

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.9674 OF 2024

1. **Vishnu Kashinath Bhoir**
Age : 58 Years, Occupation : Agriculture,
2. **Prakash Kashinath Bhoir**
Age : 55 Years, Occupation : Agriculture,
3. **Pandit Kashinath Bhoir**
Age : 51 Years, Occupation : Agriculture,
4. **Chandrabai Shalik Bhoir**
Age : 68 Years, Occupation : Household
and Agriculture,
5. **Dnyaneshwar Shalik Bhoir**
Age : 51 Years, Occupation : Household
and Agriculture,
6. **Vasant Shalik Bhoir**
Age : 50 Years, Occupation : Household
and Agriculture,
7. **Santosh Shalik Bhoir**
Age : 41 Years, Occupation : Household
and Agriculture,
8. **Draupadi Maruti Bhoir**
Age : 80 Years, Occupation : Household
and Agriculture,
9. **Manda Karsan Bhoir**
Age : 54 Years, Occupation : Household
and Agriculture,
10. **Milind Karsan Bhoir**
Age : 35 Years, Occupation : Household
and Agriculture,

11. **Anand Karsan Bhoir**
Age : 32 Years, Occupation : Household
and Agriculture.

All residing at : Thakurli, Mothagaon,
Dombiwali (W), Taluka : Kalyan,
District : Thane : 421202.

**...Petitioners
(Original Plaintiffs)**

Versus

1. **The Secretary,**
Department of Revenue,
Government of Maharashtra,
Mantralaya, Mumbai : 421 202.
2. **The Collector – Thane,**
Collector Office Building,
Opp. District & Sessions Court,
Thane : 400 601.
4. **The Sub-Divisional Officer – Kalyan,**
Mohan Pride, Wayne Nate, Near
Poddar School, Kalyan : 421 301.
5. **The Tehsildar – Kalyan,**
Opp. District Court, Kalyan,
Murbad Road, Kalyan (E), 421 301.
6. **The Dy. Superintendent of Land Record,**
Kalyan, Zunjarrao Market Building,
3rd Floor, Kalyan (W), Kalyan : 421 301.
7. **The Chief Settlement Commissioner
and Custodian of Evacuee Property M.S.**
United India Building, 4th Floor,
Sir P.M. Road, Fort : 400 001.
8. **Shivandas Hotandas Sachdev**
Age : Adult, Residing at : Thakurli
Mothagaon, Kalyan : 421 202.

9. **Udharam Amumal Parwani**

Age : Adult, Residing at : Thakurli
Mothagaon, Kalyan : 421 202.

10. **Ammumal Tirhtdas Parwani**

Age : Adult, Residing at : Thakurli
Mothagaon, Kalyan : 421 202.

**...Respondents
(Original Defendants)**

Mr.Sagar Joshi:-	Advocate for Petitioners.
Mr.Hamid Mulla-AGP:-	On behalf of Respondent Nos.1-7 (State).

CORAM : S. M. MODAK, J.

DATE : 25th NOVEMBER 2024

ORAL JUDGMENT :-

1. Heard learned Advocate Shri.Joshi for the Petitioners-Plaintiffs.
2. On the same issue, this is a **second occasion** for filing of Writ Petition in this Court. When the suit was filed by the Plaintiffs for the declaration as to ownership and various sorts of injunctions, **the trial Court on its own, observed the valuation done by the Plaintiffs is not proper. Admittedly, there is no relief for possession sought.** The trial Court directed the Plaintiffs to value the suit property on the basis of market valuation. This is the first order passed 20th February 2023. This order was passed on *suo motu* exercise of power. There cannot be any dispute about the power of the Court to issue directions to the

Plaintiffs. **However, there are serious reservations about passing of such an order on *suo motu* exercise** particularly when this Court has set aside the above order and remanded the matter for fresh consideration and still, the learned Judge passed similar order without considering the correct ratio laid down by this Court in the judgments cited before him. This tendency has compelled this Court to observe about the approach of the learned trial judge. It is nothing but adamant approach.

