IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 1746 OF 2020

Ramniklal Premji Patel
Age: 65 years, Occ: Business & Agri,
R/o: 24, Shahunagar Housing Society,
Bansilalnagar, Station Road,
Aurangabad.

...PETITIONER (Ori. Defendant No.1)

V E R S U S

1) Sarang s/o Vishwasrao Jagtap,
Age: 44 years, Occ: Service,
R/o: Saivrindavan Housing Society
Itkheda, Paithan Road,
Aurangabad.
(Original Plaintiff)

2) Nath Seeds Pvt. Ltd.
Itkheda, Paithan Road, Aurangabad
Through its Director/Authorized Officer,
Shrirang s/o Shrikisan Agrawal
(Original Defendant No.2)

3) M/s. R.P. Patel and Sons
A partnership firm through its partner
Praful s/o Premji Patel
Age: 55 years, Occu: Business,
R/o; 24, Shahunagar Housing Society,
Bansilalnagar, Station Road,
Aurangabad.
(Original Defendant No.3)

...RESPONDENTS

...
Mr. A.D.Kasliwal, learned Advocate for Petitioner
Mr. M.R. Sonawane, learned Advocate for Respondents No.1
...

CORAM : N.J. JAMADAR, J.

Reserved on : 01.04.2021
Pronounced on : 04.05.2021

JUDGMENT :

1. Rule. Rule made returnable forthwith and with the consent of the counsel for the parties, heard finally at the stage of admission.

2. In this petition the petitioner-original defendant No. 1 takes exception to an order dated 20th December, 2019, passed by the learned 2nd Jt. Civil Judge, Senior Division, Aurangabad, whereby, application (Exh. 76) preferred by the petitioner-defendant No.1 principally for the correction in the valuation of the suit claim and the consequent payment of the Court fees by the respondent No. 1-plaintiff in Special Civil Suit No. 1376 of 2012, came to be rejected.

3. Shorn of superfluities, the background facts leading to this petition can be stated as under :-

a) Respondent No. 1-plaintiff herein, instituted a suit for declaration of title over the land, ad-measuring 13 Gunthas out of Gut No. 49, situated at Itkheda, Taluka & District Aurangabad and for recovery of possession of 10 Gunthas land (suit property) from petitioner-defendant No. 1 and respondent Nos. 2 and 3, with an assertion that respondent No. 2, Nath Seeds Private Limited, had sold the suit property to the plaintiff for a valuable consideration of Rs. 4,98,000/- under the registered sale deed dated 12th January, 2011. The petitioner-Defendant No. 1, by taking undue advantage of the fact that the suit property is open, committed encroachment to the extent of 10 Are land by dumping waste material. The fact of encroachment was revealed in the measurement carried out by the T.I.L.R. on 4th February, 2011. The plaintiff called upon defendant No. 1 to remove the encroachment by addressing legal notices on 22nd March, 2011 and 11th April, 2011. The defendant No. 1 paid no heed. Instead, defendant No. 1 threatened to erect construction over the suit property and to dispossess the plaintiff of the balance 3 Gunthas land. Hence, the plaintiff instituted the suit for declaration of ownership, removal of encroachment and recovery of possession of 10 Gunthas land.

b) The petitioner-defendant No. 1 resisted the suit by filing Written Statement. The Claim of plaintiff of having acquired ownership over the suit land was contested. It was denied that defendant No. 1 committed encroachment over the suit land. It was contended that the plaintiff has instituted the suit in collusion with respondent No. 2-defendant No. 2 therein, with an oblique motive to usurp adjoining land bearing Gut No. 50, owned by defendant No. 1.

c) During the pendency of the suit, the petitioner preferred an application (Exh. 76) asserting that the value of the suit property, assessed at Rs. 5,00,000/-, was without any basis. In fact, as per sale deed dated 12.1.2011, the market value of the suit property ad-measuring 13 Gunthas is shown 54,90,000/-. If the claim of the plaintiff that the defendant No. 1 has committed encroachment over 10 Gunthas land is taken at par, the value of the suit property qua the prayer for recovery of possession would be Rs. 43,00,000/-. The plaintiff has deliberately undervalued the suit claim. It is, therefore, necessary to direct the plaintiff to correct the valuation, pay the deficit Court fees thereon and re-register the suit as a Special Civil Suit.

