



**IN THE JUDICATURE OF HIGH COURT AT BOMBAY
BENCH AT AURANGABAD**

906 WRIT PETITION NO. 4696 OF 2024

Santosh s/o Shrirang Jagtap

...Petitioner

VERSUS

1. Taramati w/o Bhausahab Jagtap,
2. Suwarnsandhya w/o Chandrashekhar Dhumal,
3. Pritamkumar s/o Bhausahab Jagtap,
4. Monalisa w/o Vivek Badage,
5. Harshal s/o Bhausahab Jagtap,
6. Ratanmala w/o Panjabrao Havle,
7. Purushottam s/o Shrirangrao Jagtap,
8. Vrindavani w/o Shrimant Shelke,
9. Sunanda w/o Shamrao Dikle,
10. Vandana w/o Sanjay Maske,
11. Dhananjay s/o Shrirang Jagtap.

...Respondents

...

Advocate for the Petitioner : Mr. Tungar Hrishikesh V.

Advocate for Respondents No.1 to 5 : Mr. Vilas P. Savant

...

CORAM : R. M. JOSHI, J.

Dated : June 12, 2024

PER COURT :-

1. Heard. By consent of both sides, heard finally at the stage of admission.
2. Petitioner is defendant No.7 in Regular Civil Suit No.436/2022. He preferred an application vide Exhibit 41 seeking direction to the plaintiff to pay Court fees on the properties mentioned in Schedule 3. The said application is opposed by the plaintiff by submitting that the

plaintiff has not raised any claim in respect of the said property and has already relinquished his right therein, and as such, question of payment of Court fees on those properties does not arise. Learned Trial Court while passing impugned order dated 28/02/2024 rejected the application Exhibit 41.

3. Learned Counsel for the petitioner submits that in view of the provisions of Section 6 (i)(v) of the Maharashtra Court Fees Act, the plaintiff is liable to pay the Court fees on the subject matter of the suit. According to him, even if the plaintiff has relinquished his right in respect of the properties mentioned in Schedule 3, in view of the aforesaid provision, he is liable to pay Court fee thereon. Learned Counsel for respondent opposed the said contention by drawing attention of the Court to the plaint indicating that suit is for the partition and the plaintiff has only disclosed all joint family properties, with a specific rider that he does not wish to make any claim in respect of the properties referred in Schedule 3. Thus, according to him, plaintiff is not liable to pay any Court fee thereon.

4. Perusal of the record indicates that Regular Civil Suit No.436/2022 is filed for partition of the suit properties belonging to

joint Hindu family. It was obligation on the part of the plaintiff to disclose all the properties of the joint family irrespective of the fact whether he claims partition in respect of all of them. As far as present case is concerned, the plaintiff therefore has specifically disclosed all the properties of the joint family with rider that he relinquishes his right in the properties mentioned in Schedule 3. If the plaintiff does not claim any right in the said property or does not claim any relief therefor, question of payments of Court fees for the same does not arise. Merely because information is given by the plaintiff with regard to the properties of the joint family, he would not be liable to pay Court fees on the same. The impugned order passed by the learned Trial Court therefore is justified requiring no interference. For the aforesaid reasons, the petition stands dismissed.

(R. M. JOSHI, J.)

vj gawade/-.