

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

WRIT PETITION NO. 8225 OF 2020

Sardar Gurpreetsingh Gurnamsingh Pander
Age : 50 Years, Occ.: Business,
R/o. : Sryakiran Appt Flat No.1,
Near Shrimya Hotel Bansilal Nagar
Station Road, Aurangabad.

... PETITIONER
(Original Defendant No. 3)

VERSUS

- 1) Sangeeta Bhagchand Bhavle
Age : 43 years, Occ : Household
- 2) Florabai Bhagchand Bhavle
Age : 74 years, Occ : Household
- 3) Premlata Bhagchand Bhavle
Age : 54 years, Occ : Household
- 4) Vijay Bhagchand Bhavle
Age : 49 years, Occ : Driver
- 5) Ajay Bhagchand Bhavle
Age : 46 years, Occ : Driver
- 6) Sanjay Bhagchand Bhavle
Age : 44 years, Occ : Business

(All respondents No. 1 to 6 R/o. Dhangarwada
Near Jalan Nagar Aurangabad)
(Respondent No. 1 is holding GPA
for Respondent No. 2 to 6)

... RESPONDENTS
(Original :Plaintiff No. 1 to 6)

....
Shri. Ajeet D. Kasliwal, Advocate for the petitioner
Shri. P. N. Surwase, Advocate for respondent Nos. 1 to 6
....

CORAM : M. G. SEWLIKAR, J.

RESERVED ON : 22nd July, 2021
PRONOUNCED ON : 3rd January, 2022

JUDGMENT :-

Rule. Rule made returnable forthwith. With the consent of the parties taken up for final hearing at the admission stage.

2. This writ petition is preferred by the petitioner, being aggrieved by the judgment and order passed by the learned 2nd C.J.S.D., Aurangabad dated 06.10.2020 below Exhibit-26 in RCS No.462/2016 whereby application for rejection of the plaint came to be rejected.

3. Facts giving rise to this petition are that plaintiffs have filed RCS No.462/2016 in the Court of C.J.S.D., Aurangabad alleging therein that the suit land ad-measuring 450 feet (East - West) out of survey no.22/2, CTS No.18823 to 18835 ad-measuring 2 acres 2 gunthas has come to the share of Bhagchand. It is alleged that one Harnam Singh was the original owner in possession of the land to the extent of 2 acres 2 gunthas. In this property one Manjulabai had started brick kiln. In the year 1952, original owner Harnam Singh had constructed a bungalow in this land and there was a brick kiln also. Harnam Singh used to sell bricks and Manjulabai and the labourers used to prepare the bricks. It is further alleged that in the year 1971 Harnam Singh

sold the land to the extent of 1 acre from the aforesaid 2 acres 2 gunthas to Manjulabai for Rs.3,000/-. In the year 1975, remaining 1 acre land was sold by the said Harnam Singh to Manjulabai for Rs.10,000/- and 2 gunthas of land was donated by him to other persons. In the year 1976, Harnam Singh died and brick kiln was demolished. Manjulabai became the absolute owner of the said 2 acres land.

4. Manjulabai had two daughters and two sons. Names of son were Bhagchand and Ramchand. Bhagchand was suffering from Schizophrenia and Ramchand was a liquor addict. Therefore, in the year 1991-1992, Manjulabai partitioned 2 acres land between Bhagchand and Ramchand. The suit property ad-measuring 450x80 feet came to the share of Bhagchand and thereafter he partitioned this land amongst his family members. In this manner, the plaintiff respondent nos.1 to 6 became the owners of the suit property. Defendants are trying to sell the suit property posing themselves as the owners and therefore plaintiffs have filed this suit. Plaintiffs have valued the suit property @ Rs.13,000/- (i.e. Rs.3,000/- in respect of the first property and Rs.10,000/- in respect of the sale of the property sold later on) and since respondent nos.1 to 6/plaintiffs are claiming 50% of this land, court fee is paid accordingly.