d) Respondent No. 1-plaintiff resisted the application. It was asserted that defendant No. 1 has resorted to dilatory tactics in preferring one application after another, so as to delay the disposal of the suit. In fact, the instant suit was initially registered as Special Civil Suit. However, due to enhancement in the pecuniary jurisdiction of the Civil Judge, Junior Division, the suit came to be re-numbered as Regular Civil Suit. Eventually, the suit came to be transferred to the Civil Judge, Senior Division, for trial. Thus, there is no substance in the prayer of re-registration of the suit, nor the objection to the valuation of the suit claim is tenable.

e) The learned Civil Judge, Senior Division, after appraisal of the rival contentions and submissions canvassed across the bar, was persuaded to hold that the subject matter of the suit being the agricultural land, assessable to revenue, the Court fees was required to be paid in accordance with the provisions contained in Section 6 (v) of the Maharashtra Court Fees Act. Thus computed, in the light of assessment of 0.48 paisa, the value of the suit claim and the Court fees paid thereon, cannot be said to be inadequate. Holding thus, the application came to be rejected.

f) Being aggrieved by and dis-satisfied with the impugned order, the petitioner-defendant No. 1 is before this Court.

4. I have heard Mr. A.D. Kasliwal, the learned counsel for the Petitioner and Mr. M.R. Sonawane, the learned counsel for Respondent No. 1 at some length. With the assistance of the counsels for the parties, I have also perused the material on record.

5. Mr. Kasliwal, learned counsel for the petitioner would urge that the learned Civil Judge Senior Division has approached the issue from a wrong perceptive. Laying emphasis on the copy of the sale deed dated, 12^{th} January, 2011, under which plaintiff came to have acquired

the suit property, it was strenuously urged that the learned Civil Judge, Senior Division, committed an error in not taking into account the market value of the suit property as shown in the said sale deed. Evidently, in the said sale deed though the consideration is shown Rs. 4,98,000/- yet, the market value of the suit property is shown Rs. 54,90,000/- and the stamp duty is paid thereon. Mr. Kasliwal, learned counsel for the petitioner further urged that the learned Civil Judge, Senior Division, also erred in not properly appreciating the averments in the plaint as regards the valuation of the suit claim. In the plaint, the plaintiff specifically averred that the suit property is valued at Rs. 5,00,000/- as per Section 6 (iv) (d) of the Court Fees Act. Thus, it was not open to the learned Civil Judge Senior Division to take recourse to the provisions contained in Section 6 (v) of the Court Fees Act, submitted Mr. Kasliwal.

6. In contrast, Mr. Sonawane, learned counsel for respondent No. 1 would submit that defendant No.1 had not raised the ground of undervaluation of the suit claim in the Written Statement. In any event, in view of the indisputable position that the suit property is an agricultural land, assessable to revenue, the provisions contained in Section 6 (v) governed the aspect of Court fees, submitted Mr. Sonawane, the learned counsel for respondent No. 1.

7. Evidently, the edifice of the petitioner's claim is rested on the sale deed dated 12th January, 2011. There is no quarrel over the fact that consideration therein is shown Rs. 4,98,000/-. The market value of the suit property is shown Rs. 54,90,000/-. Indisputably, plaintiff has valued the suit property at Rs. 5,00,000/- and professed to pay the Court fees under Section 6 (iv) (d), which governs the payment of Court fees in a suit for declaration in respect of the immovable property.

8. In the backdrop of the aforesaid un-controverted facts, the submission on behalf of petitioner is required to be appreciated. The thrust of submission on behalf of the petitioner was that the suit claim ought to have been valued on the basis of market value of the suit property. The learned Civil Judge, Senior Division, repelled the contention on the ground that the value of the suit property for the purpose of Court fees depends upon the nature of the property. In view of the provisions contained in Section 6 (v) of the Court Fees Act, in a suit for possession for agricultural land, assessable to revenue, the value of the subject matter of the suit was to be determined on the basis of the survey assessment.

