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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 452 OF 2024

Lalit Ramesh Oswal and Anr.

.. Petitioners

Versus

~~Barkabai Dashrath Goje~~

(Deceased through her legal heir)

Chandrakant Dashrath Goje and Ors.

.. Respondents

-
- Mr. Mahendra J. Karnavat, Advocate for Petitioners.
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CORAM : MILIND N. JADHAV, J.

DATE : FEBRUARY 23, 2024.

P.C.:

- 1.** Mentioned out of turn at the time of rising of the Court.
- 2.** Heard Mr. Karnavat, learned Advocate for Petitioners.
- 3.** Considering the issue involved in the Writ Petition, the Writ Petition is taken up for final hearing forthwith.
- 4.** Present Writ Petition impugns two orders dated 29.08.2023 is at Exhibit "G" - page No.59 of the Writ Petition and 23.11.2023 is at Exhibit "I" - page No.73 of the Writ Petition. Both these orders are passed by the learned Trial Court in Regular Civil Suit No.6 of 2016. The second order dated 23.11.2023 is passed in review of the first order.

5. It is seen that order dated 29.08.2023 passed by the Court below Exhibit “1” is passed *Suo Moto*. The Court observed that the Plaintiffs and their Advocate has repeatedly remained absent since long. The Court has further observed that Suit is filed for declaration and injunction, but in paragraph No.13 of the Suit plaint it is stated by the Plaintiffs that Rs.2,000/- Court fee stamp has been paid as per law. The Court is not satisfied with payment of Court fee being commensurate with the reliefs prayed for. Hence it has further observed that the provisions of Section 6(iv)(d) of the Bombay Court Fees Act, 1959 would be applicable for payment of Court fee. The Court observed the aforesaid issue in its further order dated 30.06.2023 and directed the Plaintiffs to argue on the point of valuation of the Suit and Court fee stamp paid by Plaintiffs and posted the matter for hearing. Thereafter it is seen that despite several opportunities given to Plaintiffs to argue and satisfy the Court on the aforesaid issue, the Plaintiffs and his Advocate is remain absent.

6. In that view of the matter, the Court had no other option than to pass the order dated 29.08.2023 holding that the Plaintiffs should value the Suit property as per the market value of the Suit property and pay the requisite Court fee stamp. It has been observed by the Court in the impugned order that the nature of the Suit property is non-agricultural whereas the pleadings in the Suit plaint discloses payment of Court fee by presuming that the Suit property is

agricultural land. Being dissatisfied with the order dated 29.08.2023, Plaintiffs filed Review Application before the Court which came to be dismissed by order dated 23.11.2023. The order in review incidentally is passed only on the premise that the Court cannot review its own order as there is no patent error observed in the order which is required to be considered for review.

7. Mr. Karnavat would submit that an opportunity be given to the Plaintiffs to satisfy the learned Trial Court on the payment of Court fee stamp which has been paid by the Plaintiffs on the premise that the Suit land are agricultural lands. He would submit that the first order dated 29.08.2023 is *ex-parte* order since the Plaintiffs have not been heard whereas the second order merely upholds the first order without deciding the aforementioned issue on merits.

8. In view of the submissions made by Mr. Karnavat, I am of the opinion that both the aforesaid orders viz, dated 29.08.2023 and 23.11.2023 be quashed and set aside and an opportunity be given to the Plaintiffs to satisfy the learned Trial Court on the payment of stamp duty and Court fee stamp as per the averments made in the Suit plaint by Plaintiffs in paragraph No.13 and strictly in accordance with law. The question as to whether Court fee is payable under the provisions of Section 6(iv)(j) and not 6(iv)(d) is therefore directed to be decided by the learned Trial Court after hearing the Plaintiffs.

9. In that view of the matter, the aforementioned twin orders which are impugned in the present Writ Petition are set aside.

10. Plaintiffs shall appear before the learned Trial Court on 11th March 2024 at 10:30 a.m. or thereafter alongwith an authenticated copy of this order and the learned Trial Court is directed to fix the schedule for hearing the Plaintiffs as per its convenience.

11. With the above directions, Writ Petition stands allowed and disposed.

[MILIND N. JADHAV, J.]

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