

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 9667 OF 2013

1. Vijay Deorao Goje
Age: 40 yrs, Occ. Agri.,
R/o Goje Niwas, Ajabnagar,
Tq. & Dist. Aurangabad. ...Petitioner

Vs.

1. Shrikirshna Sadashiv Choudari,
Age: 79 years, Occ. Nil,
R/o. Opp. Gautam Dal Mill,
Namrata Saw Mill, At Post Naregaon,
Dist. Aurangabad.
2. State of Maharashtra,
Through Collector for and on behalf of
State of Maharashtra and
Sub-Registrar, Collector Officer,
Aurangabad.
3. Bhikulal Radhakisan Varma @ Ravat,
Age: 57 years, Occ. Agri & Business,
R/o Kuwarfalli, Rajabazar, Aurangabad.Respondents

Mr. S.S. Wagh, Advocate for the petitioner.
Mr. Deelip L. Khivsara, Advocate for respondent no.1.
Mr. S.N. Kendre, AGP for respondent-state.

CORAM : SUNIL P. DESHMUKH, J.
DATE : 25-07-2016.

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith and heard finally with consent of the parties.
2. The petitioner is before this court in respect of an order dated 30-09-2013 passed by 3rd Joint Civil Judge Senior Division,

Aurangabad in Regular Civil Suit No. 620 of 2013 upon an application exhibit-23 moved by defendant no.1, purportedly pursuant to order VII, rule 11 of the Civil Procedure Code, questioning the valuation of the land for the purpose of payment of court fee, injunction, declaration and mandatory injunction to respondent no.2 to carry out official duty registering sale deed agreed to be executed by defendant in favour of petitioner-plaintiff. After hearing the learned counsel for the appearing parties, it appears that registration of sale deed had been refused by the Sub-registrar, Aurangabad for the reason that the property stands in the name of defendant no.1, and not in the name of defendant no.3.

3. The sub-registrar as such expressed his inability to register the deed of conveyance. It is against such refusal, the suit has been instituted, *inter alia*, seeking mandatory injunction against the Sub-registrar, Aurangabad to register the deed of conveyance between plaintiff and defendant no.1. The plaintiff, *inter alia*, has referred to that the market value of land may be around Rs.40 lakh. It has also been referred to that the suit is for declaration and injunction and land being an agricultural land, it had been valued accordingly at 800 times the land revenue assessment and for the purpose of declaration, it had been valued around Rs.3500/- i.e. 200 times the assessment and for the purpose of injunction it was valued at Rs. 2000/- and accordingly court fees came to be paid.

4. The application exhibit-23 had been moved disputing the valuation as is appearing in the pleadings of the plaintiff, referring to that the suit land value is around Rs. 40 lakhs and accordingly the court fees ought to have been deposited.

5. The defendant as such purported to move exhibit-23 with reference to order VII, rule 11. The plaintiff resisted the application and the application of defendant no.1 came to be allowed. Said order is impugned in the writ petition and since been suit proceedings have remained stayed.

6. Learned counsel for the petitioner, Mr. Wagh contends that as far as valuation of the suit property is concerned its an agricultural land and had been accordingly valued as per the suit Valuation Act and accordingly provisions of Maharashtra Court Fees Act, 1959. He submits that the subject matter of the suit is covered under section 6(iv)(j) of the Maharashtra Court Fees Act, 1959, all the reliefs claimed and the circumstances show that the suit has been valued properly and market value is not a relevant consideration. He submits that, the trial court has been swayed away by considerations which were not relevant.

7. The learned counsel for the respondents submits that,

the subject suit would be covered by item 7 of schedule I of Maharashtra Court Fees Act, 1959.

8. After hearing learned counsel, the position emerges that though pleadings are complete, however, issues have not been framed as yet. The application decided is stated to be pursuant to order VII, rule 11, whereunder, the courts are required to go by the averments in the plaint. Perusal of the impugned order shows that the court had been oblivious of the pleadings of the parties and that an issue from the same may arise. There are averments in respect of the court fees being paid along with the plaint and there is denial of the same by defendant no.1.

9. Having regard to the subject matter, the stage does not appear to be ripe enough to come to a definitive conclusive position that the situation can at this stage said to be covered by item 7 of schedule I of Maharashtra Court Fees Act, 1959. Such an inference in the proceedings of the nature under order VII, rule 11 may be little vulnerable to draw, as the parties may require to address themselves properly along with evidence in this respect. The judgments which have been relied on by the trial court while deciding the application exhibit-23 appear to have been decided in different factual situations, which do not apparently seem to have any similarity with the facts as have been involved in the present

matter. It may not be out of place to refer to that the reliance on an item of schedule without reference to the substantive provision in the enactment may not be a proper consideration at the stage at which application has been decided.

10. In the circumstances, although learned counsel Mr. Khivsara, with quite some exuberance submits that when the plaintiff himself refers to the valuation of the property, it is but natural that he should pay the court fees accordingly.

11. In the circumstances, it would be expedient that having regard to the pleadings of the parties proper issue be framed and the same be decided in accordance with facts and law and the parties be given an opportunity. Having regard to the present scenario, the suit is pending for issues since 2013 and has been stayed under an interim order of this court, it would be further expedient that issues be framed and all the issues be proceeded with, pursuant to the relevant rules under order XIV of Civil Procedure Code. For aforesaid purpose, impugned order stands set aside, since the suit is pending from 2013, the court may do well to proceed with the same expeditiously. Rule is made absolute in aforesaid terms.

(SUNIL P. DESHMUKH)
JUDGE

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