9. Mr. Kasliwal, the learned counsel for petitioner urged that the aforesaid view of the Trial Court is not legally sustainable. To lend

support to this submission, Mr. Kasliwal, the learned counsel for petitioner-defendant No. 1, placed reliance on the judgments of this Court in the case of **Sau. Asha Sopan Maithane Vs. Ramkrushna Punjaji Wanare & Ors – 2010 (6) ALL MR 673** and **Mahesh s/o. Apparao Suryawanshi Vs.Tulsabai w/o. Bhagwanrao Suryawanshi & Ors – 2005 (3) ALL MR 804**.

10. In the case of **Sau Asha Maithane** (supra), the learned Single Judge of this Court has explained the different terms used by the legislature for the purpose of computation of the Court fees namely “value”, “value of property” and “market value” in different provisions. Those terms were not used interchangeably. The observations in para 12 are material and hence extracted below :

> “12. The provisions of Section 6 which deal with computation of fees payable in certain suits, the words used are "value of property" and "market value". For the present purposes, it needs to be noticed that Section 6(v) prescribes Court fee in suits for possession of land, house and gardens. This clause (v) itself shows that such court fee is payable according to the value of the subject matter. It also stipulates that in case of houses or gardens, its market value is deemed to be value of subject matter and where subject matter is land, a sum equal to 40 times or 80 times the survey assessment, is deemed to be its value. The Scheme, therefore, is apparent and Legislature has specifically used the word market value whenever it wanted to employ that word and wanted the plaintiff to pay court fee on such market value. S.6(iii) can also be referred to for this purpose and it prescribes court fee on suits for other moveable properties having market value. Its reading shows that court fee is to be paid on its market value that too at the date of presentation of Suit. Hence, the Legislature has given different meaning to word "value" and "market value" and has not used one or the other to imply same

> thing. In case of agricultural land, the value is deemed to be at either 40 times or 80 times its survey assessment. Hence, language of Section 6(iv)(ha) assumes importance & it does not use the word "market value" but it only uses the word value of the property. It is not in dispute that sale deed dated 25.06.1998 is for Rs.4,60,000/- and accordingly the petitioner - plaintiff valued his suit at Rs.4,60,000/-. He is not party to that sale deed."
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> (emphasis supplied)

The aforesaid pronouncement does not advance the cause of the submission on behalf of petitioner. This Court, in terms, observed that in case of agricultural land the value is deemed to be at either 40 times or 80 times of its survey assessment.

11. The judgment in the case of **Mahesh** (supra) is also of little assistance to the petitioner as in the said case, the Court categorically observed that it was necessary to ascertain the market value of the subject land on the basis that it was a non agricultural land. Evidently, in the said case the subject matter of the suit was non agricultural land.

12. At this juncture, it may be apposite to note the provisions contained in Section 6 (iv) (d) and (v) of the Court Fees Act.

> "6. Computation of fees payable in certain suits :
> The amount of fee payable under this Act in the suits next hereinafter mentioned shall be computed as follows :

6. (iv) (d) - for ownership etc. of immovable property, etc. :-

In suits for declaration in respect of ownership, or nature of tenancy, title, tenure, right, lease, freedom or exemption from, or non-liability to, attachment with or without sale or other attributes, of immovable property, such as a declaration that certain land is personal property of the Ruler of any former Indian State or public trust property or property of any class or community one-fourth of ad valorem fee leviable for a suit for possession on the basis of title of the subject-matter, subject to a minimum fee of [one hundred rupees].

