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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.537 OF 2016

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| 1. | Mandabai w/o Vithal Mokase
Age - 70 years, Occ - Household
R/o Pishor, Taluka - Kannad
District - Aurangabad | PETITIONERS |
| 2. | Parvatabai w/o Vithal Mokase
Age - 45 years, Occ - Household
R/o As above | |
| 3. | Ahilyabai w/o Bajirao Borade
Age - 50 years, Occ - Household
R/o Undangaon, Taluka - Sillod
District - Aurangabad | |
| 4. | Lilabai w/o Ananda Dhanai
Age - 47 years, Occ - Household
R/o Paradh, Taluka - Bhokardan
District - Jalna | |
| 5. | Ashabai w/o Kaduba Dhanai
Age - 40 years, Occ - Household
R/o Pishor, Taluka - Kannad
District - Aurangabad | |
| 6. | Hirabai w/o Rohidas Narvade
Age - 37 years, Occ - Household
R/o Undangaon, Taluka - Sillod
District - Aurangabad | |
| 7. | Kaushalyabai w/o Shenphadu Suradkar
Age - 35 years, Occ - Household
R/o Nevpur, Taluka - Kannad
District - Aurangabad | |
| 8. | Saralabai w/o Gopal Doiphode,
Age - 30 years, Occ - Housenold
R/o Undangaon, Taluka - Sillod
District - Aurangabad | |

9. Rekha w/o Ramesh Balak,
Age - 27 years, Occ - Household
R/o Nagapur, Taluka - Kannad
District - Aurangabad
10. Laxman s/o Vithal Mokase
Age - 19 years, Occ - Agriculture
R/o Pishor, Taluka - Kannad
District - Aurangabad
11. Sonali w/o Vithal Mokase
Age - 18 years, Occ - Education
R/o Pishor, Taluka - Kannad
District - Aurangabad
12. Ram s/o Vithal Mokase
Age - 25 years, Occ - Agriculture
R/o Pishor, Taluka - Kannad
District - Aurangabad

Petitioners No. 1 to 11 through their
General Power of Attorney i.e. petitioner No. 12
Ram s/o Vithal Mokase

VERSUS

Kasabai w/o Anna Mokase
Age - 60 years, Occ - Household
R/o Pishor, Taluka - Kannad
District - Aurangabad

RESPONDENT

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Mr. Ambar s. Barlota, Advocate for the petitioners
Mr. S. S. Kulkarni, learned *Amicus Curiae*

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[CORAM : SUNIL P. DESHMUKH, J.]

DATE : 21st AUGUST, 2017

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith and heard finally with consent of learned advocate for the petitioners and learned *amicus curiae*.

2. Regular Civil Suit No. 24 of 2014 had been instituted by present petitioners seeking declaration of ownership in respect of suit property and injunction against the respondent - defendant. The suit had been decreed *ex-parte* with direction that valuation of suit be enquired into.

3. Pursuant to the decree an application had been moved by the petitioners on 24th March, 2015 intimating that proper court fee, according to rules, has been paid and non drawing of decree has been causing hurdles in the way of the petitioners from enjoying the property. It has been contended that decree refers to inquiry for valuation of property for the purpose of court fee, however, proper court fee had already been paid along with the suit and suit had accordingly been registered. Thereafter, on 31st July, 2016, MARJI No. 23 of 2015 had been moved by the petitioners

seeking drawing of decree pursuant to decision in Regular Civil Suit No. 24 of 2014.

4. It appears, both the applications filed by the petitioners are rejected and disposed of by the trial court vide orders dated 1st July, 2015 and 6th November, 2015, respectively and as such, the petitioners are before this court.

5. Learned advocate for the petitioners has pointed out that the suit had been instituted for declaration of ownership over suit property which is an agricultural land, along with claim for injunction over the same against the defendant. Said suit has been decreed. Claim had been valued, as required under relevant enactment, at Rs.1000/- for injunction and court fee of Rs.200/- thereon accordingly had been paid. As also, for declaration of ownership had been sought and fixed court fee of Rs.200/- had been paid. As such, Rs.400/- were paid in aggregate towards court fee.

