

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 3828 OF 2007

Sham s/o Devidas Sonar,
Age 34 years, Occ. Business,
R/o. Near Old Datta Mandir
Chopda, Tq. Chopda
District Jalgaon

...Petitioner
(Ori. Defendant No.1)

versus

1. Madhubala Lalitkumar Jain (Golecha)
Age 46 years, Occ. Household
R/o. Sumantai Building,
2nd floor, Datta Mandir Road,
Op. Jain Mandir, Chopda,
Tq. Chopda, District Jalgaon

2. The Secretary/Chairman,
Maharashtra State Electricity
Distribution Company Ltd.,
head Office, Prakashgarh,
Bandra (East), Mumbai

3. The Executive Engineer,
Maharashtra State Electricity
Distribution Company Ltd.
Dharangaon, Taluka Dharangaon,
District Jalgaon

4. The Assistant Engineer,
Maharashtra State Electricity
Distribution Company Ltd.,
Division -1, Chopda Division
Office: Shetkari Sangh,
Jin Compound, Chopda
Tq. Chopda, District Jalgaon

5. The Chief Officer,
Municipal Council,
Chopda, Tq. Chopda,
District Jalgaon

...Respondents
(No.1 Ori. Plaintiff, Nos. 2 to 5
Ori. Deft. 2 to 5)

.....
Mr. A. S. Kale h/f Mr. S. B. Talekar, advocate for the petitioner
Mr. R. R. Sancheti h/f Mr. R. R. Mantri, advocate for respondent No.1
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CORAM : V. K. JADHAV, J.
DATED : 21st FEBRUARY, 2020

ORAL JUDGMENT:-

1. Heard both sides.
2. The petitioner is original defendant No.1 in Regular Civil Suit No. 27 of 2007 filed by respondent No.1 herein. The petitioner has raised preliminary objection about the jurisdiction so also the valuation of the said suit. As per the order dated 30.05.2007 passed below Exh.34 in Regular Civil Suit No. 27 of 2007, the trial court has framed the preliminary issues in the following manner;-

“(i) Whether this Court has jurisdiction to try and entertain the present suit?

(ii) Whether the suit is properly valued and stamped?”
3. After having heard both the parties, the trial court, by impugned order dated 02.06.2007 decided both the issues in affirmative and held that the suit of the plaintiff is properly valued and the plaintiff has paid proper court fee stamps and the civil court has jurisdiction to try and entertain the suit. Hence, this writ petition.

4. Learned counsel for the petitioner submits that the respondent No.1-plaintiff came into possession of the suit property on the basis of agreement of sale for consideration of Rs.6,00,000/-. The respondent-plaintiff has filed an application for temporary injunction (Exh.8) and the Civil Judge, Junior Division, Chopda has directed the parties to maintain status-quo. Learned counsel submits that since the suit is based on the agreement of sale, the respondent-plaintiff ought to have paid the court fee stamps for the said amount and the trial court has no pecuniary jurisdiction to try and entertain the suit and the suit is beyond the pecuniary jurisdiction of the Court. Learned counsel submits that the trial court has not considered the relief sought by the respondent-plaintiff in its proper perspectives. The respondent-plaintiff is liable to pay the court fees in terms of the provisions of Section 6 (iv)(d) of the Maharashtra Courts Fees Act, 1959 and that the trial court has erroneously held that the respondent-plaintiff is liable to pay the court fees as if it is a suit for seeking declaratory relief.

5. Learned counsel for the respondent-plaintiff submits that the trial court has rightly passed the order. The relief as sought by the respondent-plaintiff is incapable of monetary evaluation. The respondent-plaintiff has not claimed the relief of specific performance for refund of the amount or the declaration about the title. On the strength of recital in the agreement of sale, the respondent-plaintiff has sought the declaration as to the extent of her possession over

the suit property. There is no substance in this writ petition and the writ petition is liable to be dismissed.

6. Both the counsel submit that the suit is old one and the trial court may be directed to dispose it of in expeditious manner.

7. On going through the impugned order alongwith the pleadings of the respondent-plaintiff, I find no fault in the order passed by the trial court. It is needless to say that the question of jurisdiction and the amount of court fees is required to be considered in terms of the averments made in the plaint and the said order should not be influenced by referring the plea in the written statement. Whether the respondent-plaintiff is entitled for such declaration or not that has to be decided by the trial court at the conclusion of trial, however, as per the averments made in the plaint and in terms of the said averments, the relief sought by the respondent-plaintiff is incapable of monetary evaluation. Learned judge of the trial court has, therefore, rightly held that the court has pecuniary jurisdiction to try and entertain the suit and so also about the valuation and the court fees in terms of the section 6 (iv) (d) of the Maharashtra Court Fees Act, 1959. The further proceedings of the suit are stayed in terms of the interim relief granted in terms of prayer clause "B". Thus, the trial court needs to be directed to dispose of the suit in expeditious manner. Hence, I proceed to pass the following order:-

O R D E R

- I. The writ petition is hereby dismissed.
- II. The trial court is hereby directed to dispose of the suit bearing Regular Civil Suit No. 27 of 2007, as expeditiously as possible, preferably within a period of six months after the disputed document is returned to the Court by the investigating officer.
- III. Rule stands discharged.

(V. K. JADHAV, J.)

rlj/