

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

WRIT PETITION NO. 11559 OF 2015

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Fulabai alias Pilyabai w/o Bhausahab Bansude
age 60 years, Occ. Business,
R/o 'Shubham Bansude' at Bhausahab
Niwas Building, Motinagar, Latur,
Tq. & Dist. Latur. Petitioner.
[Orig.defendant no.1]

VERSUS

1. Shubham s/o Govind Bansude,
age 20 years, Occ. Education,
R/o Bansude Niwas, Saraf Line,
Latur, Tq. & Dist. Latur.
2. Govind s/o Sopanrao Bansude,
age 50 years, Occ. Business/Agriculture,
R/o Bansude Niwas, Saraf Line,
Latur, Tq. & Dist. Latur.
3. Ashish s/o Chandrashekhar Bajpai,
age 60 years, Occ. Legal Practitioner,
R/o Signal Camp, Latur, Tq. &
Dist. Latur. Respondents
(Nos.1 and 2 orig.
plaintiffs and no.3 original
defendant no.2.

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Advocate for Petitioner : Mr. Rajendra S. Deshmukh
Advocate for Respondents 1,2 : Mr D.S. Bansude h/f N.D.
Kendre
Advocate for Respondent 3 : Mr.G.A.Kulkarni h/f A.R.Joshi

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CORAM : V.K. JADHAV, J.

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Order reserved on : 25.01.2016
Order pronounced on : 17.02.2016

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JUDGMENT :-

1. Heard. Rule. Rule made returnable forthwith. With the consent of learned counsel for respective parties, heard finally.

2. The petitioner-original defendant no.1 filed an application Exh.20 u/s 9-A and Order-VII, Rule 10 of the Code of Civil Procedure in a pending suit bearing Regular Civil Suit No.328 of 2015 instituted by the respondents no.1 and 2-original plaintiffs before the learned 2nd Jt. Civil Judge, Junior Division, Latur. After hearing both the sides, the learned 2nd Jt. Civil Judge J.D. Latur, vide its impugned order dated 21.10.2015 passed below Exh. 20, rejected the application. Hence, this writ petition.

3. Brief facts giving rise to the present writ petition are as under :-

Respondents No.1 and 2-original plaintiffs instituted a suit bearing Regular Civil Suit No.328 of 2015 for a decree of perpetual injunction in respect of immovable and movable properties as detailed in

paragraph nos. 2A to 2F of the plaint. Respondents No.1 and 2-original plaintiffs are also seeking relief of a decree of mandatory injunction directing the respondents/defendants to produce the original will of late Bhausahab Tukaram Bansode dated 28.2.2015 before the Court. The respondents No.1 and 2/original plaintiffs are also seeking relief of declaration as to the status of plaintiff no.1 as a legally adopted son of late Shri Bhausahab Tukaram Bansode and Petitioner/original defendant no.1. Further they are also seeking a relief of monetary compensation for damages caused on account of the baseless, false and frivolous applications and filing of the complaint by the original defendants no.1 and 2 (petitioner and respondent no.3 herein), after due inquiry, as to the amount of compensation. Respondents-original plaintiffs have also filed an application at Exh. 5 for issuance of temporary injunction. The petitioner/original defendant no.1 appeared in the suit in response to the suit summons and filed an application at Exh.20 u/s 9-A and Order VII Rule 10 of the Civil Procedure Code. According to the

petitioner/defendant no.1, the suit is required to be valued in accordance with Section 6 (iv) (d) of the Maharashtra Court Fees Act, 1959 (for the sake of convenience hereinafter referred to as 'the Act'), whereas the respondents/plaintiffs have valued the suit as per section 6 (iv) (j) of the Act. The petitioner/original defendant no.1, by filing said application at Exh.20 contends that, valuation of the subject matter of the suit would be beyond the pecuniary jurisdiction of the court and consequently, the plaint shall have to be returned. The Respondents/original plaintiffs have strongly resisted the application at Exh.20 by filing their say at Exh.33. According to the respondents/plaintiffs, none of the relief sought in the suit pertains to a relief capable of being valued in terms of monetary gain or prevention of monetary loss and, thus, the respondents-plaintiffs are liable to pay the court fee in terms of section 6 (iv) (j) of the Act. After hearing both the sides the learned judge of the trial court, by order dated 21.10.2015, rejected the application Exh.20.