5. Defendant no.3 filed his written statement.

6. After filing of the written statement defendant no.3 filed an application below Exhibit-26 for rejection of plaint under Order 7 Rule 11 of the Code of Civil Procedure on the ground that the respondent nos.1 to 6 / original plaintiffs did not value the suit property on the basis of market value and did not pay the court fees treating the said property as non agricultural land. This application came to be rejected. Learned trial Court held that the suit property is an agricultural land. No document is placed on record to show that the suit property has been converted into non agricultural use. The learned trial Court invoked provisions of Section 6 (v) of Maharashtra Court Fees Act for computation of court fees.

7. I have heard learned counsel Shri Kasliwal for the petitioner and Shri Surwase learned counsel for the respondents.

8. Shri Kasliwal submitted that respondent nos.1 to 6 have alleged in the plaint that there was a brick kiln in the land to the extent of 2 acres 2 gunthas when Harnam Singh was the owner. This brick kiln was being operated by Manjulabai, the mother of Bhagchand and Ramchand. He further submitted that there was a bungalow in the suit land. This clearly shows that the suit land was put to non agricultural use. He further submitted that in terms of Section 42-A of Maharashtra Land Revenue Code, when any

agricultural land is included in development plan no permission from Collector is required for conversion. He submitted that despite giving gut number to the lands, record in respect of 7/12 extract and record in respect of survey numbers were maintained. He produced an abstract to show that the procedure of maintaining the record of this land in the 7/12 extract is stopped. He submitted that all these circumstances show that it is a non agricultural land and the court fee ought to have been paid treating the said land as non agricultural land. He placed reliance on the case of **State of U.P V/s. Nandkumar Aggarwal and Ors.; AIR 1998 SUPREME COURT 473.**

9. Learned counsel Shri Surwase submitted that no record is produced to show that the suit property was converted to non agricultural use. Unless there is evidence to indicate that it was converted to non agricultural use, suit property cannot be valued treating it as non agricultural land. It will have to be computed treating it as an agricultural land. He further submitted that no rules in this regard have been framed and therefore computation will have to be made treating the suit property as agricultural land. For this purpose he placed reliance on the order passed by this Court in case of **Shri Sudhir N. Kothari and Anr. V/s. Shri Vaghu Tatyaba Padwal and Ors. (Civil Revision Application No.446 of 2012).**

10. A short question involved in this petition i.e. whether the suit

property can be treated as an agricultural land or non agricultural land for computation of court fees.

11. Admittedly, in the case at hand, no record is produced to show that the suit property was converted to non agricultural use. However, pleadings of the plaintiffs themselves show that predecessor in title of the plaintiffs and Manjulabai had put the property ad-measuring 2 acres 2 gunthas to non agricultural use. It is pleaded in the plaint that original owner Harnam Singh had constructed a bungalow in the suit property. He had permitted Manjulabai to start brick kiln in the suit property. These pleadings show that land to the extent of 2 acres 2 gunthas was converted to non agricultural use. This view of mine is fortified by the observations made by the Hon'ble Apex Court in the case of **State of U.P V/s. Nandkumar Aggarwal** cited (supra), which are as under:

"6. In the master plan the area in question is no doubt shown as agriculture. If we refer to the Schedule mentioned in the definition of urban agglomeration it could be seen that area in question falls within urban agglomeration as it is situated within the peripheral area of the Municipal Corporation of Lucknow (Lucknow Nagar Mahapalika). The land in question will not be urban land if though situated within the limits of an urban agglomeration, it is mainly used for the purpose of agriculture. Operating of a Bhatta cannot certainly be an agriculture purpose, Mr. Rohtagi, learned counsel for the 1st respondent submitted that Explanation to clause (o) shows as what is not

included in agriculture and since Bhatta is not one of the entries therein it would mean that operating Bhatta would be an agriculture purpose. We do not find any substance in the submission. It is correct that the land in question is entered in the revenue record but at the same time the record shows that the land is being used for Bhatta. The foremost question is; if the land in question though agricultural was being mainly used for the purpose of agriculture on the appointed day? Seeing the definitions as set out above and the affidavit of the 1st respondent dated August 13, 1976 the answer is obvious that the land in question is not being mainly used for the purpose of agriculture. Agriculture under the explanation to clause (o) has limited meaning. It includes horticulture but does not include cultivation of every type of vegetation or rearing of animals or birds. That apart to hold land is mainly used for the purpose of agriculture. Agriculture under the explanation to clause (o) has limited meaning. It includes horticulture but does not include cultivation of every type of vegetation or rearing of animals or birds. That apart to hold that land is mainly used for the purpose of agriculture it is not enough even if the land is entered in the revenue records before the appointed day used for the purpose of agriculture or even if so entered the master plan gives purpose of the land other than agriculture. In the present case though (B) and (C) to the explanation are satisfied but (A) is not as the purpose to which the land, though agriculture and so entered in the revenue records, was being used for running of brick-kiln. High Court was not, therefore, correct in holding that the land was being mainly used for the purpose of agriculture merely on the strength of the purpose in master plan which is specified as agriculture (Krishi Bhumi) and that the land is entered in the revenue records. High Court has wrongly applied

