

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

WRIT PETITION NO.12602 OF 2018

SHIVAJI RAMCHANDRA ALIAS RAMBHAU DANGE
VERSUS
ANNASAHEB RAMCHANDRA ALIAS RAMBHAU DANGE AND
OTHERS

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Advocate for the Petitioners : Shri R. A. Tambe
Advocate for Respondent Nos. 1 to 4 : Shri S.S.
Chapalgaonkar

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CORAM : RAVINDRA V. GHUGE, J.

DATED : 19th MARCH, 2019.

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PER COURT :

1. Despite service of court notice, respondent Nos. 5 and 6 have not caused an appearance in this matter.

2. The petitioner plaintiff is aggrieved by the impugned order dated 11/10/2018 passed by the Trial Court, by which, application Exhibit 12, filed by defendant Nos. 1 to 4, seeking rejection of the plaint in RCS No.261/2018 by invoking Order VII Rule 11 of the Code of Civil Procedure, is partly allowed and the plaintiff has been directed to correct the valuation of the suit properties. Grievance is that the Trial Court has

invoked Section 6(v) of the Maharashtra Court Fees Act and has directed the plaintiff to cause valuation of the suit as per the market price of the house properties.

3. The learned Advocate for the petitioner makes a specific statement not only on the basis of instructions, but in view of the pleadings in the plaint, that the house properties are not the suit properties. He points out from paragraph 1 of the plaint, which describes the suit properties as agricultural land. He then points out the last two sentences of paragraph 2 to indicate that the house properties are not at issue. He then clarifies from prayer Clause 9A that where the word "मिळकती" has been used, it would mean and indicate only agricultural lands and not the house properties. He further states on instructions and submits that the plaintiff is willing to amend the plaint so as to specifically exclude the house properties from the suit filed by him seeking partition and separate possession.

4. The learned Advocate for the appearing defendants submits that these defendants had moved Exhibit 12 because it

appeared that the plaintiff was likely to seek possession of the house properties. It is also submitted that even the defendants want some of the house properties to be partitioned. Though this is not set out in the written statement, the defendants can take recourse to the provisions of the Code of Civil Procedure and the civil laws for resorting to a remedy in this context, for seeking a share in the house properties.

5. The learned Advocate for the petitioner/plaintiff submits that his contentions are restricted to the properties set out in the plaint and the properties which are mentioned in application Exhibit 12.

6. The learned Advocate for the appearing defendants then submits that, in future, if the plaintiff seeks any partition or separate possession or recovery of possession of a house property, liberty may be granted to raise the issue of valuation of this suit.

7. In view of the above, this petition is partly allowed by recording the statement made by the petitioner. The

impugned order dated 11/10/2018 is quashed and set aside and application Exhibit 12 stands disposed off.

8. Needless to state, the petitioner would amend the plaint in view of the statement made. In the event, in the pending proceedings, the plaintiff introduces a prayer for partitioning or for recovery of any portion of the house properties, it would be open to the defendants to raise the issue under Order VII Rule 11(b) of the Code of Civil Procedure.

(RAVINDRA V. GHUGE, J.)

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