

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 2945 OF 2016**

Archana Kholam

Petitioner

Vs

Chandrabhaga Balu Bhondave
and Ors.

.. Respondents

Ms. Prachi Khandge i/b Nitesh V. Bhutekar, Advocate for
Petitioner.

CORAM : R.G.KETKAR,J.

DATE : 08/03/2016

PC:

1. Heard Ms. Prachi Khandge, learned counsel for the petitioner at length.
2. By this Petition under Article 227 of the Constitution of India, the petitioner has challenged the Judgment and order dated 23.9.2015 passed by the learned Civil Judge, Jr. Dn., Pimpri, Pune below Exhibit-20 in Regular Civil Suit No. 33 of 2015. By that order, the learned trial Judge directed the petitioner, hereinafter referred to as 'plaintiff', to revalue the suit according to the value of the share claimed and in effect to the nonagricultural status of the 100 Ares property, being the subject matter of sale deed dated 31.12.2007 and to pay the court fees accordingly within one month.
3. Ms. Khandge submitted that the plaintiff has not prayed for cancellation of the sale deed dated 31.12.2007. The plaintiff has only prayed for partition and his separate possession of 1/6th

share in the suit property. In addition, the plaintiff has also claimed injunction restraining defendants no. 1 to 10 and 11 from carrying out any construction in the suit property as also creating third party interest therein. As the plaintiff has not prayed for cancellation of the sale deed and the suit lands are agricultural lands, the court fees paid in terms of valuation made in paragraph 12 is proper. As far as prayer clause (c) for injunction is concerned, the court fee on Rs.1000/- is paid. In other words, as far as 1/6th share in agricultural land is concerned, the plaintiff has separately valued that prayer and accordingly paid Rs.400/-, being 200 times of the assessment. As far as prayer clause (c) of injunction is concerned, it is valued at Rs.1000/- and accordingly on the claim of Rs.1400/- court fee is paid.

4. In the impugned order, the learned trial Judge observed that out of the suit property, 100 Ares described in paragraph no.1A of the plaint is converted to the non-agricultural. The plaintiff has also claimed 1/6th share in the entire property including the property described in paragraph 1A of the plaint. The learned trial Judge, therefore, observed in paragraph 4 that when the plaintiff is claiming 1/6th share in the entire suit property including 100 Areas property, the suit is to be valued treating the said 100 Ares property as a nonagricultural property.

5. Ms Khandge submitted that conversation of agricultural

land into non agricultural land is illegal. She did not point out whether the order of N.A. Is challenged by the plaintiff and the said order is set aside. The learned trial Judge has noted that construction work is going on in the suit property. Ms Khandge relied upon the decision of this Court in the case of Sardarsinha Vs. Swarupsingh, 2012 (6) Mh.L.J. 704. In that case, the question that fell for consideration was whether the plaintiffs are liable to pay court fees on the market value of properties which was subject matter of 9 sale deed. It is in that context, this Court held that the plaintiffs had sought limited relief that those sale deeds were not binding upon them, they had not prayed for cancellation of those sale deeds. The plaintiffs were also not party to the said sale deeds.

6 In the present case, as noted earlier, the plaintiff has claimed 1/6th share in the entire suit property including 100 Ares property which is undisputedly converted into non agricultural. That part, the plaintiff has also claimed injunction against the defendants 1 to 10 and 11 from carrying out any construction as also creating third party interest therein. Understood thus, reliance placed on the decision of Sardarsinha (supra) does not advance the case of the plaintiff.

7. In the light of the above, Petition fails and the same is dismissed. It is, however, expressly made clear that where a decree is appealed from by the petitioner, any error, defect or

irregularity in the impugned order, affecting the decision of the case, may be set forth as a ground of objection in memorandum of Appeal as contemplated by Section 105(1) of C.P.C.

(R.G.KETKAR, J.)