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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.2762 OF 2017**

Sunita Dashrath Yewale and ors	...	Petitioners
V/s.		
The State of Maharashtra	...	Respondents

Mr. Pradeep J.Thorat, for the Petitioners.
Mr. A.R.Metkari, AGP for the Respondent
State.

CORAM : DR.SHALINI PHANSALKAR-JOSHI, J.

DATE : 22nd JANUARY, 2018.

P.C. :

1] Heard learned counsel for the petitioners and learned AGP for the State.

2] By this petition filed under Article 227 of the Constitution of India, the petitioners are challenging the order dated 9.11.2016, passed by Jt. Civil Judge J.D., Vashi, Navi Mumbai, below Exh.1 in Misc. Application No.5of 2016.

3] The said application was filed by the present petitioners under Order 47 Rule 1 and under Section 151 of the Code of Civil Procedure, before the trial Court, for reviewing its own order, on the count that while allowing the Mis. Application No.269 of 2014, for Heir-ship certificate filed by the petitioners, in the trial Court, vide its order dated 2nd September, 2015, the petitioners were directed to

pay the Court fee on the “market value” of the suit flat as per ready-reckoner.

4] According to learned counsel for the petitioners, there is difference between the term “value” and the “market value” as used under in the Maharashtra Court Fees Act. It is submitted that as per Schedule-I Article 12, of the said Act on the Application for Certificate under Bombay Regulatory VIII 1827 Act or under any corresponding law in force, the fee leviable is the same as per application for probate (Article 10) on the amount or value of property in respect of which the certificate is granted. Article 10 of the Schedule which pertains to the application for Probate of a will or letters of administration also provides for payment of Court fee on the “value” of the property,

5] It is submitted that though the learned counsel for the petitioners has relied upon the judgment of Hon'ble Supreme Court, in case of **Satheedevi -vs- Prasanna and another, 2010 AIR (SC) 2777**, and also judgment of this Court in case of in **Asha Sopan Maithane -vs- Ramkrushna Punjaji Wanare and ors, [2011 (4) Bom.C.R.637]**, pointing out the distinction between the term “value” and “market value”, the learned trial Court has not adhered to or dealt with the legal position considered in those judgments. The trial court rejected the petitioners' application for review only on the

ground that as per the valuation report issued by Joint Sub Registrar, Thane-3, it has no pecuniary jurisdiction to decide the said application and therefore, the order dated 2nd September 2015 passed is set aside.

6] There is some substance in the submission advanced by learned counsel for petitioner as the perusal of the impugned order passed by the trial Court reveals that the trial Court has not at all considered both these above referred judgments on the basis of which the distinction was tried to be pointed out by learned counsel for petitioners, in respect of the words used “value” and “market value”. Therefore, it would be in the fitness of things, if the matter is remanded to the trial Court for deciding the application filed by the petitioners bearing M.A. No.5 of 2016 afresh, after considering the the judgments which are referred above and any other case law which may be cited by the parties.

7] Hence writ petition is allowed.

8] The impugned order passed by the trial Court is set aside. The trial Court is directed to decide the M.A.No.5 of 2016 afresh after considering the submissions of the learned counsel for both parties and also having regard to the case laws cited above and any other case law that may be cited, pointing out the distinction between the “value” and “market value”.

9] The trial Court to decide the said application keeping open the question whether it has pecuniary jurisdiction to decide the suit or not.

10] The trial Court to decide the said application as expeditiously as possible and preferably within three months from the receipt of the order.

11] All the contentions raised by the learned counsel for both the parties are expressly kept open.

[DR.SHALINI PHANSALKAR-JOSHI, J.]