

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 12624 OF 2016
WITH WRIT PETITION NO12625/2016
WITH WRIT PETITION NO12626/2016
WITH WRIT PETITION NO12627/2016
WITH WRIT PETITION NO12628/2016
WITH WRIT PETITION NO12629/2016
WITH WRIT PETITION NO12630/2016
WITH WRIT PETITION NO12631/2016
WITH WRIT PETITION NO12632/2016
WITH WRIT PETITION NO12633/2016
WITH WRIT PETITION NO12634/2016
WITH WRIT PETITION NO12635/2016
WITH WRIT PETITION NO12636/2016

Smt. Shyamlal Nagorao Phute and others

Petitioners

Versus

Mohan S/o Erappa Masure & others

Respondents

Mrs. Poonam V. Bodke Patil advocate for the petitioners
Mr. S.K. Tambe, AGP for respondent State (as amicus curiae)

CORAM : **RAVINDRA V. GHUGE, J**

(Date : 10th July, 2017.)

PER COURT :-

1 In all these petitions, the petitioners have put forth prayer clauses (A) and (B) as under:-

" (A) This Writ Petition may kindly be allowed.

(B) The impugned orders dated 14.10.2016 and 11.11.2016 passed in R.C.S.No.656/2016 below Exh.1 by the learned 2nd Joint Civil Judge (Junior Division) Ahmedpur may kindly be set-aside and cancelled and consequently, the learned trial court be ordered/directed to restore the suit R.C.S.No.656/2016 to its original

stage and proceed further in accordance with law. ”

2 In all these identical petitions, the order Exh.1 in identical civil suits has been passed by the trial Court on 14.10.2016 which reads as under:-

“ ORDER BELOW EXH.1

In this suit, the plaintiffs claim themselves to be the owner of a plot over which the defendants encroached and constructed a house. Hence, the plaintiffs are seeking recovery of possession of said plot by demolishing the house over it. However, the plaintiffs have valued the suit as if said plot is an agricultural land assessed to the payment of revenue to the Government. The suit ought to have been valued according to value of the suit plot. As such, the suit appears to have been improperly valued and relief claimed is under valued. Hence, plaintiffs is directed to correct the valuation and pay requisite court fees accordingly failing which the plaint will have to be rejected. ”

3 The petitioner, in all the Civil Suits involved in these proceedings, moved an application, praying for recalling/setting aside the order dated 14.10.2016 reproduced above. All these applications have been rejected by an identical order dated 11.11.2016, which reads as under:-

“ ORDER

1 Application below Exh.6 for recalling or setting aside the order (direction) dated 14/10/2016 passed below Exh.1, is rejected.

2 The plaint is rejected for want of proper valuation in view of Order VII Rule 11(b) of the Code of Civil Procedure, 1908. "

4 The first petition from these identical group of petitions bearing No.11841/2016 was taken up for adjudication by this Court (Coram: T.V. NALAWADE, J). By Judgment dated 16.12.2016, the said writ Petition was allowed and the impugned identical orders dated 14.10.2016 and 11.11.2016 have been set aside. The relevant observations of this Court in its Judgment dated 16.12.2016 in paragraph Nos.2 to 4 are 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 f 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. "

5 Shri Tambe, learned AGP has assisted the Court in so far as the facts of the case are concerned, keeping in view that the earlier, learned AGP Mr. B.A. Shinde was appointed as amicus Curie and heard in that matter.

6 Considering the above, I do not find any such circumstances in these petitions which would convince me to take a different view than the view taken by this Court by Judgment dated 16.12.2016.

7 In the light of above, all these petitions are allowed. The impugned orders dated 14.10.2016 and 11.11.2016 are quashed and set aside. The Court fees that are payable on the basis of the valuation made under section 6(v)(b) of the Maharashtra Court Fee Act shall be accepted and the suits shall then be tried on their own merits.

(RAVINDRA V. GHUGE , J)