4. Learned counsel for petitioner/original defendant no.1 submits that, from perusal of the plaint itself, it appears that under the pretext of the suit for injunction and a mere declaration of status the respondents/plaintiffs are seeking the relief which can be calculated in monetary terms. The learned counsel submits that, in order to decide the question of court fees, the allegations in the plaint are required to be looked into to examine what is the substantive relief sought by the plaintiffs. Learned counsel submits that, apparently, valuation of the suit property is in crores of rupees and, as such, the valuation of the suit is required to be done as per the provisions of the section 6 (iv) (d) of the Act. Learned counsel submits that, a suit for decree of perpetual injunction simplicitor would not suffice the purpose without claiming the relief of declaration by ascertaining the title to the suit properties. The learned counsel submits that, in fact, under the garb of the various reliefs as sought in the suit, the respondents/plaintiffs have claimed the declaration of ownership in respect of the suit properties. Learned counsel submits that, if the

valuation of the suit is carried out as per the market price of the properties as detailed in paragraph no.2A to 2F of the plaint, the suit is beyond the pecuniary jurisdiction of the trial court. The learned counsel submits that, respondents/original plaintiffs have purposely undervalued the suit so as to avoid the stamp of requisite court fees and also the forum. The learned counsel submits that, the respondent/original plaintiffs title to the property is under cloud since the petitioner/defendant asserts the title thereto. Consequently, the respondents/plaintiffs ought to have sue for declaration of the title and, consequently relief of injunction. Learned counsel submits that, the trial court ought to have allowed the application Exh.20 and returned the plaint to the respondents.

5. Learned counsel for the petitioner in order to substantiate his submissions, placed his reliance on following cases :-

1. Anathula Sudhakar Versus. P Buchi Reddy (Dead) by L.Rs. and others reported in 2008 (4) SCC 594.
2. Vinod Vyankat Narsaiyya Gannu Versus. Sunil Diwakar Poshettiwar and others, reported in [2004 (4) Mh.L.J. 245].

3. Shamsheer Singh, Appellant Vs. Rajinder Prashad and others reported in AIR 1973 SC page 2384.
4. Manju Narendra Gupta Versus Meenakshi Ashok Patil and others, reported in [2012 (1) Mh.L.J. 706].
6. The learned counsel for respondents 1 and 2-original plaintiffs submits that, respondents/plaintiffs apprehends serious threat for the settled peaceful possession, enjoyment, management of the suit properties described in paragraph no.2A to 2F of the plaint at the hands of the petitioner and respondent No.3 and, accordingly they have sought perpetual injunction as equitable relief. Learned counsel submits that, plaintiffs need not value the suit properties as per the market value because the relief is not sought for their title thereon. Learned counsel submits that, the illegal obstruction, objection and interference in the management of running business of the firm Govind Bhausahab Bansude and operation of some Bank accounts mentioned therein at the hands of the defendants is not susceptible to monetary evaluation. Furthermore, the learned counsel submits that, the properties mentioned in the plaint alongwith other

properties are legally bequeathed by Late Bhausahab Bansude by last will deed dated 28.2.2015 on the respondent no.1-plaintiff no.1. Furthermore, the respondents/plaintiffs have demanded an inquiry into the illegalities committed by the defendants so as to determine the quantum of damages sustained by them. They have not given the figure of monetary loss because same will be assessed on the basis of evidence forthcoming. Learned counsel submits that, inquiry into the monetary loss sustained by the plaintiffs from the wrongful illegal overt acts by the defendants in this situation is a merely consequential relief which does not require any court fees. Learned counsel submits that, the respondents/plaintiffs have properly valued the suit claim for the purpose of jurisdiction and court fees as per mandate of Order 7 Rule 1 of Code of Civil Procedure, 1908 and Section 6 (iv) (j) of the Act. Learned counsel submits that, petitioner/defendant no.1 is trying to compel the plaintiffs to resort to more expensive relief as per their whims and choices. Learned counsel submits that, the declaration of the adoption of the respondent no.1/plaintiff no.1 has no

direct nexus with the suit property mentioned in paragraph nos. 2A to 2F of the plaint and therefore, said relief is not susceptible to monetary evaluation vide section 6 (iv) (d) of the Act. Learned counsel submits that, respondent no.1/plaintiff no.1 is entitled to the suit properties independently by virtue of the legally executed 'Will' of late Bhausahab Bansude. Learned counsel submits that, the trial court has jurisdiction to try and entertain the suit. The learned judge of the trial court has rightly rejected the application at Exh.20. There is no substance in the writ petition. Writ petition is liable to be dismissed.

