

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.9664 OF 2022

Subhash Natthu Chaudhary
and others

.... Petitioners

Versus

Smt. Ramibai @ Kantabai W/o. Nathu
Chaudhary and others

.... Respondents

.....
Mr. Amit S. Salve, Advocate for the Petitioners
Mr. S.P. Pandit, Advocate for Respondents
.....

[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 21st MARCH, 2023

ORDER :

1. The petitioners are aggrieved by the order passed by the learned Civil Judge, Senior Division, Shahada, below Exhibit-48 in Regular Civil Suit No.2 of 2022, thereby rejecting the application filed by the petitioners/defendants Order VII Rule 11(C) of the Code of Civil Procedure.

2. Respondents/plaintiffs have filed suit for partition, possession and perpetual injunction against the petitioners/defendants. The plaintiffs claimed that they being women litigants, they may be exempted from the payment of necessary court fees.

3. The suit is resisted by the defendants by filing written statement. They contented that plaintiffs are not exempted from payment of court fees.

4. The defendants have filed application below Exhibit-48 under Order VII Rule 11 (C) of the Code of the Civil Procedure seeking direction to the plaintiffs for payment of court fees, after necessary enquiry and investigation into the valuation of the market value of the suit property. The said application is rejected. Hence, the present petition.

5. Heard the learned advocate for the petitioners and the learned advocate for the respondents. Perused the grounds raised in the petition, documents placed on record and the impugned order.

6. According to the learned advocate for the petitioners, the impugned order is contrary to the ratio of the Division Bench decision in *Girish Kanaiyalal Munshi Vs. Nil, 2008 (3) AIR Bom.R 820*. According to him, since partition suit relates to the property dispute, plaintiffs are liable to pay the court fees. Further submission is, the trial Court has erred in relying on *Manoramabai Keshav Joshi Vs. Arun Keshav Joshi and another, 2008 (1) Bom CR 667*, which is a per incuriam

judgment as is held in *Kailash Satyanarayan Khandal Vs. Vijaykumar Satnarayan Khandal and others, 2019(10 Mh.LJ 737* and *Smt. Arti Vs. Vijay and others, 2019 (1) Mh. LJ 650*.

7. On the other hand, learned advocate for the respondents submits that defendants themselves have asked for enquiry into the valuation of the suit properties, and the same is observed by the trial Court. He further submits that the issue as to the valuation of the court fees is already framed by the trial Court. According to him, the trial Court has not relied on any of the citations mentioned in the impugned order. Therefore, he submits that there is no substance in the petition, and the petition is liable to be dismissed.

8. There appears substance in the contention of the respondents that the trial Court has not granted any exemption to the plaintiffs from payment of Court fees. In para 12 of the impugned order, it is observed that, "*It will transpire during the evidence/hearing the status of plaintiffs, therefore it cannot be directed to them to pay Court fee at this stage*". Since the trial Court has kept the issue of Court fee open, which will be considered after recording of evidence, no fault can be found with the order passed by the trial Court.

9. There is no illegality or perversity in the order impugned in the present petition. No case is made out by the petitioner to warrant exercise of extraordinary writ jurisdiction.

10. The writ petition being devoid merit is dismissed.

[NITIN B. SURYAWANSHI]
JUDGE

S.P Rane