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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.5341 OF 2021

Omprakash Champalal Ostwal and Others PETITIONERS

VERSUS

Ratnakanta Motilal Lalwani and Others RESPONDENTS

Mr. Deelip L.Khivesara, Advocate for the petitioners

Mr. A. R. Kawade, Advocate for respondents No.1 to 3, 5 and 6

Mr. G. D. Jain, Advocate for respondent No.4

[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 12th APRIL, 2023

ORDER :

1. The petitioners are aggrieved by order dated 12th March, 2021 passed by the learned 13th Joint Civil Judge, Junior Division, Aurangabad below Exhibit-20 in Regular Civil Suit No. 90 of 2021.

2. The petitioners filed the said suit for declaration and cancellation of agreement to sale dated 15th February, 2020 in respect of the suit property and declaration that said agreements to sale are null and void and not binding on the plaintiffs. Defendants appeared and resisted the suit. Defendants No. 1, 2,

3, 5 and 6 thereafter filed application Exhibit-20 claiming that the suit is not properly valued and proper court fee is not paid. Therefore, the suit may be sent to the appropriate court for adjudication.

3. By the impugned order, the Trial Court has directed the plaintiffs to correct the valuation of the suit on consideration amount of Rs.10,50,000/- each and pay the requisite court fee thereon within 15 days from the date of the order. The petitioners – plaintiffs are aggrieved by this order.

4. Heard learned advocate for the petitioners and the learned advocates for the respondents. Perused the grounds raised in the writ petition, documents annexed with it and the impugned order.

5. Learned advocate for the petitioners, by relying on the provisions of section 6 (v), 6 (vii) of the Maharashtra Court Fee Act, submits that the plaintiffs have rightly valued the suit and have paid court fees 200 times of the assessment of the agricultural land. The suit properties are claimed to be agricultural lands and the petitioners are not parties to the two registered agreements to sale. They are enforcing their right to share in the said property and, therefore, the petitioners have

rightly valued the suit and have paid court fee as per their share. He, therefore, submits that the Trial Court has erred in directing the petitioners to correct valuation of the suit on consideration amount of Rs.10,50,000/- and to pay court fee.

6. Learned advocates for the respondents, on the other hand, supported the impugned order by pointing out the pleadings and prayers made in the plaint.

7. Admittedly, the suit is filed for cancellation of two registered agreements of sale, consideration amount of which is Rs.10,50,000/- each. Admittedly, a declaration is sought by the plaintiffs – petitioners that both these agreements of sale are null and void. The same appears to be the main and substantive relief claimed by the petitioners in the suit, relief of injunction is consequential relief.

8. In the above facts, the Trial Court has rightly come to the conclusion that section 6 (iv) (ha) of the Maharashtra Court Fees Act is applicable and as per the said section, in the suits for declaration that any sale, or contract for sale or termination of contract for sale of any movable or immovable property is void one half of *ad valorem* fee leviable on the value of the property is required to be paid. It is further held that as per section 8 of

the Suit Valuation Act, court fee and jurisdictional value shall be the same, except in 6 (v), (vi), (x) and (xi) of the Court Fee Act. Therefore, the suit ought to be valued at the value of the property consideration amount mentioned in two registered agreements of sale @ Rs.10,50,000/- each. The plaintiffs ought to have valued the suit on said consideration amount. It is a matter of record that the defendants have valued their counter claim at Rs.70,50,000/-.

9. The Trial Court has passed a reasoned order and has correctly applied section 6 (iv) (ha) of the Maharashtra Court Fee Act. There is no illegality or perversity in the order impugned in the present writ petition. No case is made out by the petitioners to exercise extraordinary writ jurisdiction. Writ petition, being devoid of merit, is dismissed.

[NITIN B. SURYAWANSHI]
JUDGE