

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

WRIT PETITION NO.9639 OF 2014

- 1) Mir. Azghar Ali Khalid Nasiri s/o
Mir Akbar Ali Nasri
Age 60 years, Occ. Business
R/o House No.20-1-330,
Kokabazar, Hyderabad, A.P.
- 2) Mir Ather Ali Farooq Nasiri s/o
Mir Akbar Ali Nasri,
Age 58 years, Occ. Business
R/o House No.20-1-330,
Kokabazar, Hyderabad, A.P.
- 3) Mir Amjad Ali Zubair Nasiri s/o
Mir Akbar Ali Nasri,
Age 52 years, Occ. Business
R/o House No.20-1-330,
Kokabazar, Hyderabad, A.P.
- 4) Mir Dawere Ali Tariq Nasiri s/o
Mir Akbar Ali Nasri,
Age 49 years, Occ. Business
R/o House No.20-1-330,
Kokabazar, Hyderabad, A.P.
- 5) Mir Azam Ali Nasiri s/o
Mir Akbar Ali Nasri,
Age 40 years, Occ. Business
R/o House No.20-1-330,
Kokabazar, Hyderabad, A.P.
- 6) Amatul Yusuf Hafsa Nasiri s/o
Mir Akbar Ali Nasri,
Age 34 years, Occ. Business
R/o House No.20-1-330,
Kokabazar, Hyderabad, A.P.

... **PETITIONERS**
(Orig. Plaintiffs)

VERSUS

- 1) Mir Nasir Ali Mujahid Nasiri,
Age 62 years, Occ. Business
R/o House No.20-1-330,
Kokabazar, Hyderabad, A.P.
- 2) Amatul Buturool Siddiqua Nasiri
d/o late Mir Akbar Ali Nasiri,
Age 38 years, Occ. Business
R/o House No.20-1-330,
Kokabazar, Hyderabad, A.P.
- 3) Mohan s/o Kashinathrao Kale,
Age 51 years, Occ. Agriculture
& Business, R/o Dhanshree,
Dhanora Road, Beed. ... **RESPONDENTS**
(Orig. Defendants)

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Shri A.D. Kasliwal, Advocate for petitioners
Shrei J.N. Singh, Advocate for respondent No.3
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CORAM: T.V. NALAWADE, J.

DATED: 23rd December, 2016.

ORAL JUDGMENT :

1. Rule. Rule returnable forthwith. Heard both sides by consent for final disposal.

2. The petition is filed by original plaintiffs of Special Suit No.48/2013, which is pending in the Court of Civil Judge, Senior Division, Aurangabad. The order made on Exhibit 36 is challenged by the plaintiffs. By this order, the trial Court has directed the two plaintiffs to pay separately court fee on share

claimed by each plaintiff in a suit filed by them for relief of partition and separate possession of their respective shares.

3. There is specific order that the court fee should be paid on market value i.e. total amount of Rs.7,46,84,269/-.

4. The learned counsel for respondents submitted that, in view of the provisions of Section 6(vii) of the Bombay Court Fees Act, in a suit for partition, the plaintiffs should pay court fee on the basis of value of their respective shares. The counsel for other side took this Court through Schedule I of Article 1 proviso. The provision runs as under :

"Provided that, maximum fees payable on the plaint or memorandum of appeal or cross-objection shall be three lakhs rupees."

She submitted that, even if it is presumed that the market value of the property is as mentioned above, the maximum court fees which will be payable by the plaintiffs on the plaint will be Rs.3 Lakhs and that court fees is already paid and so, the plaintiffs cannot be made to pay anything more than Rs.3 Lakhs. This Court holds that, there is substance in this contention in view of the wording of the aforesaid proviso. The suit needs to be valued for the purpose of court fee and court fee

needs to be paid on the plaint. If the value with separate relief is considered and then the totalling of the relief is done, and the value then comes as per the aforesaid Article, then the maximum court fee will be payable. Only if the limitation of court fee is not reached, separate court fee will be payable on each relief. In view of this circumstance, this Court holds that the petition needs to be allowed.

5. Learned counsel for the respondents placed reliance on some reported cases like:

- (1) 2009(3) Mh.L.J. 35
Khairrunisa Haji Mohammed Vs. Afzal Haji Mohammed & ors.
- (2) 2002(6) Kar.L.J. 70
Smt. Gowramma Vs. Nanjappa & ors.
- (3) A.I.R. 1973 Bombay 91
Sadhu Mahadu Jagdale Vs. Tatyia Sadhu Jagdale & ors.
- (4) (1947(49 Bom.L.R. 72
Shankar Maruti Girme Vs. Bhagwant Gunaji Girme
- (5) Hardeep Singh Vs. Baldev Singh & ors. (unreported judgment)
decided by Delhi High Court

6. In view of the facts of the present case and the aforesaid provision made in the Maharashtra Court Fees Act, this Court holds that the maximum court fees which can be recovered from the plaintiffs is Rs.3 Lakhs and they need not make

payment of more court fees.

7. In the result, the petition is allowed. Order of the trial Court is modified, which is to be held that the maximum court fees is Rs.3 Lakhs which is already paid by the plaintiffs and the plaintiffs need not make any more court fees. Rule made absolute. No costs.

(T.V. NALAWADE, J.)

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