

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.42 OF 2015

Shri. Ramesh Ganesh Kenge Petitioner

Vs.

Sou. Deepali Vijay Patukale Respondent

Mr. Aniruddha A. Garge for the Petitioner.

Ms. Gauri Godse for Respondent No. 1.

Coram : Smt. Sadhana S. Jadhav, J.

Date : 13th November, 2017

P.C.:

1 Heard respective Counsel. Rule. Rule made returnable forthwith with the consent of the parties.

2 The petitioner herein happens to be original defendant in Regular Civil Suit No. 89 of 2006. The suit is for partition and possession. The relations between the parties are that the plaintiff happens to be niece of the defendant-petitioner i.e. she happens to be the daughter of the only sister of the defendant. It is admitted position that at the time of demise of her mother, the plaintiff was a

minor. The suit is valued at Rs.90,000/-. It was the contention of the petitioner that the valuer's report was called for. The petitioner had filed an application below Exhibit 10 contending therein that the suit is not properly valued and in the eventuality that it is properly valued, the Court may in all probability lose its jurisdiction as the petitioner had specifically contended that the suit property has been under valued. Against the rejection of the application below Exhibit 10, the petitioner herein had filed Writ Petition No.5393 of 2009. This Court, by the order dated 7th July, 2009 has directed the learned Court to consider the objection application filed by the petitioner on its own merits and assign reasons for allowing or discarding the valuation report submitted by the valuer. It was, in this background that the impugned order rejecting the application for proper valuation was set aside and the trial Court was directed to hear the application filed by the petitioner afresh.

3 Pursuant to the directions of this Hon'ble Court, the Civil Judge, Junior Division, Ulhasnagar had heard the application afresh and had arrived at a conclusion that there is deficit court fees stamp

of Rs.2,900/- and the plaintiff was directed to pay the same within one month from the date of the order. The said order dated 15th September, 2014 is impugned by this writ petition. It is the specific contention of the petitioner that the Court has not assigned any reasons for discarding the valuation report and has arrived at it's own conclusion without there-being any basis for the said conclusion.

4 The defendant had specifically contended that the property is a self acquired property and therefore the plaintiff cannot claim any share in the suit property. She would be entitled to the same only if it was an ancestral property. It is further submitted that the valuation of the said suit property is much more than Rs.90,000/- and that if the suit is under valued, the Court would lose it's jurisdiction and any order passed by the said Court, would be an order without jurisdiction and hence null and void. As against this, the learned counsel for the respondent has drawn attention of this Court to the detailed order passed below Exhibit 10. The learned Court had framed issue as to whether the suit is properly valued for

jurisdiction purpose of this Court and held the same in negative. The learned Court has not only considered the valuation report but has minutely scrutinised the valuation report in consonance with the facts of the present case and the description of the property. The learned Court has specifically observed in para 13 of the order that the suit property, which is Extract no. 3743, H No. 3, is owned by Suryoday Co-operative Housing Society and it was given on lease to the father of the present petitioner at the rate of Rs.1/- per year and the revenue assessment was at 0.2 paisa per square yard. Similarly CTS No. 3725 is also owned by Suryoday Co-operative Housing Society and was given on lease at the rate of Rs.1/- per year and CTS No.7673 is in possession of the present petitioner and it appears that the plaintiffs and defendants' parents were residing in CTS No.7673 and therefore it cannot be said that the said house property was constructed after the demise of Ganesh Ravji Kenge or it is a self acquired property. The learned Court has specifically observed that on perusal of all CTS extracts, it is crystal clear that all properties are owned by Suryoday Co-operative Housing Society and the defendant

is in possession as a lessee. It is further pertinent to note that though the petitioner herein has admitted this fact as DW no.1 in his evidence below Exhibit 24, it appears that as on today, the only contention of the petitioner is that the Court has not stated that the valuation report is discarded. In fact the Court is not bound by any valuation report as it would be a matter of evidence. Moreover, upon a perusal of the valuation report, it appears that the valuer has valued the property as on the date of filing of the suit. The basis of calculation has not been specifically stated. The basis is neither as per Ready Reckoner nor the price at which was constructed. It is an admitted position that these are the properties on lease and therefore what would be taken into consideration is the amount of lease, which is calculated and it appears that the learned Court has done that exercise meticulously. The only word that remained to be stated is that “for above reasons, the valuation report is rejected”. However, it can be seen that in such case, a fair inference is to be drawn that the Court has refused to agree with the valuation report and after considering the calculation and the records which were not before

the valuer at the time of valuation report, the Court has come to the conclusion that the deficit Court fee stamp is of Rs.2,900/-. It is clear from the records that the valuer had not considered that these are the properties on lease and had considered the same as properties by virtue of ownership. This Court is of the opinion that the learned Civil Judge, Junior Division, Ulhasnagar has not agreed with or approved the valuation report, which was filed without any foundation. Hence, the petition being sans-merits deserves to be dismissed and the findings recorded by the 4th Jt. Civil Judge, Junior Division, Ulhasnagar in the order dated 15th September, 2014 do not call for any interference by this Court. Rule is discharged.

5 Learned counsel for the respondent at this stage submits that the suit is filed in the year 2006, and since there were objections in respect of the suit and till today the application below Exhibit 5 has not yet been decided since there was a preliminary objection in respect of the valuation of the suit. It is in view of this, the suit is pending for last more than 11 years, hence the trial Court is hereby

requested to make an endeavour to proceed with the suit as expeditiously as possible. The petition stands disposed of.

(Smt. Sadhana S. Jadhav, J.)