

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 708 OF 2019

Habibkha Dildarkha ...Petitioner

Versus

Daudkha Dildarkha and others ...Respondents

...
Mr. V. B. Patil, Advocate for petitioner

...

CORAM: SUNIL P. DESHMUKH, J.

Date: 6th March, 2019

ORDER :

1. Petition has been moved against order dated 4th August, 2018 whereunder application Exhibit-69 filed by petitioner – defendant no. 1 in regular civil suit bearing no. 8 of 2010 instituted by respondent no. 1 – plaintiff, for direction to plaintiff to value the suit property and pay court fee over costs of construction carried out by defendant no. 1 on suit property and which the plaintiff has prayed to be demolished, has been rejected by civil judge, junior division, Muktainagar.

2. The suit by plaintiff is for declaration, partition, perpetual injunction and possession by demolishing construction raised by the sons of defendant no. 1 over suit property and plaintiff, therefore, according to petitioner, is required to pay court fee on cost of construction which is said to be in the range of Rs. 12 to 13 lakh.

3. The request under application Exhibit-69 had been resisted on behalf of plaintiff, referring to that construction on suit property by defendant is during pendency of suit. The application, according to plaintiff, has been moved after evidence had already been commenced to protract litigation. Aforesaid situation about construction during pendency of suit is not seriously disputed. During pendency of suit defendant no. 1 had started construction on suit property and plaintiff, therefore, had moved application Exhibit-24 for injunction. However, the same had been rejected on the ground that defendants are co-owners of suit property and are in possession of the same as is case of plaintiff himself in plaint paragraph no. 3.

4. The trial court while rejecting Exhibit-69, adverted to that the suit has been filed in 2010. Application Exhibit-30 had been moved by petitioner – defendant no. 1 for correction of valuation of suit property and accordingly, pursuant to report by the Sub Registrar, under order dated 18th June, 2013 by trial court, plaintiff had been directed to pay requisite court fee on Rs. 1,57,000/- which has been accordingly paid.

5. While defendants had carried out construction over suit property during pendency of */is*, the plaintiff was forced to seek amendment to plaint and seek demolition of construction by defendants. In the interregnum, it appears, defendant had placed on record a valuation report / certificate dated 29th November, 2010 issued by private engineer Mr. Sandip Bagul under which valuation of total building is stated to be Rs. 16,98,000/- as against valuation Rs. 2,50,000/- stated in written statement.

6. The court, for the reasons which have been referred to in impugned order, particularly, in paragraphs no. 7 and 8, had discarded aforesaid valuation certificate because of deviation from earlier valuation in written

statement further referring to that valuation as on the date of suit would be relevant and further that for proper and correct market valuation, on request by defendants, the court had appointed Sub Registrar in 2013.

7. This apart, writ petition would not be considered for one more additional reason, namely, for the acts of defendants, plaintiff would seldom be held liable having regard to proposition weighed in the cases of *Suhrid Singh alias Sardool Singh vs. Randhir Singh and others* reported in (2010) 12 SCC 112 and *Surashta Estate Pvt. Ltd. And Anr... vs. Shri Runja Laxman Lokhande and ors.*, reported in 2016 SCC OnLine Bom 9627.

8. In view of aforesaid, present writ petition is not being entertained and same is rejected.

[SUNIL P. DESHMUKH, J.]