

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD

WRIT PETITION NO. 10448 OF 2015

1. Vaijyanath Tulshiramji Ekkar
Age : 50 years, Occu : Agri.,
R/o Wadgaon, Tq. & Dist.Parbhani
 2. Udhav s/o Tulshiramji Ekkar,
Age : 54 years, Occu: Agri.,
R/o Bank Colony, Dargah Road,
Parbhani, Tq. & Dist. Parbhani
 3. Rukhminibai w/o Tulshiramji Ekkar,
Age : 80 years, Occu: Agri.,
R/o Wadgaon, Tq. & dist. Parbhani
- .. Petitioners/
Orig. Plaintiffs

versus

1. Shamrao s/o Tulshiramji Ekkar,
Age : 52 years, Occu : Service,
R/o Bank Colony, Dargah Road,
Parbhani, Tq. & Dist. Parbhani
 2. Mankarnabai w/o Balasaheb Gaikwad
Age : 56 years, occu :Household,
R/o Ukhali (Gaikwad), Tq. Aundha,
Dist. Hingoli
 3. Sow. Savita w/o Shamrao Ekkar,
Age : 45 years, Occu : Household,
R/o Bank Colony, Dargah Road,
Parbhani, Tq. & Dist. Parbhani
 4. Sachin s/o Shamrao Ekkar,
Age : 25 years, Occu : Service,
R/o Bank Colony, Dargah road,
Parbhani, Tq. & Dist. Parbhani
- .. Respondents/
Org.Defendants

Mr Mahesh V. Ghatge, Advocate for petitioners
Mr M. M. Joshi, Advocate for respondents no.1, 3 and 4

CORAM : SUNIL P. DESHMUKH, J.

DATE : 9th October, 2018

ORDER :

1. Rule. Rule made returnable forthwith. Heard learned counsel for parties finally by consent.

2. Petitioners - plaintiffs in special civil suit bearing no. 12 of 2015 take exception to order dated 13-08-2015 passed by 2nd joint civil judge, senior division, Parbhani on application Exhibit - 35 by defendant no. 4 in aforesaid suit whereunder, plaintiffs have been directed to value suit property and pay court fees accordingly.

3. After hearing learned counsel for parties, it transpires that petitioners have sought partition and separate possession of properties against present respondents. Properties include agricultural lands as well as non agricultural land plots and houses. House properties and open plots, had been valued by the plaintiffs according to consideration referred to in the sale transactions and petitioner no. 3 being woman had sought exemption from payment of court fees.

4. Respondent no. 4 - who is defendant no. 4 in the suit had filed objection application under Exhibit - 35 to valuation of the

suit, purportedly coming out with actual valuation of the properties as referred to in tabular form under paragraph no. 4 of the application. It was thus claimed that there is vast difference in the two valuations. The valuation referred to in tabular form by defendant no. 4 had been in accordance with valuation made by government authorities and accordingly suit be valued and revised valuation may be directed with direction for enquiry in that respect. Defendant no. 4 had also prayed that enquiry under section 8 of Maharashtra Court Fees Act be made and commission be issued for enquiry and plaint be rejected if court fees according to correct valuation is not paid.

5. Plaintiffs had resisted the application, contending that they had shown correct valuation and have paid requisite court fees thereon. They had denied the valuation given under paragraph no. 4 in application at Exhibit - 35. It is contended that valuation as depicted in sale deed executed in favour of defendant no. 1 by the vendor had been taken into account. They claimed that application does not carry any substance and prayed for rejection of the same.

6. Trial court had considered that there appears to be no dispute in respect of valuation of agricultural land. The dispute is, however, in respect of valuation of houses and land plots. The

court had considered that having regard to the reliefs claimed by plaintiffs, the court fees according to section 6(iv)(d) of the Bombay Court Fees Act, 1959 will have to be paid.

7. Trial court referred to decision of the supreme court relied on by defendant no.4, rendered in *Santosh Ramchandra Tadsare vs. Subhas Ramchandra Gujjuar* [civil appeal bearing no. 2758 of 2013] wherein it has been considered in the facts of that case that the property will have to be valued as non agricultural land and court fees will have to be accordingly paid since the purchaser had converted the purpose of land for non agricultural use. Trial court had, as such, considered that having regard to valuation certificate submitted by defendant no.4, the plaintiffs will have to value the suit according to market value of the property as on the date of the suit and not in accordance with valuation of the sale deed. Trial court had thus directed to value the suit accordingly and pay necessary court fees.

8. Mr M. V. Ghatge, learned counsel on behalf of the petitioners - plaintiffs submits that application overbearingly shows that defendant no. 4 had not been sure about valuation and had accordingly sought enquiry into the matter yet, the trial court has erred in relying on the certificate so issued as if it was depicting correct valuation. He submits that there is sufficient

material available which would show that valuation shown in the certificate is excessive and would not hold good so far as it relates to concerned suit properties. He submits that looking at the tenor of the application, plaintiffs were under bonafide impression that at the highest having regard to the prayer in the same, an enquiry would be directed, however, he submits, without letting opportunity to the plaintiffs, an exercise of determining valuation has been undertaken by the court itself without giving even semblance of idea that valuation would be decided pursuant to application based on certificate alone. He submits that valuation in the certificate had been denied by plaintiffs and in such a case an inquiry ought to have been directed. However without letting opportunity to plaintiffs, the order came to be passed which tends to be in breach of principles of natural justice and is liable to be set aside.

9. On the other hand, Mr M.M. Joshi, learned counsel appearing for respondents submits that while government authorities have issued certificate, it presupposes it is issued by following certain procedure. As such, valuation depicted in the certificate would not be liable to be faulted with and court cannot be attributed any error in relying on the same. He submits, valuation of properties referred to under Exhibit - 35 necessarily has to be a market value having regard to provisions

of Bombay Court Fees Act. He submits that while such impeccable material had been placed on record, it cannot be said that the trial court has committed error in determining valuation of the properties. He, therefore, urges not to meddle with impugned order.

10. Learned counsel for respondents during course of hearing has purported to refer to that valuation of the property is far on lower side placing reliance on a chart which, according to him, is depiction of correct rate of valuation and going by the same, valuation claimed by plaintiffs is seldom possible.

11. Perusal of application Exhibit – 35 shows that in substance it has been made with a view to have an enquiry into correct valuation of properties involved in the suit supporting the claim with the aid of the certificate. Taking into account that there would be resistance to the application and certificate, an enquiry had been solicited. Substantial thrust of the application is on the enquiry. While the contents of the application had been denied, so also valuation under the certificate had been denied by the petitioners. It appears that the petitioners seldom had an opportunity to substantiate their claim disputing valuation in the certificate.

12. Taking into account aforesaid, since opportunity is being solicited to make submissions in respect of claim of valuation in application Exhibit - 35 and as now being contended on behalf of petitioners, it appears that trial court may, having regard to section 8 of the Maharashtra Court Fees Act, consider the application afresh.

13. In view of aforesaid, impugned order dated 13-08-2015 passed by 2nd joint civil judge, senior division, Parbhani on application Exhibit - 35 in special civil suit bearing no. 12 of 2015 is set aside. Exhibit - 35 is restored. Application be heard afresh by giving opportunity to the parties, including for amendments to the application and response to the application once again. It is further made clear that all points are kept open for the parties. Exercise is expected to be done expeditiously preferably within forty five days from the date of receipt of writ of this order. It is further made clear that other stages in suit may not be hindered for decision on application Exhibit - 35.

14. Rule made absolute in aforesaid terms.

15. Writ petition is disposed of.

SUNIL P. DESHMUKH
JUDGE

pnd/-