in the application Exhibit-16 about valuation of land claimed to have been encroached upon.

9. As such, as far as this writ petition is concerned, said contention does not deserve to be considered.

10. Mr. Palod contends that it may be left open for petitioner to make proper application in this respect, valuation of property since it may raise valid legal point.

11. It may be for the petitioner if he so deems it proper and is so advised to make an application in this respect. However, such a request in this petition would not be considered.

12. As such, the writ petition stands rejected.

(SUNIL P. DESHMUKH, J.)

sms