6. Learned advocate for the petitioners submits that while decision of this court in the case of "*Pushparaj Surajprasad Modh V/s Sayyad Altaf Sayyad Wazir and Others*" reported

in 2000 (12) LJSOFT 61 had been placed before the court, it appears, attention of the court had not been drawn to relevant provision of section 6 particularly provisos under section 6 (iv) (d) and section 6(v) of the Maharashtra Court Fees Act, 1959, which refers to suits valuation for possession.

7. However, subsequently, this position stands clarified under another decision of this court in the case of “*Aman Harishkumar Vij V/s Shantabai Anandrao Patil*” reported in 2015 (3) ALL MR 522. He draws attention particularly to paragraphs No. 23 and 24 of said judgment, reading, thus -

“ 23. Normally, in such matters, valuation disclosed by the Plaintiff or the amount of court fees upon the relief claimed in the plaint should be accepted as correct. This however, does not preclude the court from examining if the valuation on the averments in the plaint is arbitrary or capricious. If, on the perusal of the plaint, the court is prima facie satisfied that the Plaintiff has not been fair and valued the suit and the reliefs arbitrarily, the court is not precluded from directing the Plaintiff to value the suit property and to pay appropriate court fees thereon. In the present case, the Plaintiffs have made the averments in paragraph 18 of the plant, in respect of valuation and payment of court fee. The same read as under:

'18. The Suit Property being agricultural land assessed to the land revenue. The plaintiffs submit that

the present suit has been valued at L 142/- i.e. the 200 times of the assessment of the Suit Property for the purpose of relief of declaration. The plaintiff has also prayed for permanent injunctions and therefore the plaintiffs have valued the present suit at L 1000+ L 1000/- for the purpose of permanent injunctions. Thus the plaintiff has valued the present suit at L 142/- + 1000/- + 1000/- and has paid appropriate court fees stamp fees thereon. In case any additional court fees is required to be paid by the plaintiff then the plaintiff is ready to pay the same as and when directed by the Hon'ble Court.'

24. The suit as framed, seeks declaration that Plaintiffs are absolute owners of the suit property [prayer clause (b)]. In addition the plaint seeks relief of injunction as against Defendant Nos. 1 to 13, which includes the Petitioner. In terms of Section 6 (iv) d, suit for declaration in respect of ownership for title is eligible to court fee of one fourth ad valorem fee leviable for a suit for possession on the basis of title of the subject matter, subject to minimum fee of one hundred rupees. The third proviso provides that when in addition any consequential relief other than possession is sought the amount of fee shall be one-half of ad valorem fee and when the consequential reliefs are also sought to include relief for possession, the amount of fee shall be full ad valorem fee. Further, Section 6 (v) deals with suits for possession of lands, houses and gardens. This in turn, has to be read and construed with the provisions of the Suits Valuation Act, 1887 and the Rules made thereunder.”

8. Mr. Barlota, learned advocate refers to yet another

judgment in the case of “*Asha Sopan Maithane V/s Ramkrushna Punjaji Wanare and Others*” reported in 2011 (4) Bom.C.R. 637, wherein computation of court fees pursuant to section 6 (v) of the Maharashtra Court Fees Act appears to have been considered.

9. Mr. Sanket Kulkarni, learned *amicus curiae*, during the course of hearing has referred to two provisions, namely sections 6 (iv) d and 6 (v) of the Maharashtra Court Fees Act and supports legal position as is appearing in decision rendered in the case of *Aman Harishkumar Vij (supra)*.

10. There is no resistance to aforesaid submissions, on behalf of the respondent – defendant – judgment debtor.

11. Having regard to overall position as would be emerging from the decision in the case of *Aman Harishkumar Vij (supra)* and looking at the nature of suit, submissions advanced on behalf of the petitioners carry a lot of substance, which learned *amicus curiae* very graciously concurs with.

12. In view of aforesaid, writ petition succeeds. Impugned orders dated 1st July, 2015 and 6th November,

2015 passed by 2nd Joint Civil Judge, Junior Division, Kannad, District – Aurangabad on Exhibits 1 and 9 in MARJI No. 23 of 2015 stand set aside. Writ petition stands allowed in terms of prayer clause “B”. Rule is made absolute in aforesaid terms.

[SUNIL P. DESHMUKH, J.]

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