3. The first order was challenged in the first **Writ Petition No.6617 of 2023**. This Court felt that the order is non-speaking. The matter was remanded to the trial Court for fresh consideration vide the order dated 26th July 2023.

4. After remand, the trial Court reiterated its earlier view and after discussing some judgments, directed the Plaintiff to value the subject matter as per the market valuation (as per the order dated 2nd January 2024). **This order is subject matter of present Writ Petition.**

5. Three judgments are referred by learned trial Judge. They are as follows:-

- (i) *Pushparaj Surajprasad Modh V/s. Sayyad Altaf Sayyad Wazir and others*¹
- (ii) *Shri.Sudhir N. Kothari and Anr. V/s. Shri.Vaghu*

¹ 2000(4) Mh.L.J. 492
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*Tatyaba Padwal and Ors.*²

(iii) *Sardar Gurpreetsingh Gurnamsingh Pander V/s. Sangeeta Bhagchand Bhavle and others*³

Averments in the plaint

6. For deciding the controversy, certain averments need to be considered. They are:-

(a) Plaintiff's forefathers were in possession of suit lands since long. These lands are situated at Village–Thakurli, Taluka–Kalyan, District–Thane.

(b) There were certain revenue entries thereby recording the names of their forefathers. Whereas, names of forefathers of Defendant Nos.8 to 10 were also recorded. But, they never got the possession of suit lands. Plaintiff's forefathers continued to be in possession.

(c) Apprehending threat to their title, there was some pre-suit legal correspondence. They filed suit for declaration of their title as owners as adverse possessors and also for declaration that others have no right to disturb their possession over the suit lands, different kinds of permanent injunction and for other reliefs.

(d) Government officials and private persons were impleaded as Defendants.

(e) The important paragraph about valuation of subject matter and payment of court fees is follows :--

² Civil Revision Application No.446 of 2012 : 17th March 2016 : Bombay High Court
³ 2022(2) Mh.L.J. 130

“31. *The Plaintiff has filed this suit for declaration and injunction and has valued prayer (a) at Rs.1000.00 being 200 times of the assessment value of the land which are agricultural lands and have paid court of Rs.200.00 thereon. The Plaintiffs have valued the prayer (b) and (c) at notional valuation of Rs.1000.00 under the provisions of Section 6(iv)(j) of the Bombay Court Fees Act and have paid court fee of Rs.200.00 thereon. The Plaintiffs have paid total court fee of Rs.400.00. The Plaintiffs however undertake to pay additional Court Fee if and when necessary.”*

7. In nutshell, the valuation done is as follows:--

<u>Nature of Relief</u>	<u>Valuation</u>	<u>Mode of Valuation</u>
<u>PRAYER (a)</u> For relief of declaration as to ownership:-	Rs.1,000/-	Being 200 times of the assessment value of the suit lands used for agricultural purpose.
<u>PRAYERS (b) and (c)</u> For declaration not susceptible for monetry valuation and for permanent injunction.	Notional valuation of Rs.1,000/-	As per the provisions of Section 6 (iv) (j) of the Maharashtra Court Fees Act.

8. On this background, it needs to be seen:-

- (a) Whether the trial Court was justified in issuing *suo motu* directions for valuing the subject matter on the basis of market valuation of the suit lands.

- (b) It needs to be seen, what is the correct ratio in the judgments referred above and
- (c) whether learned Judge applied it to the facts of the case.

Observations of the trial Court in the second order dated
02/01/2024

9. Though the learned trial court judge gave some reasonings, he reiterated the earlier directions given by him in the first order, that is to say, value the suit claim on the basis of market valuation. The learned trial Judge after referring the observations in case of Sudhir and observations in case of Pushparaj ultimately observed :-

“ In case of *Pushparaj*, Hon’ble Bombay High Court held that suit for declaration would be governed by sub-clause (d) of Clause (iv) of section 6 of the Act. But in case of *Sudhir v/s Raghu*, Hon’ble High Court held that plaintiffs are liable to pay court fee for relief of declaration on survey assessment”.

