

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

CIVIL APPLICATION (CAC) 83 OF 2017
IN
CIVIL REVISION APPLICATION STAMP 15719 OF 2017
(Shankar Narayan Raut..vs.. Bhagwan Narayan Raut, thr LRs)

*Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's Orders.*

Court's or Judge's orders.

Mrs. R.S. Sirpurkar, counsel for applicants.
Mr. Anilkumar Thakkar, counsel for respondent 1(A),1(C),1(D), 1(E)

CORAM: ROHIT B. DEO, J.
DATE: 23th APRIL, 2019.

The defendant in a suit for declaration of ownership and declaration of possession is assailing the order dated 6.1.2017, by and under which, the trial Court rejected the application for rejection of suit on the ground that the suit property is not properly valued and appropriate stamp duty is not paid.

2 The suit is for declaration of ownership and declaration of possession. The nature of the property is in dispute. While the defendant contends that the suit property is non-agricultural land, the plaintiff contends otherwise.

3 The application seeking dismissal of the suit is rejected by the trial Court holding that since the suit is for declaration, court fee is properly paid. The trial Court

appears to have assumed that section 6(iv)(j) of the Bombay Court Fee Act (Act) would apply. The trial Court clearly fell in error. In view of the declaration of ownership, court fee shall have to be paid in accordance with the provisions of section 6(iv)(d) of the Act.

4 The aspect of valuation would depend upon the evidence brought on record. The bone of contention is whether the property is agricultural or non-agricultural. The evidence is nearly complete. In view of the matter, it would not be appropriate for this Court to make any decisive observation on the nature of the property. In the final analysis, although, section 6(iv)(d) would apply as is rightly contended by the applicant, the valuation would have to be worked out on the basis of the nature of the property, which exercise the trial Court can undertake after the evidence is recorded. This Civil Revision Application can be disposed of with the direction that after the evidence is recorded, the trial Court shall rule on the valuation of the property and direct the plaintiff to pay appropriate court fee on the basis that section 6(iv)(d) of the Act would apply.

5 Civil Revision Application is disposed of in the aforestated terms.

JUDGE