

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

WRIT PETITION NO.7514 OF 2020

1. Kartar s/o. Gopaldas Pamnani
2. Suresh s/o. Radhyeshyam Pamnani ..Petitioners

Vs.

1. Ahmednagar Municipal Corporation,
Ahmednagar, Through its Commissioner
2. The Town Planning Officer,
Ahmednagar, in front of T.V.Centre,
Savadi, Ahmednagar
3. Sau. Uma Jayantilal Rathod
4. Sau. Vaishali Suresh Rathod
5. Parbatibai Sadashiv Rathod ..Respondents

Mr.P.B.Salunke, Advocate for petitioners

Mr.P.B.Shirsath, Advocate for respondent nos.3 to 5

CORAM : R.G. AVACHAT, J.

DATE : JANUARY 15, 2021

ORDER :-

The challenge in this Writ Petition is to the order dated 24.09.2019 passed by learned 8th Joint Civil Judge, Senior Division, Ahmednagar, below Exh.1 in suit being Regular Civil Suit No.176 of 2015. By the impugned order, learned Judge has directed plaintiffs/petitioners herein to value the suit on the market value of the property i.e. Rs.57,40,560/-.

2. Learned counsel for the petitioners would submit that the petitioners have not sought any relief against respondent nos.3 to 5 nor did they seek relief of possession of the constructed portion. Learned counsel took me through the averments in the plaint and the prayer clause/clauses therein. Learned counsel, however, came around to submit that the petitioners/plaintiffs would pay the court fee, as has been calculated in paragraph 6 of the impugned order in respect of open space ad-measuring 1250 sq. ft., possession of which has been prayed for in the suit. Learned counsel, therefore, urged for setting aside the impugned order.

3. Learned counsel for respondent nos.3 to 5, would, on the other hand, submit that the plaint has to be read in its entirety. He took me through paragraph 4 of the plaint to submit that the petitioners/plaintiffs have urged for demolition of the construction allegedly made by respondent nos.3 to 5 on the road. According to learned counsel, its a relief claimed against these respondents. The petitioners/plaintiffs have, therefore, to value the suit on the basis of the market value of

the constructed portion. Learned counsel relied on the measurement map indicating that the construction stands on the disputed land. He submits that the market value of the constructed portion comes to Rs.40,75,400/-.

4. Reading of the plaint would indicate that the petitioners/plaintiffs have not sought for possession of the alleged constructed portion nor do they claim title thereto (construction). There is, therefore, no question of the petitioners/plaintiffs to pay the court fee on the basis of its market value. What has been averred in paragraph 4 of the plaint is that removal of the constructed portion has been sought for. Said averment is in the nature of mandatory injunction. Needless to mention that there is a quite distinction between a suit for mandatory injunction and a suit for possession so far as regards payment of court fee is concerned. Since the petitioners/plaintiffs have not sought for possession of the constructed portion, the trial court was not justified in directing the petitioners/plaintiffs to pay court fee on the

market value thereof, which comes to Rs.40,75,400/-. To this extent, the order dated 24.09.2019 is required to be set aside.

5. In view of the above, Writ Petition is partly allowed. The order dated 24.09.2019 directing the petitioners/plaintiffs to pay the court fee on the market value of the property i.e. Rs.57,40,560/-, is set aside.

6. However, in view of the statement made by the petitioners/plaintiffs, they shall pay court fee on the value of the suit land ad-measuring 1250 sq. ft., as has been calculated in paragraph 6 of the impugned order i.e. the plaintiffs to value the suit at Rs.16,65,160/- and pay necessary court fee thereon *minus* the court fee already paid.

7. The petition stands disposed of accordingly.

[R.G. AVACHAT, J.]

KBP