

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 7209 OF 2016

Prabhakar Shamrao Patil,
Age 50 years, Occ. Business
R/o Plot No.11, Gut No.18,
Shriratna Colony, Pimprala,
Jalgaon.

..Petitioner

Versus

Gunwant Baksu Pimpale
Age 65 years, Occ. Retired,
R/o Near Shri Swami Samarth
Mandir, Partur, Dist. Jalna.

..Respondent

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Advocate for Petitioner : Shri Patil Vinod Prakash
Advocate for Respondents : Shri Bolkar Y.B.

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CORAM : RAVINDRA V. GHUGE, J.
Dated: July 27, 2017

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ORAL JUDGMENT :-

1. Heard learned Advocates for the respective parties.
2. Rule.
3. By consent, Rule is made returnable forthwith and the petition is taken up for final disposal.
4. The petitioner is aggrieved by the order dated 4.3.2016,

delivered by the trial Court, by which, application Exhibit 35 seeking rejection of plaint under Order VII Rule 11 of the CPC has been rejected on the ground that the recording of evidence has already commenced and Exhibit 35 has been filed belatedly.

5. I have considered the submissions of the learned Advocates for the respective sides.

6. The record reveals that the valuation of the property on the date of the lodging of the suit was around Rs.7,92,278/-. A valuation report in 2015 is produced by the petitioner indicating the market value of the land is Rs. 15,78,278/-. It is on the basis of this report that the defendant has prayed for the dismissal / rejection of the suit.

7. It cannot be debated that the Court fees to be paid by the plaintiff would be dependent upon the valuation of the property as on the date of the lodging of the suit. Merely because the escalation / appreciation of the valuation of the property has occurred, would not mean that the suit was under valued and lesser Court fees were paid. Nevertheless, the trial Court has framed an issue as to whether the suit would be maintainable in the light of such objections of the defendants. It is informed that

the plaintiff has concluded the recording of oral evidence and it is for the defendant to step into the witness box.

8. Considering above, I do not find that the impugned order could be termed as being perverse or erroneous.

9. This petition being devoid of merits is dismissed.

10. Needless to state the trial Court shall note that the additional issue framed in so far as valuation of the property and payment of court fees is concerned, it shall deal with the said issue by keeping in view the valuation of the property on the date of the lodging of the suit and not the current valuation.

11. Rule is discharged.

(RAVINDRA V. GHUGE, J.)

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akl/d