10. It is further observed

‘If the decisions of the coordinate Benches of equal strength differ’ and the later decision does not notice or explain the earlier decision, then the court may choose that decision which it considers to be more closer to the facts of the case or which more directly deals with the legal issue”

There is need to understand what is meant by 'ratio'.

What is Ratio

11. In *Ambica Quarry Works V.s State of Gujarat* reported in (1987)

1 SCC 213 para no.8 Supreme Court observed :--

“18 The ratio of any decision must be understood in the background of the facts of that case. It has been said long time ago that a case is only an authority for what it actually decides, and not what logically follow from it”.

12. Whereas in case of *Bhavnagar University v/s Palitama Sugar Mill (P) Ltd* reported in (2003) 2 SCC 111 Supreme Court observed :

“..... It is also settled that a little difference in facts or additional facts may make a lot of difference in the precedential value of a decision”.

13. On this background, it needs to be considered the observation in three judgments.

Case of Sudhir N. Kothari

14. In that matter, suit filed before the trial Court consists of :--

- i. prayer for declaration of ownership by adverse possession,
- ii. for cancellation of sale-deed and
- iii. other prayers.

Orders passed:-

- a. Trial Court rejected to accept the objections about improper valuation, pecuniary jurisdiction and about limitation. One of the contentions was about valuing the subject matter on the basis of market valuation. This was rejected by the trial Court. However, it was upheld by this Court.

Observation of this Court

15. This Court has considered the provisions of Suit Valuation Act and the Maharashtra Suits Valuation (Determination of Value of Land for Jurisdictional Purposes) Rules, 1983. The suit land was used for agricultural use (Para No.9). The relevant observations are:--

*“10. In view thereof, I am of the opinion **that the plaintiffs are liable to pay court fee on the basis of either forty times or eighty times of the survey assessment.** Even if we consider that the plaintiffs are liable to pay eighty times the survey assessment, it will not exceed the pecuniary jurisdiction of the Court of Civil Judge, Junior Division.”*

Case of Pushparaj Surajprasad Modh

16. There was a suit for :--

- a. declaration as to ownership and
- b. there was a prayer for mandatory injunction.

From facts, it is not clear what sort of mandatory injunction was

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sought, that is to say, handover possession or to demolish construction or to do a particular act. On the basis of objection, trial Court gave following directions:-

- i. The Plaintiff to revalue the suit claim as per the provisions of Section 6(iv)(d).
- ii. There was some issue whether this direction was complied with or not (Para No.2).
- iii. The Respondents/Plaintiffs sought review of the first order.
- iv. There was also delay in filing review Application. It was condoned by the trial Court.
- v. It is not clear from the facts, as to how matter reaches to this Court. **It seems, trial Court has accepted the prayer for review of the order directing revaluation** (we can gather this on the basis of final relief granted by this Court in Para No.10. Revaluation direction was upheld).

I have narrated above facts in detail because, without doing the same, it is difficult to gather the correct ratio. Now a days, there is more and more tendency to apply ratio without considering the factual background.

Pleas raised

17. There were two pleas raised. They are :--

- i. **According to Applicant/Defendant**, the valuation and court fee ought to have been done as per provisions of Section 6(iv)(d) because the prayers are for declaration and mandatory injunction. Defendant relied upon the provisions of third proviso to sub-clause (d) of Section 6(iv) of the Bombay Court Fees Act. The subject matter ought to have been valued as 1/2 of ad-valorem fees (Para No.4).
- ii. **Whereas, according the Respondent/Plaintiff**, valuation and court fees are properly assessed as per both the provisions of Section 6(iv)(d) and Section 6(v) and court fees will have to be determined as per Rule 2 of Maharashtra Suit Valuation (Determination of Value of Land for Jurisdictional purpose) Rules, 1983.

