

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 2309 OF 2018

KALIM MEHTABSAB PATHAN AND OTHERS

VERSUS

AKRAM KHAN GULAM QUADER KHAN PATHAN
AND ANOTHER

Advocate for Petitioners : Mr. G.R. Syed
a/w. Mr. A.R. Syed.

CORAM : RAVINDRA V. GHUGE, J.
Dated : 08th March, 2018

PER COURT :

1. The petitioners, who have been added as defendant Nos. 2 to 4 in R.C.S. No. 176/2012, are aggrieved by the order dated 13/10/2017 passed by the Trial Court, by which, the application Exhibit 60 filed by them on 17/02/2016, has been rejected by holding the preliminary issue against these petitioners.

2. The contention is that these petitioners / added defendants have purchased the suit property. The plaintiff claims a right for pre-emption and has offered an amount of Rs. 75 lakhs as valuation of the suit property. It is stated that the plaintiff is willing to

purchase the suit property by exercising the right for pre-emption and by offering Rs.75 lakhs.

3. The grievance is that the suit will then have to be valued as per the value of the suit property and the Trial Court would not have pecuniary jurisdiction since its pecuniary jurisdiction is limited up to Rs. 5 lakhs. By framing an issue, the Trial Court has concluded that the purchase price offered by a plaintiff has nothing to do with the valuation of the suit, since the revenue assessments have to be considered for the sake of payment of Court fees.

4. The learned counsel for the petitioners places reliance upon the judgment of the Calcutta, High Court, **Subimal Kanti Paul Versus Parimal Paul [2015(5) Cal. H.C.N. 292]**, contending that whichever value the plaintiff may mention in the plaint as a price that he is willing to pay for purchasing the land by exercising a right of pre-emption, it has to be considered as the valuation of the suit.

5. I find that the suit has been lodged in the year 2012 and is almost six years old. The suit would be

ready for a final adjudication.

6. The Trial Court has considered Section 7 paragraph No. 5 of the Court Fees Act as well as Rule 3 of the Suits Valuation Act. It is concluded that merely because the plaintiff offers an attractive price for purchasing the suit land in his endeavor to exercise the right of pre-emption, would not mean that the suit land is valued at the price which is proposed by the plaintiff.

7. I find that in a given case, the plaintiff may quote a higher price in order to strengthen his claim and for making the offer attractive. That would not mean that the suit is valued at the price which is quoted by the plaintiff. The Trial Court while considering R.C.S. No. 176/2012, will have to consider whether the plaintiff establishes a right for pre-emption. That being the issue, the amount that he volunteers to pay or offers as the purchase price would not be the basis for the Trial Court to conclude the issue with regard to a right for pre-emption. Such price or offer, therefore, would not create any fetter on the basis of pecuniary jurisdiction.

8. As such, I do not find that the impugned order of

the Trial Court dated 13/10/2017, could be termed as being perverse or erroneous. This petition being devoid of merit, is therefore, dismissed.

(RAVINDRA V. GHUGE, J.)

S.P.C.