

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

WRIT PETITION NO. 2066 OF 2023

Lala Bhanudas Dhumal and others .. Petitioners

Versus

Madhukar Sawala Bhitade and another .. Respondents

Shri Vijay P. Latange, Advocate for the Petitioners.

CORAM : SHARMILA U. DESHMUKH, J.

DATE : 21ST FEBRUARY, 2023.

FINAL ORDER :

. Heard.

2. By this petition the challenge is to the order dated 07th December, 2022 thereby rejecting the petitioners' application for ascertainment of the valuation of the suit property and to direct the plaintiff to pay the deficit court fees.

3. R.C.S. No. 237 of 2014 was instituted by the plaintiffs/respondents for recovery of vacant possession of the encroached portion. It is the case of the plaintiffs that the petitioners have encroached upon the agricultural land of the plaintiffs and have constructed structures on the said property. The relief that is claimed in the plaint is that the encroachment be removed and vacant possession of the agricultural land be handed over to the plaintiffs. The Court fees has been paid by

valuing the same as per Section 6 of the Maharashtra Court Fees Act, as the plaintiff sought possession of the agricultural land. Learned counsel for the petitioners submits that it is not disputed that the houses of the petitioners are constructed over the suit property and as such valuation has to be done by taking into consideration the value of the structures which are constructed.

4. At the outset this Court to be mindful of the fact that purpose of the Court Fees Act is collection of revenue for the State and not to arm a contesting party/defendant with the weapon of technicality. With this background, the averments in the plaint are required to be perused. The plaintiffs are seeking removal of the encroachment and vacant possession of the agricultural land, which is described in the prayer clause 'A' of the plaint. The plaintiffs are not claiming any ownership in respect of the house property and are not seeking recovery of possession of the house property and on the contrary the structures are construed as an encroachment by the plaintiffs and direction has been sought to remove the encroachment.

5. Considering averments which are made in the plaint and the written statement in which it is not disputed that the suit land is an agricultural land, there is no infirmity in the valuation of the plaint and appropriate court fees has been paid as the possession is sought of vacant land, which is an agricultural land. The findings of the Trial Court that the court fees which is

required to be paid as per 200 times of assessment value cannot be faulted with.

6. For the reasons above, there is no merit in the writ petition. Writ petition stands dismissed. No costs.

[SHARMILA U. DESHMUKH, J.]

bsb/Feb. 23