

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.1960 OF 2017
(Shymal Nagorao Phute and others Vs. Sulochana Sandipan
Gaikwad and others)

Ms.P.V.Bodke Patil, Advocate for the petitioners.
Mr.A.V.Rakh h/f Mr.N.D.Kendre, Advocate for respondent Nos. 1 to 3.

(CORAM : Ravindra V.Ghuge, J.)

DATE : 13/09/2017

PER COURT :

1. The petitioners are aggrieved by the order dated 20/01/2017 passed by the Trial Court in RCS No.446/2016 vide which the plaint has been rejected under Order 7 Rule 11(b) of the CPC, for want of proper valuation.

2. This Court (Coram : T.V.Nalawade, J.), by judgment dated 16/12/2016 in a group of writ petitions bearing Nos.11841/2016 and others, has observed in paragraph Nos.2 to 4 as under :-

“ 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 the 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 b 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 provisions of Section 6(v)(b) of the Maharashtra Court Fee Act.*

Rule made absolute in those terms. ”

3. In the instant case as well, an identical issue appears. So also, this Court, by order dated 10/07/2017 in WP No.12624/2016 and group of matters, has passed the same order keeping in view the earlier order passed on 16/12/2016.

4. Considering the above, I do not find that different circumstances emerge in this petition so as to take a different view.

5. This petition is, therefore, allowed. The impugned order dated 20/01/2017 is quashed and set aside. The petitioners shall pay the court fees that are payable on the basis of the valuation made u/s 6(v)(b) of the Maharashtra Court Fees Act, if not already paid, within a period of 4 (four) weeks from today and the suit shall then be tried on its own merits.

(Ravindra V.Ghuge, J.)