

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

(1) WP NO.406 OF 2017

902 WRIT PETITION NO. 406 OF 2017

KAUSHALYABAI ASARAM GADHWAL AND ANOTHER
VERSUS
PRAKASH SAMPAT KORKE AND ANOTHER

...

Advocate for Petitioners : Mr.Bhandari Anand P.
Advocate for Respondent no.1. : Mr.S S Ghumare

...

CORAM : P.R. BORA, J.
Dated: November 29, 2017

...

PER COURT :-

1. Heard learned Counsel appearing for the petitioners and the learned Counsel appearing for respondent no.1.

2. The petitioner has questioned the order dated 2nd of May, 2016, passed by the 10th Joint Civil Judge, Junior Division, Aurangabad, below Application Exh.12 in RCS No.320/2015. The petitioners are original defendant nos. 1 and 3. Respondent no.1 is the original plaintiff. Respondent no.2 is original defendant no.2. The property bearing Gat No.19 situated at Itkheda, taluka and district Aurangabad, admeasuring 3 Hectares 21 Are is the subject matter of the dispute between the petitioners and respondent no.1. Respondent no.1 has filed the aforesaid civil suit seeking declaration of ownership and possession. Consequential relief of possession and injunction is also sought. The petitioners have resisted the suit by filing their written statement. During pendency of the aforesaid suit, the petitioners

agp/-

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

(2)

WP NO.406 OF 2017

filed an application at Exh.12 alleging that the suit property is not properly valued and, therefore, prayed for direction to the plaintiff i.e. present respondent no.1 to pay the due Court fees. Respondent no.1 filed his reply to the said application and denied the contentions raised in the application. Learned Civil Judge, after hearing the parties, rejected the application so far as the prayer of the defendants to value the suit on the basis of market value, however, directed the plaintiff to value the suit in view of his claim for declaration and perpetual injunction. The aforesaid order is questioned in the present writ petition.

3. Learned Counsel appearing for the petitioners, placing reliance on the judgment of this Court in the case of Pushparaj Surajprasad Modh Vs. Sayyad Altaf Sayyad Wazir and others (2000 (4) Mh.L.J. 492), submitted that since besides the declaration, respondent no.1 had also prayed for relief of injunction, full ad valorem Court fee is required to be paid in view of third proviso to Section 6 (iv)(d) of the Maharashtra Court Fees Act, 1959.

4. Learned Counsel for the respondent supported the impugned order. Learned Counsel relied upon the judgment of this Court in the case of Sau.Asha Sopan Maithane Vs. Ramkrushna Punjaji Wanare & ors (2010(11) LJSOFT 69), to urge that the suit has been properly valued by the plaintiffs.

agp/-

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

(3)

WP NO.406 OF 2017

5. After having considered the submissions advanced by the learned Counsel appearing for the parties, it appears to me that without going into the merits of the rival contentions raised by the parties, and without going into the merits of the impugned order, the present writ petition can be disposed of with the following order.

ORDER

1. The impugned order stands set aside. The learned Joint Civil Judge, Junior Division, Aurangabad, shall make necessary enquiry for determining the valuation of the suit for the purposes of Court fees as provided under Section 8 of the Maharashtra Court Fees Act, 1959, and pass necessary orders.
2. The Writ Petition, thus, stands disposed of in the aforesaid terms.

(P.R. BORA, J.)

...