

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

WRIT PETITION NO. 11841 OF 2016

1. Smt. Shyamal Nagorao Phute
Age: 62 years, Occu.: Household,
R/o Tembhurni Road, Ahmedpur,
Tq. Ahmedpur, Dist. Latur.
2. Sow. Aparna Shrikant Aghor
Age: 41 years, Occu.: Household,
R/o Parijat Apartment, C-2,
Flat No.11, Naikwadi Nagar,
Osmanabad, Tq. & Dist. Osmanabad.
3. Shashikant Nagorao Phute
Age: 39 years, Occu.: Pvt. Service,
R/o Tembhurni Road, Ahmedpur,
Tq. Ahmedpur, Dist. Latur.
4. Laxmikant Nagorao Phute
Age: 37 years, Occu.: Pvt. Service,
R/o Tembhurni Road, Ahmedpur,
Tq. Ahmedpur, Dist. Latur.

..PETITIONERS

VERSUS

1. Gangaram Vithoba Bhagat
Age: 67 years, Occu.: Labour
2. Shivaji Gangaram Bhagat
Age: 37 years, Occu.: Business,
3. Tanaji Gangaram Bhagat,
Age: 34 years, Occu.: Driver,
4. Gunaji Gangaram Bhagat
Age: 32 years, Occu.: Lab Technician

5. Balaji Gangaram Bhagat
Age: 32 years, Occu.: Pvt. Service

All R/o Edgah Road, Eastern Side,
Ahmedpur, Tq. Ahmedpur, Dist. Latur.

..RESPONDENTS

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Ms. Poonam V. Bodke Patil, Advocate for petitioners.
Mr. R.B. Bagul, Amicus Curie.

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CORAM : T.V. NALAWADE, J.
DATED : 16th DECEMBER, 2016

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith. Heard both sides by consent for final disposal. Mr. Bagul is appointed as amicus curie as the matter involves the interest of government in terms of Court Fee.

2. The present petitioners have filed suit for recovery of possession and mesne profit. The property described is some portion of land Survey No. 38/1 having total area of 1 H 87 R. It is the case of the plaintiffs that defendants have made encroachment from different sides over different portions and they have made some construction and that way they have made encroachment over the land of the plaintiff. The 7/12 extract produced shows that it is an agricultural land. In view of this circumstance, the valuation was made as per the provisions of Section

6(v)(b) of the Maharashtra Court Fee Act. The court fee is paid on the basis of assessment of land revenue. The Trial Court has held that the property is situated in residential area, surrounding the property there are houses and plaintiff is now seeking possession of the portion over which there are houses and so the valuation needs to be done on the basis of market value of that piece of land.

3. This Court has carefully gone through the aforesaid provision. 7/12 extract is also shown to this Court. The property is an agricultural land and it is the case of plaintiff that though it is an agricultural land, defendants have made encroachment. In any case the plaintiff is not seeking possession of the house but seeking possession of portion of land over which the encroachment is made and it is the portion of agricultural land.

4. In view of this circumstance this Court holds that the court fee is payable as per the aforesaid provision which is referred by the learned Counsel for petitioner. The Trial Court has committed error in directing to pay court fee on the basis of market value of those pieces of land. In the result, petition is allowed. Order made by the Trial Court is hereby set aside. The court fee is to be accepted on the basis of valuation made

under the provision of Section 6(v)(b) of the Maharashtra Court Fee Act.

Rule made absolute in those terms.

(T.V. NALAWADE, J.)

SSD