



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

18 WRIT PETITION NO. 6631 OF 2024

SUGRAV ANGAD GUND
VERSUS
PIRSAHEB MAHEBUB SHAIKH AND OTHERS

.....
Advocate for the Petitioner : Mr. Ingale Vivekanand V.

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CORAM : Y.G. KHOBRAGADE, J.
DATE : 18.09.2024

PC.:-

1. Heard the learned counsel appearing for the Petitioner at length. By the present Petition the Petitioner is challenging the order dated 03.12.2022 passed below Exh.12 in RCS No.865/2021 by the learned 4th Jt. C.J.J.D. Osmanabad, whereby the application under Order 7 Rule 11 of the C.P.C. was rejected.

2. The learned counsel appearing for the Petitioner submits in vehemence that Respondents/Original Plaintiff have filed RCS No.865/2021 before the C.J.J.D., Osmanabad and prayed for declaration that he is the owner of the suit property described in the suit standing within the jurisdiction of Borkheda Gram Panchayat. He further submits that since the Petitioner prayed for declaration and injunction therefore the

Respondents/Original Plaintiffs could have valued the suit as per the market rate of the suit property, however, the Respondents/Plaintiffs under valuing the suit just to avoid payment of Court fees. However, without considering the provisions of the Maharashtra Court Fees Act, the learned Trial Court passed the impugned order and rejected the application.

3. It is an admitted fact that the Respondent Nos.1 to 3/Original Plaintiffs filed RCS No.865/2021 and prayed for decree of declaration that they are the owner of suit property and the Petitioner/Defendants illegally constructed RCC column and brick work, hence prayed for mandatory injunction for removal of said construction. After service of notice, the Petitioner/Defendant appeared in the matter and filed Exh.12 on the ground that the Plaintiffs valued the suit @ Rs.1000/- and paid Court fees to the tune of Rs.400/- only. Though the market value of the suit property is more than thousand rupees but the Plaintiffs under valued the suit. The Respondents/Plaintiffs have given say and stated that they have property valued the suit as per the provisions of the Maharashtra Court Fees Act as per Section 6(ha). On 03.12.2022, the learned Trial Court passed the impugned order and rejected application considering the provisions of Section 6(ha) of the Maharashtra Court Fees Act.

4. Section 6 of the Maharashtra Court Fees Act provides

computation of fees payable in certain suits. Section 6(d) provides in respect of ownership of immovable property and Court fess of one fourth of ad valorem fee leviable for a suit for possession on the basis of title of the subject matter, subject to a minimum fee of Rs.100/-. For the sake of brevity Section 6(d) of Maharashtra Court Fess Act is re-produced as under:

“(d) for ownership etc. of immovable property, etc:

In suits for declaration in respect of ownership, or nature of tenancy, title, tenure, right, lease, freedom or exemption from, or non-liability to, attachment with or without sale or other attributes, of immovable property, such as a declaration that certain land is personal property of the Ruler of any former Indian State or public trust property or property of any class or community one fourth of ad valorem fee leviable for a suit for possession on the basis of title of the subject-matter, subject to a minimum fee of one hundred rupees:

Provided that if the question is of attachment with or without sale the amount of fee shall be the ad valorem fee according to the value of the property sought to be protected from attachment with or without sale or the fee of sixty rupees, whichever is less:

Provided further that, where the defendant is or claims under or through a limited owner, the amount of fee shall be one-third of such ad valorem fee, subject to the minimum fee specified above:

Provided also that, in any of the cases falling under this clause except its first proviso, when in addition any consequential relief other than possession is sought the amount of fee shall be one-half of ad valorem fee and when the consequential reliefs also sought include a relief for possession the amount of fee shall be the full ad valorem fee;”

5. Section 6(ha) provides that in a suit for declaration that any sale, or contract for sale or termination of contract for sale, of any movable property or immovable property is void one half ad valorem fee leviable on the value of the property. Section (j) provides for other declarations; where declaration is sought, with or without injunction or consequential relief.

6. Since the Respondents/Plaintiffs filed a suit and prayed for declaration that they are owners of the properties described in the suit and the Petitioner/Defendant carried out construction unauthorizedly by encroaching upon their land. Therefore, the suit can be valued as per the provisions of Section 6(d), Section 6 (ha) and Section 6 (j) of the Maharashtra Court Fees Act. The Petitioner has not brought any substantial record to show that the suit property is valued more than the valuation shown in the suit. The learned Trial Court passed the impugned order holding that the Respondents/Plaintiffs valued the suit as per the provisions of the Section 6(ha) of the Maharashtra Court Fees Act as well as considering the ratio laid down by this Court in Writ Petition No.6225/2007 (Dilip Bastimal Jain V/s. Baban Kamble).

7. In view of the above discussion, I do not find that the impugned order is illegal, bad in law and there is no substance in the present petition and hence it is dismissed.

[Y.G. KHOBRADE, J.]