Provided that if the question is of attachment with or without sale the amount of fee shall be the ad valorem fee according to the value of the property sought to be protected from attachment with or without sale or the fee of [sixty rupees], whichever is less:

Provided further that, whenever the defendant is or claims under or through a limited owner, the amount of fee shall be [one third] of such ad valorem fee, subject to the minimum fee specified above:

Provided also that, in any of the cases falling under this clause except its first proviso, when in addition any consequential relief other than possession is sought the amount of fee shall be one-half of ad valorem fee and when the consequential reliefs also sought include a relief for possession the amount of fee shall be the full ad valorem fee; ”

6. (v) - for possession of lands, houses and gardens :-

In suits for the possession of land, houses and gardens according to the value of the subject-matter; and such value shall be deemed to be, where the subject-matter is a house or garden

> according to the market value of the house or garden and where the subject-matter is land, and -
>
> (a) where the land is held on settlement for a period not exceeding thirty years and pays the full assessment to Government a sum equal to [forty times] the survey assessment;
>
> (b) where the land is held on a permanent settlement, or on a settlement for any period exceeding thirty years, and pays the full assessment to Government a sum equal to [eighty times] the survey assessment; and
>
> (c) where the whole or any part of the annual survey assessment is remitted a sum computed under sub-paragraph (a) or sub-paragraph (a) as the case may be, in addition to [eighty times] the assessment or, the portion of assessment, so remitted;".

13. From a conjoint reading of the aforesaid provisions, it becomes abundantly clear that in a suit for declaration of title in respect of immovable property simplicitor, the prescribed Court fees is 1/4th of advalurem fee leviable for suit for possession on the basis of title, subject to minimum fees of 100/- rupees. The Court fees for a suit for possession, in turn, is prescribed by Clause (v). It provides that the Court fees in suit for possession of land, houses and garden shall be according to the value of the subject matter. A distinction is, however, made in determination of the value of the subject matter on the basis of nature of the property. If it is a house or a garden, the value has to be

determined according to the market value thereof. However, where the subject matter is land, assessable to revenue, its value is deemed to be equal to 40 times or 80 times of the survey of assessment, depending upon the nature of the settlement.

14. It would be contextually relevant to note that under Section 3 of the Suits Valuation Act, 1887, the State Government is empowered to make rules for determining the value for land for the purposes of jurisdiction. Rule 2 of the Maharashtra Suits Valuation (Determination of Value of Land for Jurisdictional Purposes) Rules, 1983, provides that in suits for possession of property under Section 6 (v) of the Court Fees Act, for the purpose of jurisdiction, the value of property shall be determined as follows :

> “2. (a) where the subject mater is a house or garden – according to the market value of the house; or garden, as the case may be;
>
> (b) where the subject-matter is land – a sum equal to two hundred times of the assessment payable in respect of the land.”

15. Here again a distinction is made based on the nature of the immovable property. If the provisions of the Court Fees Act and the Suit Valuation Act and Rules are read in juxtaposition, it becomes evident that where the subject matter of the suit for possession is the

agricultural land, assessable to revenue, for the purpose of determination of value of the property, what is material is its survey assessment and not market value.

16. An useful reference, in this context, can be made to the judgment of this Court in the case of **Raosaheb s/o. Ramrao Shinde and Anr. Vs. Sahebrao s/o. Ramrao Shinde and Anr. 2010 (2) MAH L.J. 273**, on which reliance was placed by the learned counsel for respondent No. 1. In the said case, after adverting to the provisions contained in Section 6 (iv) (d) and (v) of the Act, 1959, extracted above, the following observations were made :

> "7. It can thus be seen that when in a suit basically for declaration in respect of ownership, any consequential relief including that of possession is sought, the said suit would be governed by Section 6(iv)(d) of the said Act. However, it can be seen that when a suit is for possession of land, where the land is held on a permanent settlement, or on a settlement for any period exceeding thirty years, and pays the full assessment to Government, it shall be governed by Section 6(v) of the said Act."

17. The learned Civil Judge, Senior Division, thus does not seem to have committed any error in resorting to the provisions contained in Section 6 (v) of the Court Fees Act, 1959. For the foregoing reasons, no interference is warranted in exercise of writ jurisdiction. The petition,

thus, deserves to be dismissed. Hence, the following order :

ORDER

The petition stands dismissed.

Rule discharged.

No costs.

(N.J. JAMADAR)
JUDGE

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