

vks

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.6309 OF 2016

Gulam Mustfa Yasin Kokani and ors	...	Petitioners
V/s. Shankarrao Haribhau Dhumal and ors	...	Respondents

Mr. Drupad Sopan Patil a/w Ms. Shivani S.
Samel, for the Petitioners.

Mr. Pradeep J. Thorat, for the Respondent
No.143 and 148.

Mr.Rahul D. Motkari, for respondent No.s 24
and 41.

Mr.Sachin Gite, for respondent Nos. 19 and
20.

Mr.Girish R. Agrawal, for respondent
No.135.

Mr. Sajeet Deshmukh I/by Sandip D. Shinde,
for respondent Nos. 157 and 158.

Mr. Yogesh Katira I/by Sanjay P. Shinde, for
respondent No.132.

CORAM : DR.SHALINI PHANSALKAR-JOSHI, J.

DATE : 1st FEBRUARY, 2018.

P.C. :

1] Heard learned counsels for the respective parties.

2] Though all the respondents are not served, defendant
No.24 who has filed application before the trial Court is present and
represented by counsel. Moreover, some other respondents are
1/4

served and represented by their counsel. Their counsels advanced submissions on this issue before this Court which submissions will take care of the interests of unserved respondents also. Hence, this petition is taken up for final hearing.

3] By this petition, the petitioners are challenging the order dated 2nd March, 2016, passed below Exh.249, by the 5th Joint Civil Judge Junior Division, Nashik, in R.C.S. No.653 of 2011.

4] Application at Exh.249 was filed by defendant No.24 under Order VII Rule 11 (b) of Code of Civil Procedure for rejecting the plaint on the ground of under valuation of the suit claim and for non payment of appropriate Court fee stamp.

5] The rejection of the plaint was sought under Order 7, clause (d) of Rule 11 of Code of Civil Procedure, also on the ground that the suit is barred by limitation. The trial Court has kept the said issue open, it being a mixed question of fact and law. Hence there is no grievance about it. This writ petition, therefore, stands confined only to the finding of the trial Court as regards the ground under Order VII, Rule 11(b) CPC.

6] In respect of this ground also, learned counsel for for the petitioners fairly concedes that he is not disputing the finding of trial Court that the valuation of the suit claim is not proper in the sense that though the plaintiff is claiming declaration, ownership and possession of the suit property after removal of encroachment, he has valued the suit only on the amount of Rs.600/- and therefore, he should have valued the suit as per Section 6(iv)(d) of the Maharashtra Court Fees Act 1959. His only grievance is on the point that the trial Court has directed the valuation to be made on the “market value” of the suit property. According to learned counsel for petitioners, in case of agricultural lands, the valuation of the suit claim needs to be made, on revenue assessment and not on “market value”.

7] In support of this submission, learned counsel for petitioners has placed reliance on the judgment of this Court in the case of **Smt. Tarabai Bhausahab Deokar -vs- Jaywant Mahepati Balwadkar and ors**, in **W.P.No.1659 of 2005**, dated 15th December, 2009, especially to the observations of this Court in para No.16 which read thus :-

“16. Hence, in a suit for possession of the land which is assessed to payment of land revenue under the Revenue Code, irrespective of the fact whether it is put to agricultural or non agricultural use, the valuation for the purpose of court fees will be governed

by clauses (a), (b) or (c) of section 6 (v) of the said Act of 1959”.

8] Learned Counsel for original petitioners, therefore, submits that as the valuation of the suit claim, as made in the plaint is not proper, he is ready to amend valuation clause and make the valuation of the suit claim and pay proper Court fee stamp in terms of clauses (a), (b) or (c) of section 6 (v) or 6(iv) (d) of the Maharashtra Court Fees Act 1959, treating the suit property as non agricultural land. In view of the aforesaid judgment of this Court, the valuation would be based on the non agricultural revenue assessment of the land and not on the market value.

9] Accordingly, writ petition stands allowed and disposed of in terms, as stated above.

10] The petitioner to carry out necessary amendment in the valuation clause of the plaint within two weeks from the receipt of this order. After such amendment is carried out, the petitioners to pay Court fee within two weeks therefrom.

[DR.SHALINI PHANSALKAR-JOSHI, J.]