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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.9813 OF 2021

Aasiya Abdul Salam Pinjari

PETITIONER

VERSUS

Shafique Vazir Patel and Others

RESPONDENTS

.....

Mr. Punit S. Mehta, Advocate for the petitioner

Mr. S. C. Arora, Advocate for respondents No.1 to 3

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[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 4th JULY, 2022

ORDER :

1. The petitioner is aggrieved by the order dated 28th June, 2021 passed by the learned Second Joint Civil Judge, Senior Division, Aurangabad below Exhibit-1 in Special Civil Suit No. 153 of 2012, thereby framing preliminary issue regarding jurisdiction.

2. The plaintiff – petitioner has filed said suit for possession and injunction against the defendants – respondents in respect of the property which comprises of a portion of Gut No. 59 at Kasabkheda, Taluka – Khultabad, District – Aurangabad, admeasuring 555 square feet. The plaintiff has treated the suit

property as commercial and has valued the suit at Rs.6,00,000/- and has paid court fees of Rs.16,430/- while instituting the suit in the Court of Civil Judge, Senior Division Aurangabad.

3. The defendants resisted the suit, by filling written statement. Thereafter, the defendants filed application at Exhibit-15 raising a preliminary objection in respect of jurisdiction and maintainability of the suit urging the Trial Court to frame preliminary issue as to the jurisdiction, contending that the plaintiff has overvalued the suit only so as to bring it within the jurisdiction of Civil Judge, Senior Division. The plaintiff resisted the said application, by filing a detail say. The Trial Court has allowed the application, this order is impugned in the present petition.

4. Heard learned advocate for the petitioner and learned advocate for the respondents.

5. Learned advocate for the petitioner submits that in view of the deletion of section 9-A of the Civil Procedure Code, preliminary issue cannot be framed by the Trial Court. The Trial Court, ought to have initiated an inquiry in terms of sections 6 and 8 of the Maharashtra Court Fees Act to ascertain whether the suit is properly valued or not. By relying on section 16 of the

Suits Valuation Act, he submits that the suit was valued as per the market value and proper court fee is paid. According to him, no prejudice is likely to be caused to the defendants if the suit is tried before the Civil Judge, Senior Division.

6. Learned advocate for the respondents, on the other hand, supported the impugned order. He submits that merely by making a statement that the suit land is of commercial use, the plaintiff has proceeded to overvalue the suit, so as to bring it within the jurisdiction of the Court of Civil Judge, Senior Division. He further submits that the land has to be assessed on the basis of land revenue. By relying on Order XIV, Rule 2 of the Code of Civil Procedure, he states that the Trial Court is empowered to frame preliminary issue in respect of jurisdiction. In support of his submissions, he relied on ***"Nusli Veville Wadia V/s Ivory Properties and Others" (2020) 6 SCC 557.***

7. By the impugned order, the Trial Court has directed to frame preliminary issue regarding the jurisdiction, as follows:

"Whether the suit is overvalued which affecting the territorial jurisdiction of this Court?"

8. Perusal of the plaint, particularly the averments made in the plaint, do not, *prima facie*, justify the valuation made by the

plaintiff, as the suit land is an agricultural land situated in a village in Khultabad Taluka of Aurangabad District. Except bare statement, there is nothing on record to substantiate the excess valuation done by the plaintiff.

9. The Trial Court has properly appreciated the contentions of both the sides and has rightly held that the suit property is situated at Mauje Kasabkheda, Taluka – Khultabad, District – Aurangabad, therefore, the objection regarding pecuniary jurisdiction may affect the territorial jurisdiction of the Trial Court and, therefore, the Trial Court thought it fit to frame the preliminary issue.

10. Order XIV, Rule 2 of the Code of Civil Procedure provides that issues of law as to (a) the jurisdiction of the Court or (b) the bar to suit created by any law for the time being in force, are to be framed and decided as preliminary issues. The Hon'ble Apex Court in "**Nusli Neville Wadia**" (*supra*), has considered the comparative scope of Order XIV, Rule 2 of the Code of Civil Procedure and section 9-A of the CPC. The ratio of the above decision supports the case of the defendants.

11. In the light of the aforesaid ratio and the facts of the present case, the Trial Court is justified in framing the

preliminary issue. There appears no substance in the challenge raised by the petitioner in the present writ petition. The writ petition, being devoid of any substance, is dismissed. No costs. The stay granted earlier, stands vacated. Trial expedited.

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[NITIN B. SURYAWANSHI]
JUDGE