

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL REVISION APPLICATION NO.102 OF 2017**

Avinash Kamleshwar Shrivastava ... Applicant

Vs.

Vinayak Gopal Dandekar & Ors. ... Respondents

Mr.S.A.Sawant for the Applicant

Mr.P.M. Arjunwadkar, for Respondent Nos.1 & 2

**CORAM: Mrs.MRIDULA BHATKAR, J.
DATED: APRIL 25, 2017**

P.C. :

1. In this Civil Revision Application filed under section 115 of the Civil Procedure Code, the applicant/original defendant had challenged the order dated 7.11.2016 passed by the Joint Civil Judge, Junior Division, Palghar, below exhibit 1 in Regular Civil Suit No.30 of 2015. The trial Court has framed a preliminary issue as per the application moved by the defendants that whether suit is properly valued and proper court fees is affixed? The trial Court answered the said issue in affirmative and rejected the application of the defendants. Hence, this revision application.

2. The plaintiffs have filed the suit for declaration that the plaintiffs are the owners and in possession of the suit land.

Further, prayers of damages of Rs.1 lakh to be paid and perpetual injunction against the defendants/petitioners were also made. The respondents/plaintiffs have valued the suit under clause (v) of section 6 of the Maharashtra Court fees Act and according to the petitioners/defendants, the suit property should have been valued as per clause (iv)(d) of section 6 of the Maharashtra Court Fees Act.

3. The learned Counsel for the applicant has submitted that the value of the suit land is more than Rs.1,62,48,000/- which is a suit for declaration and, therefore, the suit should have been valued under section 6(iv)(d) of the Court Fees Act and the plaintiffs are to be ordered to pay ad-valorem fee on the market value of the property. He further submitted that as the value of the suit is more than Rs.10 lakhs, the Civil Judge, Junior Division has no pecuniary jurisdiction to try and entertain the suit.

4. The learned Counsel for the respondent nos. 1 and 2/original plaintiffs has supported the order passed by the learned Judge of the trial Court. He relied on the judgment of this High Court in **Aman Harishkumar Vij vs. Shantabai Anandrao Patil (Smt.)**¹.

¹ 2015 BCI 617

He further relied on the judgment of **Raosaheb Ramrao Shinde vs. Sahebrao Ramrao Shinde**². He submitted that the value of the property and market value of the property are two different things and for the purpose of valuation of the suit, considering the prayers made, the plaintiffs have considered the value of the property for the purpose of Court fees. He further relied on the judgments in **Sau. Asha Sopan Maithane vs. Ramkrushna Punjaji Wanare & Ors**³ and **Prism Reality vs. Govind Yashwant Khalade & Ors**.⁴

5. Considered the submissions of the learned counsel for the applicant and the learned counsel for the respondent nos. 1 and 2. In order to ascertain the valuation of the suit, it is necessary to go into the pleadings. In the case in hand, the prayer is for declaration, damages and injunction. The respondents/plaintiffs have paid court fees on all the three reliefs and there is no dispute in respect of court fees paid on damages and injunction. The objection raised is pertaining to the prayer of declaration. On the point of nature of the land, relief claimed, the Court fees and its valuation, I place reliance on **Prism Reality** (*supra*), **Raosaheb**

2 2010 (1) ALL M.R. 285

3 2010 (6) ALL M.R. 673

4 2015 (4) Bom. C.R. 370

Ramrao Shinde (*supra*) and **Sau. Asha Sopan Maithane** (*supra*). The land in the present case is of agricultural land used for cultivation and therefore, in the assessment of the valuation of the Court fees, one has to take into account that there is difference in value of property and the market value of the property as laid down in the case of **Sau. Asha Sopan Maithane** (*supra*).

6. in the case of **Raosaheb Ramrao Shinde** (*supra*), it is held that:

“It can thus be seen that when in a suit basically for declaration in respect of ownership, and consequential relief including that of possession is sought, the said suit would be governed by Section 6(iv)(d) of the said Act. However, it can be seen that when a suit is for possession of land, where the land is held on a permanent settlement, or on a settlement for any period exceeding thirty years, and pays the full assessment to Government, it shall be governed by Section 6(v) of the said Act.”

7. Thus, considering the nature of land in the present petition, the suit is properly valued and hence, there is no merit in the Petition. Writ Petition is dismissed.

(MRIDULA BHATKAR, J.)