

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

WRIT PETITION NO.2346 OF 2018

(MANOHAR TANBA DEVIKAR..VS.. NARMADABAI LAXMANRAO KALAMKAR & OTH.)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri P.A.Teni, Advocate for Petitioner.
Shri S.R.Shinde, Advocate for Respondent No.1 to 3.

CORAM : ANIL S. KILOR, J.
DATED : MARCH 08, 2023.

1. Heard.
2. In this writ petition the order below Exh.1 dated 12/01/2018 passed by Civil Judge Senior Division, Nagpur, directing the defendant to pay $\frac{3}{4}$ *ad valorem* court fees, which requires for possession for the property under Section 6(iv)(d) of the Maharashtra Court Fees Act, 1959, is under challenge.
2. The learned counsel for the petitioner has drawn attention of this Court to the prayer clauses of the counter claim and submits that there is not a single prayer made by the defendant in the counter claim as regards possession. He, therefore, submits that the order is erroneous and is liable to be quashed and set aside.
3. The learned counsel for the respondents, on the other hand, argues that the learned trial Court has rightly held that in view of the prayer for possession the defendant has to pay $\frac{3}{4}$ *ad valorem* court fee.

4. After going through the record, it can be seen that the prayers made in the counter claim are as follows:

“PRAYER : It is therefore, most humbly prayed that this Hon’ble Court be pleased to :

a) Declare that, the mutation entry carried out by the City Survey Officer of Hiraji Parasram Devikar in a city survey record in respect of suit property Mouza – Nagpur, Sheet No.112, City Survey No.204, is illegal, without jurisdiction and needs to be set aside being illegal.

b) Further be pleased to grant permanent injunction restraining plaintiffs, their agents, servants or any other person claiming on their behalf from claiming any rights over the suit property, in view of illegal mutation entry of the Hiraji Parasram Devikar.

c) Saddle the cost of the suit upon the plaintiffs.

d) Grant any other relief which this Hon’ble Court deems fit.”

5. As far as prayer clause (a) is concerned, a declaration is sought to the effect that the mutation entry carried out by the City Survey Officer in respect of the suit property is illegal, without jurisdiction and needs to be set aside being illegal. The prayer clause (b) is in respect of grant of permanent injunction. Thus, in the prayer clause (a) there is no prayer seeking declaration of ownership or there is no prayer seeking possession of the suit property. Thus, it appears that while directing the petitioner to pay $\frac{3}{4}$ *ad valorem* court fee, the learned trial Court has not considered the prayer clauses made in the counter claim in right perspective.

6. In the circumstances, I am of the opinion that the impugned order needs to be quashed and set aside and the matter needs to be remanded back to the trial Court for deciding the same afresh in the light of the prayer clauses made in the counter claim. Accordingly, I pass the following order:

- i) The Writ Petition is allowed.
- ii) The impugned order dated 12/01/2018, passed by Civil Judge Senior Division, Nagpur in Special Civil Suit No.595 of 2017, is hereby quashed and set aside.
- iii) The matter is remanded back to the trial Court to decide afresh as regards court fees on the counter claim, after considering the prayer clauses made in the counter claim.
- iv) The parties shall appear before the trial Court on 15/03/2023 at 11:00 a.m.
- v) The trial Court shall make an endeavour to decide the matter as expeditiously as possible.

The Writ Petition stands **disposed of** accordingly. No order as to costs.