

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

WRIT PETITION NO.5717 OF 2019

(KISAN TUKARAM ADAGALE...VS.. SMT. MANKARNA SHAMRAO KANADE & OTH.)

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

Court's or Judge's orders

Shri M.M.Pimpalgaonkar, Advocate for Petitioner.

CORAM : Z.A.HAQ, J.

DATED : AUGUST 22, 2019.

Heard.

By the impugned order, the trial Court has rejected application(Exh.33) filed by the petitioner/defendant under Order VII Rule 11 of the Code of Civil Procedure. By the application (Exh.33), the defendant prayed that the plaint be rejected as the pleadings in the plaint does not show that there is any cause of action in favour of the plaintiffs and against the defendant, that the claim of the plaintiffs is barred by limitation and the plaintiffs have not valued their claim properly and the claim is undervalued.

As far as point of valuation is concerned, according to the defendant, the market value of the suit property is Rs.6,00,000/- and therefore, the plaintiffs are required to pay *ad valorem* court fees on the market value of the suit property as per Section 6(v) of the Maharashtra Court Fees Act.

In the plaint, the plaintiff has described the suit property and has referred it as 'plot' out of 0.60 HR agricultural land. It is well settled that while considering the

application under Order VII Rule 11 of the Code of Civil Procedure, the trial Court has to go by the averments in the plaint. As the suit property is shown as agricultural land, the calculation of the court fees cannot be as per Section 6(v) of the Maharashtra Court Fees Act.

The contention of the petitioner/ defendant that the plaint is liable to be rejected, as it does not show that cause of action exists in favour of the petitioner/defendant, cannot be accepted at this stage. Order VII Rule 11(a) of the Code of Civil Procedure enables the Court to reject the plaint if it does not disclose cause of action. Whether the cause of action exists in favour of the plaintiff and /or against the defendant has to be adjudicated after the trial.

Third contention that the claim of the plaintiffs is barred by limitation also cannot be considered at this stage, as it is a mixed question of facts and law and will have to be adjudicated after the parties are granted opportunity to adduce evidence.

In the above facts, I find that the trial Court has rightly rejected the application (Exh.33). It cannot be said that the impugned order suffers from any illegality or error of jurisdiction which necessitates interference by this Court in the extraordinary jurisdiction.

Hence, the petition is **dismissed**. No costs.

JUDGE