

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 6617 OF 2023

Vishnu Kashinath Bhoir & Ors.

...Petitioners.

Versus

The Secretary Department of Revenue & Ors.

..Respondents.

Mr. Sagar A. Joshi for the petitioner.

Mr. C.D. Mali, AGP for respondent State.

Coram : Sharmila U. Deshmukh, J.

Date : July 26, 2023.

P. C. :

1. The Registry has not placed the papers of the petition before this Court. Considering the limited controversy involved in the matter, copy of the petition has been handed over by learned counsel for the petitioner and the petition was heard.

2. The challenge in the petition is to the order dated 20th February 2023 passed by the trial Court *sou moto* as regards the valuation of suit property. Learned counsel for the petitioner submits that the suit was filed for declaration that the petitioners have acquired title by adverse possession and that considering the decision of this Court in ***Sudhir N. Kothari v. Vaghu Tatyaba Padwal [CRA 446***

of 2012 dated 17th March 2016] the petitioners have valued the subject property at 40 times / 80 times of the survey assessment.

3. The trial Court while deciding the issue of valuation has not considered the decision of this Court in ***Sudhir v. Vaghu (supra)***. The facts of the said case are identical to the facts of present case inasmuch as in that case the plaintiff sought a declaration that the plaintiff has become owner by adverse possession of an agricultural land. In that context, this Court considered the provisions of section 6(iv)(d) of the Maharashtra Court Fees Act and has held in paragraph 10 of the said decision that the plaintiffs are liable to pay Court fees on the basis of either 40 times or 80 times of the survey assessment. This Court in that case rejected the submission that the plaintiffs will have to value the suit as per the market value and not on the basis of assessment.

4. The trial Court has relied upon the decision in ***Pushparaj v. Sayyad Altaf [2000(4) Mh.L.J. 492]*** which dealt with the situation when clause (iv) and clause (v) of section 6 will operate. Perusal of the impugned order shows that the same is a non speaking order inasmuch as the Court has not considered the averments in plaint and the reliefs sought and also there is no discussion on the issue as the

relief is sought in respect of agricultural land, the relevant provision of the Court fees Act which will be applicable. The trial Court on the basis of the decision in the case of ***Pushparaj (supra)*** has held that the plaintiffs ought to have valued the suit as per the market value of the suit property. In view of the fact that the impugned order is a non reasoned order, in my opinion, the matter is required to be remanded to the trial Court to decide the issue of valuation after taking into consideration the decision of this Court in ***Sudhir v. Vaghu (supra)***

5. Writ petition stands disposed of.

[Sharmila U. Deshmukh, J.]