

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

WRIT PETITION NO. 12363 OF 2017

GOLULDAS MADANLAL BHUTADA AND OTHERS

VERSUS

RAMNIVAS GOVINDLAL BHUTADA AND OTHERS

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Advocate for the Petitioners : Shri Nagargoje Ankush N.

Advocate for Respondents 1 to 4 : Smt.Bhale Kavita S..

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CORAM: RAVINDRA V. GHUGE, J.

DATE :- 21st November, 2018

Per Court:

1 The Petitioners, who are the original Plaintiffs in RCS No.737/2016, are aggrieved by the order dated 21.09.2017 passed by the Trial Court by which, an application Exhibit 30 filed by Defendant Nos.1 and 2 seeking a direction that the plaint be rejected under Order 7 Rule 11(b) of the Code of Civil Procedure on the ground of undervaluation of the suit, has been partly allowed and the Plaintiffs are directed to make revaluation of the suit and pay proper court fees within 15 days.

2 The learned Advocate for the Petitioners strenuously contends that the suit preferred by the Plaintiffs is for seeking perpetual injunction against the Defendants and a declaration that the Plaintiffs are the owners of the suit property. They have come forward with the case that the

ancestral property was admeasuring 6 H and 32 R. There was an oral partition on 08.09.1994 and 17 R land was allotted to Defendant Nos.1 to 4. The land admeasuring 5 H and 62 R came to the share of the Plaintiffs. As the Defendants are interfering with the peaceful possession of the Plaintiffs, the suit was preferred seeking injunction and declaration that the Plaintiffs are the owners of the land admeasuring 5 H and 62 R. It is, therefore, canvassed that Section 6(j) of the Maharashtra Court Fees Act would apply to the Petitioners' suit and Section 6(d) r/w the third proviso thereunder, would not be applicable.

3 The learned Advocate for Respondents Nos.1 to 4 has supported the impugned order and prays for the rejection of this petition with costs.

4 Upon considering the submissions of the rival parties, I find that the Plaintiffs are unable to state as to whether, the declaration of ownership specifically put forth by them would amount to seeking a primary relief or an ancillary relief. It requires no debate that in the given set of facts and pleadings of the parties, the prayer for seeking declaration of ownership of the land admeasuring 5 H and 62 R, cannot be termed as being a secondary relief sought. It is the main relief put forth by the Plaintiffs and based on such declaration of ownership, they seek an injunction against the Defendants. Such declaration of ownership to the extent of the immovable properties is specifically included in Section 6(d)

of the said Act. The said relief would not fall under Section 6(j) which prescribes the valuation of suits in which other declarations are sought.

5 The Petitioners have voiced a grievance that the Trial Court has, by implication, conveyed in paragraph 9 that the theory of oral partition cannot be believed. I find that the said grievance is misplaced since the Trial Court has not made any such observations of voicing its suspicion about the theory of oral partition, inasmuch as, even if there would have been such an observation, it would not amount to adjudication of the case of the Plaintiffs that there was an oral partition.

6 In view of the above, this Writ Petition being devoid of merit is, therefore, dismissed.

7 Needless to state, the Trial Court would consider the suit on its own merits by taking into account the rival contentions of the litigating sides. The Petitioners are, therefore, expected to implement the impugned order dated 21.09.2017 within 15 days from today.