Explanation B to clause (o) of Section 2 of the Act. Simply because land is entered in the revenue record would not mean that it is being used mainly for the purpose of agriculture. Here the land is mainly for the purpose of brick kiln business of the 1st respondent. It is not material if a small portion of the land was being used for the purpose of agriculture as well."

12. From this authoritative pronouncement of the Hon'ble Apex Court, it is evident that when land is being used mainly for brick kiln it cannot be said that it is agricultural land. It has been put to non agricultural use. In the case at hand, not only brick kiln was constructed but also a bungalow was constructed in the land owned by Harnam Singh the predecessor in title of the plaintiffs and their mother Manjulabai. Therefore, I find much substance in the arguments advanced by learned counsel Shri Kasliwal that the suit property was put to non agricultural use. When the land is put to non agricultural use, court fees will have to be computed treating it as non agricultural land.

13. In the case of **Shri Sudhir N. Kothari and Anr.** cited (supra), it has been observed as under:

*"13. Mr. Anturkar relied upon the decision of **Shantabai's** case (supra) and in particular paragraphs-5 and 6 thereof. In that case the plaintiff had instituted the suit for possession of the agricultural land. He had paid the court fee stamp of a value equal to twenty times the land revenue. He had valued for the purpose of jurisdiction Rs.9000/- which,*

*according to him, was the market value of the land. The defendant therein raised an objection on the ground that the valuation so far as jurisdiction was concerned, was not proper. According to the defendants the valuation for the purpose of jurisdiction should be similar to that of the valuation for the purposes of the court fee stamp. In para-4 of the report, the Court specifically recorded that the State Government did not make Rules for the purpose of determining the value of land for the purpose of jurisdiction. The decision relied upon by Mr. Anturkar was rendered on 16.1.1970 and the Rules came into effect w.e.f. 1.1.1984. In view thereof, reliance placed by Mr. Anturkar on **Shantabai's** case does not advance the case of defendant Nos. 1 and 2."*

This authority has no application to the facts of the instant case, because in terms of this authority it is clear that rules have been framed w.e.f. 01.01.1984.

14. Court fee will have to be computed in terms of Section 6 (iv) (d) of the Maharashtra Court Fees Act. Section 6 (iv) (d) reads as under:

"Section 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 immoveable 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;”

15. The trial Court has held in the suit for declaration of ownership and possession that court fee will have to be paid treating it as an agricultural land in terms of Section 6 (v) of Maharashtra Court Fees Act. Learned trial Court failed to consider the pleadings of the plaintiffs that the original owner Harnam Singh had already converted the property to non agricultural use by building a bungalow and by constructing a brick kiln. Therefore, the trial Court has committed error in holding that the suit property is an agricultural land. Therefore, interference in the order of the learned trial Court is called for. Hence the following order is passed:

ORDER

I) Writ petition is allowed.

- II) Impugned order dated 06.10.2020 passed by Jt.C.J.S.D. in RCS No.462/2016 is set aside.
- III) Application under Exhibit-26 is allowed.
- IV) Court fee be paid in terms of Section 6 (iv) (d) of Maharashtra Court Fees Act treating the suit property as non agricultural land.
- V) Plaintiffs to pay the Court fee as aforesaid within the time fixed by the trial Court.
- VI) If the Court fee is not paid within the time fixed by the trial Court or within the time extended by the trial Court, consequences under Order 7 Rule 11 of the Code of Civil Procedure shall follow.
- VII) With these directions rule is made absolute in above terms.

[M.G. SEWLIKAR, J.]