7. I have heard the learned counsel for respondent no.3, also.

8. In order to appreciate the controversies in the matter, it would be appropriate to refer the substantive prayers made in the plaint, those read thus :-

PRAYERS

1. *That, this suit may kindly be decreed with costs.*

2. That, defendant no.1 and 2, their men, relatives, friends, or any one claiming through him may be perpetually restrained by decree of perpetual injunction from making any sort of illegal obstruction, interference, dispossession or objection to the peaceful possession and enjoyment, management of the plaintiff's on the "suit property described in plaint para 2A to 2F" otherwise than in due course of law.

3. That, defendants may be directed and compelled by a decree of mandatory injunction to return the copy of original will of late Bhausaheb Tukaram Bansude Dated 28.02.2015 to plaintiffs or produce it before this Hon'ble Court.

4. That, plaintiff no.1 may be declared as the legally adopted son of late Shri Bhausaheb Tukaram Bansude and defendant no.1.

5. That, defendant no.1 and 2 may be directed to pay the monetary compensation for damage caused to plaintiffs by making baseless, false and frivolous applications and cold storages, filing false police managed F.I.R. to settle exclusive civil property dispute on threat criminal prosecution, after due inquiry in the interest of justice.

6. That, any other just and equitable relief to which plaintiffs are legally entitled to may kindly be granted to them in the interest of justice.

9. The respondents/plaintiffs have stated in paragraph no.23 of the plaint that, the plaintiffs have claimed a perpetual and mandatory injunction and declaration of plaintiff no.1 as adopted son of Bhausahab Tukaram Bansude and defendant no.1 and hence, they valued the suit claim for perpetual injunction and mandatory injunction at Rs.1,000+Rs.1,000=Rs. 2000/- for the purpose of jurisdiction and has paid the requisite court fees of Rs.400/- as per section 6 (iv) (j) of the Act. It is further stated in the plaint that, plaintiffs have claimed declaration of plaintiff no.1 as a legally adopted son of Bhausahab Tukaram Bansude and defendant no.1, and hence paid requisite minimum court fees of Rs.120/- vide section 6 (iv) (f) of the Act. Thus, total court fees paid Rs.520/-which is sufficient.

10. Section 6 (iv) (d) of the Act is in respect of the suits for declaration of ownership, or nature of tenancy, to the title, tenure, right, lease, freedom or exemption from, or non-liability to, attachment with or without sale or other attributes, of immovable property, whereas section (iv) (j)

is applicable, wherein declaration is sought, with or without injunction or other consequential relief and the subject-matter in dispute is not susceptible of monetary evaluation. The relevant provisions are quoted as below :-

“Section 6: The amount of fee payable under this Act in the suits next hereinafter mentioned shall be computed as follows :-

(i) In suits for money (including suits for damages or compensation, or arrears of maintenance, of annuities, or of other sums payable periodically)- according to the amount claimed;

(ii) In suits for maintenance (with or without a prayer for the creation of a charge) and for annuities or other sums payable periodically according to the value of the subject matter of the suit, and such value shall be deemed to be, in the case of a suit for maintenance, the amount claimed to be payable for one year and in any other case, ten times such amount :

Provided that if in a suit for maintenance the plaintiff obtains a decree for maintenance the defendant shall be liable to make good the deficit, if any, between the fee payable on ten times the amount awarded for one year and the fee already paid by the plaintiff; and the amount of such deficit shall, without prejudice to any other mode of recovery, be recoverable as an arrear of land revenue ;

(iii) In suits for movable property other than money, where the subject matter has a market value- according to such value at the date of presenting the plaint;”

“Section (iv) (d) :-

In suits for declaration in respect of ownership, or nature of tenancy, title, tenure, right, lease, freedom or exemption from, or non-liability to, attachment with or without sale or other attributes, of immovable property, such as a declaration that certain land is personal property of the Ruler of any former Indian State or public trust property or property of any class or community-one-fourth of advalorem fee leviable for a suit for possession on the basis of title of the subject-matter, subject to a minimum fee of [one hundred rupees]:

Provided that if the question is of attachment with or without sale the amount of fee shall be the advalorem fee according to the value of the property sought to be protected from attachment with or without sale or the fee of [sixty rupees], whichever is less:

Provided further that, where the defendant is or claims under or through a limited owner, the amount of fee shall be [one-third] of such advalorem fee, subject to the minimum fee specified above :

Provided also that, in any of the cases falling under this clause except its first proviso, when in addition any consequential relief other than possession is sought the amount of fee shall be one-half of ad valorem fee and when the consequential reliefs also sought include ad relief for possession the amount of fee shall be the full ad valorem fee;

