IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 13412 OF 2016

Shri Shivajirao Anandrao Shende ..Petitioners.
and Anr.

Vs

Sou. Anuradha Shivajirao Yadav .. Respondents
and Anr.

Mr. Umesh R. Mankapur, Advocate for Petitioners.
Mr. Ajay A. Joshi, Advocate for Respondent no.1.

CORAM : R.G.KETKAR,J.
DATE : 16/12/2016

PC:

1. Heard Mr. Umesh Mankapure, learned counsel for the petitioners and Mr.Ajay Joshi, learned counsel for respondent no.1 at length. Mr. Mankapure seeks leave to delete respondent no.2 on the ground that respondent no.1 is the only contesting respondent. On the motion made by Mr. Mankapure, leave to delete respondent no. 2 is granted. Amendment shall be carried out forthwith.

2. Rule. Mr. Joshi waives service for respondent no.1. In view of the narrow controversy raised in the petition as also at the request and by consent of the parties, Rule is made returnable forthwith and petition is taken up for final hearing.

3. By this Petition under Article 227 of the Constitution of India, the petitioners, hereinafter referred to as 'plaintiffs' have challenged the Judgment and order dated 16.11.2016 passed

by the learned Civil Judge, Jr.Dn., Sangola below Exhibit-17 in R.C.S. No.377 of 2016. By that order, the learned trial Judge allowed the application made by defendant no.1 under Order VII, Rule 11 of C.P.C., and directed the plaintiffs to correct the valuation within one month failing which the plaint shall stand rejected provided further time for correction of valuation is not extended under Order VII, Rule 11(b) of C.P.C.

4. Defendant no.1 has filed application, inter alia, contending that the plaintiffs have not paid adequate court fees in respect of house property bearing Gram Panchayat No.991 and, therefore, the plaint is liable to be rejected. By the impugned order, the learned trial Judge has directed the plaintiffs to value the house property as per section 6(iv)(d) and (v) of the Maharashtra Court Fees Act, (for short, 'Act').

5. Learned counsel appearing for the parties submit that by consent, impugned order may be set aside by directing the trial Court to hold inquiry as per Section 8 of the Act. They further submit that the parties may be given liberty to lead evidence in support of their respective case and all contentions in that regard may be expressly kept open.

6. In view thereof, by consent of the parties, the impugned order is set aside with direction to the learned trial Judge to hold inquiry as per Section 8 of the Act. Parties are at liberty to adduce evidence in support of their respective case. All

contentions of the parties in that regard are expressly kept open.

7. Liberty is reserved to the parties to make appropriate application before the trial Court for referring the matter to expert valuer. Let that inquiry be concluded within three months from production of the authenticated copy of this order.

8. Rule is made absolute in the above terms with no order as to costs. Parties including the trial Court to act on the authenticated copy of the order.

(R.G.KETKAR, J.)