

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.7820 OF 2023

Mangal vasant Susware and others ... Petitioners
Versus
Sunita Sunil Londhe ... Respondent

— —
Mr. Omkar Nagwekar for the Petitioners.
— —

CORAM : SHARMILA U. DESHMUKH, J.

DATE : June 28, 2023.

P. C. :

1. The petitioner's application under Order 7 Rule 11 of the Code of Civil Procedure, 1908, raising an objection to the Court Fees paid by the plaintiff-respondent came to be rejected by the impugned order.

2. RCS No.383 of 2019 was instituted by the Respondent Plaintiff seeking relief of partition, separate possession, declaration and injunction in respect of the properties mentioned as suit property 1A i.e. property bearing survey nos.6779, 6780 and 6781 and structure situated on the land and open space and suit property 1 B i.e RCC house and shed and open space in Survey No.9881. An

application came to filed by the Petitioners below Exhibit-28 alongwith a valuation report for framing of preliminary issue in respect of valuation and court fees, which came to be rejected and the review application also came to be dismissed.

3. Heard Mr.Nagwekar, learned counsel appearing for the petitioners.

4. Mr. Nagwekar, learned counsel for the petitioners submits that the Petitioners had placed on record the valuation report of Sub Registrar of Assurances valuing the property as per the ready reckoner rate which ought to have been considered. He would contend that the Trial Court assessed the value of the property on the basis of the photographs produced which showed the dilapidated condition of the property.

5. Considered the submissions.

6. The suit was filed claiming $\frac{1}{2}$ share in the suit properties and for the said purpose had valued the property at 1A at Rs.2,50,000/- and the property at 1B at Rs.3,00,000/- and paid the court fees accordingly. The purpose of the court fees is to obtain the

revenue for the State and the trial Court on the basis of material on record has arrived at a satisfaction that the plaint has been properly valued. The Apex Court in the case of *A.Nawab John & Ors vs V.N. Subramaniam*, reported in *2013(1) Mh.L.J.* was considering the provisions of The Tamil Nadu Court Fees Act and Suits Valuation Act, 1955 while examining the issue of condonation of delay by trial court permitting the plaintiff therein to pay the court fees and held that question of court fees is a matter between the Plaintiff and the Court and noted the observations of Madras High Court in *SL.Lakshmana Aiyar vs. TSPLP Palaniappa Chettiar* AIR 1935 MAD that the Court Fees Act was passed not to arm the litigant with a weapon of technicality against his opponent and although the defendant is permitted to object that proper court fees is not paid, he has strictly speaking no legal right to raise such a plea, but his function must be deemed to be subject to court's leave merely to assist it in coming to a proper decision.

7. Another reason for this Court not being inclined to interfere in exercise of its jurisdiction under Article 227 is that Section 14 of the Maharashtra Court Fees Act gives a finality to the decision of the Court in which the plaint is filed as regards the valuation for

purpose of determining the Court fees. Under sub-Section (2) of Section 14, whenever such suit comes before Court of Appeal, reference or revision and the Court considers that the said question has been wrongly decided to detriment of revenue, it shall require the party concerned to pay the additional court fees.

8. In that view of the matter, I am not inclined to interfere with the impugned order. Writ Petition stands dismissed.

(Sharmila U. Deshmukh, J.)