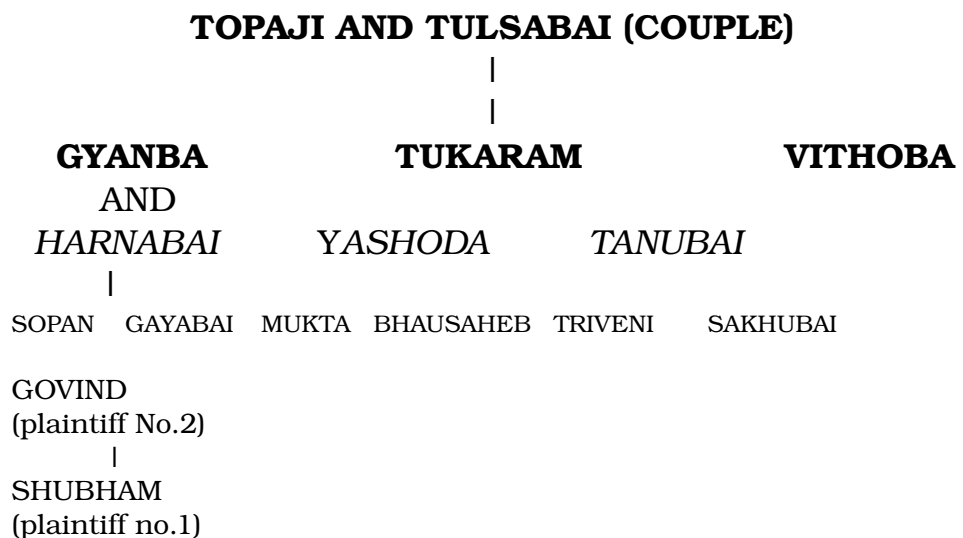
Section (iv) (j):-

In suits where declaration is sought, with or without injunction or other consequential relief and the subject-matter in dispute is not susceptible of monetary

evaluation and which are not otherwise provided for by this Act [ad valorem fee payable, as if the amount or value of the subject matter was (one thousand rupees;)]

In all suits under clauses (a) to (i), the plaintiff shall state the amount at which he values the relief sought, with the reasons for valuation.

11. In order to well understand the real controversy, though prima facie, the genealogy as described in the plaint is required to be reproduced here.



12. As per the pleadings of the respondents/plaintiffs, Vithoba and his branch are not included in the suit as they have no concern with the suit, or suit property. There was partial partition amongst the erstwhile coparceners Gyanba, Tukaram and Vithoba of some of their ancestral coparcenary properties. However, the sons of Gyanba and Tukaram i.e. Sopan and Bhausahab

continued to remain joint, and constituted a Joint Hindu Mitakshara Family. Respondents/plaintiffs have further pleaded that, the father of plaintiff no.2 namely Sopan had started his own jaggery business in the year 1965-1966. The description of the property is given in detail in paragraph nos. 2A to 2F of the plaint.

13. As per the pleadings, property 2A is standing in the name of deceased Bhausahab Tukaram Bansude and in the same property one function hall admeasuring 20,000 square feet named and styled as “Fulabai Bhausahab Bansude Mangal Karyalaya”, Latur is situated. Property 2C is stated to have been originally owned by deceased Bhausahab Bansude and now standing in the name of parents of plaintiff no.2. Property 2D is a open plot standing in the name of deceased Bhausahab Tukaram Bansude. Property 2E is the proprietorship, licences, bank accounts, cash in banks and with customers, traders, stock of goods in various godown, cash in hand and in banks of the jaggery adat business firm named and styled as “Govind Bhausahab Bansude” alongwith registered lease-hold

rights of private plots and finally property 2F is about the amount lying in various bank accounts of the firm “Govind Bhausahab Bansude” in various banks.

14. It is further pleaded in the plaint that, initially deceased Bhausahab was not doing anything and at the request of his parents, Sopan permitted Bhausahab to join his jaggery business. It has also pleaded that, deceased Bhausahab was little more educated than Sopan and entire internal management of the said business including the account, daily account, cash and banking transactions were looked upon by him. It has also pleaded that, deceased Bhausahab and defendant no.1 (wife of deceased Bhausahab) were also unhappy in their old house and, therefore, Sopan and Bhausahab shifted to a new house i.e. the suit property 2C as described in the plaint.

