

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 1679 OF 2018

KISAN APPAJI SAWANT AND OTHERS
VERSUS
NARAYAN DNYANOBA SHINDE AND OTHERS

Advocate for Petitioners : Shri H.V. Tungar.
AGP for Respondent No. 5 to 8 : Shri V.S. Badakh.

CORAM : RAVINDRA V. GHUGE, J.
Dated : 12th February, 2018

PER COURT :

1. The petitioners are aggrieved by the order dated 04/11/2017, by which, the petitioners/plaintiffs are directed to deposit sufficient Court fees on the valuation of the suit land as per Order VII Rule 11 (c) of the Code of Civil Procedure.

2. The contention of the plaintiffs is that the suit has been preferred by them only for ensuring that, the compensation granted for the land which is acquired by the acquiring body under the National High Ways Act, should not be disbursed to the land owners, since the petitioners are tenants and they would have a right of 75% of the compensation amount.

3. It is specifically contended that due to some circumstances, the petitioners could not raise objections at different stages under

Section 3 under the National High Ways Act. When they realized that the compensation amount will be disbursed only to the landlord and that they had a claim in the said compensation, they had preferred the said suit. In this backdrop, this plaintiffs will not be liable to pay the Court fees as are computed in a suit seeking declaratory orders. Since, these plaintiffs are seeking apportionment of the compensation amount, Section 6 (iv) (j) of the Maharashtra Court Fees Act, would become applicable. Reliance is placed upon the judgment of this Court in the matter of **Jafferli Alibhai Versus S.R. Dossa [LEX (BOM) 1967 9 20]** and more specifically paragraph No. 7 of the said judgment.

4. I find that these plaintiffs have preferred the suit for seeking a specific declaration that they are the tenants in the suit land. Further relief sought is that pursuant to such declaration, it should be declared that they are Tabedar and the defendants, their servants assignees, etc. should be enjoined from interfering with the plaintiffs peaceful possession over the disputed suit property. A mandatory declaration is sought in terms of the prayers put forth.

5. The plaintiffs place reliance upon Section 6 (iv)(j), contending that the suit is preferred only with regard to the declaration of a charge on the immovable property and hence, the

Court fees as are prescribed under clause (j), would become payable.

6. Section 6 (iv)(d) deals with suits for declaration. Such suits can be for seeking declaration in respect of ownership or nature of tenancy or title or tenure or right or lease or freedom or exemption with preference to the immovable properties. There is no dispute that the land at issue is an agricultural land and the same has suffered acquisition proceedings. A glance at the prayer put forth by the plaintiffs and especially prayer clause (1) and (2) indicate that a specific declaration has been sought that they be declared as the tenants in the suit land and Tabedar. Further declaration sought is that the defendants should be restrained perpetually from interfering with the peaceful possession of the plaintiffs over the suit property.

7. In my view, considering the fact that the declarations, as noted above, are being sought and the suit is especially filed for seeking declaratory relief of the above nature, the cases of the plaintiff would be covered by Section 6 (iv) (d).

8. In so far as the judgment cited is concerned, it was noted that a declaration that the deed of assignment is to be set aside as being

null and void, was not sought. This Court, therefore, concluded that the subject matter of the suit was not the property comprised in the deed of assignment, but was purely a declaration that the deed of assignment would be void as against the plaintiffs. The pleadings reproduced in the said judgment do not indicate that any other relief has been sought. In contrast, as noted above, in the present suit filed by the plaintiffs, the Trial Court is called upon to adjudicate as regards whether the plaintiffs are the tenants and pursuant to the same, the declaration is sought that they be declared as tenants and Tabedar, the defendants be restrained from interfering with the peaceful possession of the plaintiffs and further relief sought is that these plaintiffs would have 75% share in the compensation for the land acquired.

9. Considering the above, I do not find that the impugned order could be termed as being perverse or erroneous. This petition being devoid of merits, is therefore, dismissed.

(RAVINDRA V. GHUGE, J.)