



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR**

Writ Petition (WP) No. 442 of 2018

Smt. Shakuntalabai @ Shakunbai Wd/o Narayanrao Wanjale (Dead)
through her legal representation Shri Dilip Krushnarao Sakhale

Versus

Smt. Mohanibai Sukhdev Dhanole and another

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Shri K.D.Shukla, Advocate for the petitioner.

CORAM : ANIL S. KILOR, J.

DATED : 4th SEPTEMBER, 2023.

In view of the well settled law that the application Exhibit 26 under Order VII Rule 11 of the Code of Civil Procedure (in short hereinafter referred as "CPC") can be considered only on the basis of the pleadings made in the plaint, the challenge is raised in this petition to the order dated 25th October, 2017 directing the petitioner to pay Court fee value of the suit property and deposit requisite court fees within sixty days from the date of this order passed by the 10th Joint Civil Judge, Senior Division, Nagpur, is under challenge in this writ petition.

2. There are two suits namely Special Civil Suit No. 953 of 2014 filed by the petitioner and Regular Civil Suit No. 786 of 2016 filed by the respondent no.1 in respect of the same suit.

3. In the suit filed by the respondent no.1, the petitioner raised an objection that in the written statement filed by the respondent no.1 in the petitioner's suit, she has claimed and stated that the value of the suit property is more than 30 lakhs and therefore it was contended that the suit filed by the respondent no.1 was under valued.

4. The learned trial Court accordingly directed the respondent no.1 to value the suit properly and pay the stamp duty.

5. Thereupon, the respondent no.1 moved an application under Order VII Rule 11 of the CPC in the petitioner's suit i.e. Special Civil Suit No. 953 of 2014 to properly value the suit and to pay the stamp duty.

6. Accordingly, the learned trial Court in para 5 has observed thus:

5. In RCS No. 786 of 2015 Mohanibai (plaintiff) instituted suit in respect of the same suit property by valuating suit property more than Rs. 30,00,000/-. Hence, it is clear that defendant in the present suit i.e. plaintiff in RCS No. 786/2016 valued suit property for more than Rs.30,00,000/- and defendant in RCS No. 786/2016 (plaintiff in present suit) valued suit

property at Rs.6,00,000/-. In RCS No. 786/2016 present plaintiff raised objection in respect of valuation of suit property by moving application under Order VII Rule 11 of Code of Civil Procedure. In written statement also present plaintiff in RCS No. 786/2016 raised the said objection. On these two rival pleadings between the parties in two different suits, it is gathered that present plaintiff admitted/agreed that valuation of suit property is more than Rs.30,00,000/-. Hence, under such circumstances, present suit is under valued by the plaintiff for the purpose of paying Court fees.”

7. In light of above observations, learned counsel for the petitioner submits that under Order VII Rule 11 of the CPC, the order impugned is not legal as it is not based on the pleadings of the suit.

8. There is no dispute as regards the law argued by the petitioner. However, in a peculiar facts and circumstances of the case, if the contention of the petitioner is accepted in two suits relating to same suit property, there will be two different valuations and in that case the Government will lose revenue in one matter i.e. in the petitioner’s suit.

9. Moreover, it cannot be ignored that at the instance of the petitioner only, the learned trial Court directed the respondent no.1 to properly value her suit and pay the stamp duty. But when it comes to the petitioner, the petitioner is raising objection to avoid payment of stamp duty. Thus, to avoid any conflict, I

am of the opinion that no interference is required.
Accordingly, the writ petition is dismissed.

[ANIL S. KILOR, J.]