15. The respondents/plaintiffs further pleaded that, deceased Bhausahab and defendant no.1 were issue less and accordingly, with mutual consent they legally adopted respondent/plaintiff no.1 on 10.4.1996.

Deceased Bhausaheb and defendant no.1 with free consent by mutual understanding have legally accepted plaintiff no.1 as their legally adopted son with free consent of their biological parents. It has further pleaded that, deceased Bhausaheb has given the power of attorney of the firm "Govind Bhausaheb Bansude" to plaintiff no.1 on 29.11.2001 which continued till his death. It has also stated that, deceased Bhausaheb has already removed his entire deposits, profits and share in the said firm and on the basis of that made constructions of the buildings, function hall, badminton hall, out of his share.

16. It has further pleaded that, deceased Bhausaheb was aware of his collapsing health, so he has decided to make proper disposition of his entire property in his own lifetime voluntarily. It has further pleaded that, according to the last 'will', Bhausaheb has bequeathed his entire property including the suit property 2A to 2F voluntarily to plaintiff no.1. It has further pleaded by way of allegations that, everybody knew about custody of the original 'will' and fact's of the disposition made

therein very well. It has also alleged by way of pleadings that, defendant no.1 and her step relatives in collusion with each other under the advise of defendant no.2 through his letter and instance obtained one forged, fabricated, managed report of so called hand writing expert about the will and thereby dishonestly denied the legal right of the plaintiffs over the suit properties.

17. The respondents/plaintiffs further concluded the pleadings by stating that the defendants are denying the very status of the plaintiff no.1 as the legally adopted son of deceased Bhausahab Tukaram Bansude, who had absolute rights, title and interest in the suit property 2A to 2F. It has further stated that, defendants, her step relatives and friends are denying the legal last will of deceased Bhausahab Bansude dated 28.2.2015 and concurring rights of the plaintiffs on the suit property 2A to 2F otherwise than in due course of law.

18. On the basis of these pleadings, the respondents/plaintiffs are seeking relief of decree of perpetual injunction with a decree of mandatory

injunction to produce before the Court the original will and further a declaration that the plaintiff no.1 is legally adopted son of late Bhausahab Tukaram Bansude and further seeking relief of monetary compensation for the damages.

19. In the light of the genealogy as described in the plaint, the pleadings of the plaintiffs about the status of plaintiff No.1 as an adopted child, and, the joint status of the family of Sopan and Bhausahab, the business of the firm named and styled as “Govind Bhausahab Bansude” and movable and immovable properties earned by the said firm, and further pleadings that deceased Bhausahab had removed his entire deposits, profits and share in the said firm and on the basis of that, made constructions of building, function hall, badminton hall out of his share and subsequent execution of the will deed of deceased Bhausahab, it appears that the trial court has not given thought to this part of the pleadings, to find out whether the respondents/plaintiffs are claiming entitlement to the suit property. The Trial Court, thus has not considered

whether the suit is required to be valued in accordance with section 6 (iv) (d) of the Act, or as per section 6 (iv) (j) of the Act in the light of the aforesaid pleadings.

20. It is true that, the Court Fee payable on a plaint is certainly required to be decided on the basis of the allegations and prayer in the plaint, and the question whether the plaintiffs will succeed at last is of no concern to the Court at this stage. However, mere astuteness in drafting the plaint will not be allowed to stand in way of the Court looking at the substance of the relief asked for. I am fortified by the view expressed in this regard in the case of **Shamshersingh Vs. Rajinder** (supra), relied upon by the learned counsel for the petitioner.

21. So far as valuation of the property as described in paragraph nos. 2A to 2F of the plaint is concerned, the trial court, before whom the suit is pending, shall enter into an inquiry as to the valuation of the suit, since the property is claimed to be of crores of rupees.

22. The trial court is therefore, directed to decide the application at Exh.20, afresh. It is made clear that, this Court has not expressed any opinion on merits of the application Exh.20.

23. For the reasons recorded above, the Trial Court shall decide the application at Exh.20, afresh. Hence, following order.

ORDER

- I. Writ Petition is hereby partly allowed.
- II. The order dated 21.10.2015 passed by the learned 2nd Jt. Civil Judge, J.D. Latur below Exh.20 is hereby quashed and set aside.
- III. The learned 2nd Jt. Civil Judge J.D., Latur is hereby directed to decide the application at Exh.20, afresh.
- IV. Writ Petition is disposed of accordingly.
- V. Rule is made absolute in above terms.

VI. In the circumstances, there shall be no order as to costs.

(V.K. JADHAV)
JUDGE

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