18. So, the issue before this Court was, whether the valuation is to be done as per 3rd proviso to Section 6(iv)(d) [as contended by Plaintiff] OR whether it is done as per Rule 2 of the Maharashtra Suits Valuation Rules [as contended by Plaintiff]. The direction for revaluation was upheld. But it is not clear why 3rd proviso was invoked.

This Court observed :--

“I have considered the rival submissions. I am inclined to accept the stand taken by the applicant that the suit, as presented in this case, shall have to be valued on the basis of sub-clause (d) of Clause (iv) of section 6 of the Bombay Court Fees Act, 1959 read with Article 1 to Schedule I of the Act.”
(Para No.6).

This Court further observed :--

“On the other hand, if the stand taken by the respondent is accepted, it would virtually make the provisions of Clause (iv) of section 6 of the Act redundant, inasmuch as, in that case, for every suit for declaration, the valuation will have to be done on the basis as if that suit is one for relief of possession. This contention, therefore, will have to be stated to be rejected.” (Para No.7).

19. This Court referred to provisions of third proviso to Section 6(iv)

(d). **For ready reference, it is reproduced below** :--

*“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.”*

20. About provisions of section 6(iv)(d) and section 6(v), this

Court observed :--

“ 8. In my view, **clause (iv)** and **clause (v)** would operate and apply to totally different situations. The purpose of clause (iv) is only to levy Court fees in relation to the suit for declaration and consequential relief on the basis of declaration. On the other hand, clause (v) would operate only in respect of the suits which are based on title and simpliciter for the relief of possession. **The purpose of both the clauses are totally different and clause (v) cannot be made applicable to the present case**”.

21. Finally, this Court accepted the objection taken by the Applicant/Defendant valuation ought to have been done as per Section 6(iv)(d). That is how, the direction for revaluation passed by the trial Court was upheld.

22. On this background, it is important to understand the ratio laid down in case of ***Pushparaj***. It is as follows :--

- a. When there is prayer for specific declarations, valuation has to be done on the basis of Section 6(iv)(d).
- b. But, when in addition (means in addition relief of declaration), any consequential relief :--

- (i) **other than possession** is sought then-- the court fee will be -- 1/2 of ad valorem fee
&
- (ii) **including possession is sought**-- the court fee will be-- full ad valorem fee.

23. In case of *Pushparaj*, there was prayer for grant of mandatory injunction (means consequential relief other than possession) and that is why, this Court has accepted the objection taken by the Defendant and upheld the order of revaluation passed by the trial Court.

Case of Sardar Gurpreetsingh Gurnamsingh Pander

24. Suit was for:-

- (a) Possession of land wherein there was a brick kiln and bungalow was constructed (Para No.11).
- (b) For declaration as to ownership.

Still, trial Court rejected the objection taken by the Defendant for undervaluation. This Court on the basis of above facts held (Para No.12), valuation ought to have been done under Section 6(v) (suit for possession) of the Maharashtra Court Fees Act and direction was given to pay proper court fee. In that matter, there were two factors involved.

They are:-

- (i) **One** is, pleadings in the plaint suggesting non-agricultural

use and

- (ii) **second** is, nature of relief of possession sought (There may be an issue whether possession of land only or also of bungalow).

Valuation for the purpose of pecuniary jurisdiction

25. For ascertaining the pecuniary jurisdiction of Civil Courts, it is necessary to consider the provisions of The Maharashtra Civil Courts Act, 1869. Section 24 lays down two classes of Civil Judges. There are Civil Judge (Senior Division) and Civil Judge (Junior Division). The jurisdiction is as follows:-

- a. The jurisdiction of CJJD extends to all original suits and proceedings of civil nature wherein the subject matter (**does not exceed Rs.5 lakhs**).
- b. Jurisdiction of CJSD extends to all suits of civil nature (**irrespective of pecuniary jurisdiction**).

26. So, when civil suits are filed apart from territorial and subject matter jurisdiction, the pecuniary jurisdiction is important. For determining pecuniary jurisdiction, valuation of suits is important. There is difference in between:-

- a. Valuation of subject matter for jurisdiction;

- b. Valuation of subject matter for the purpose of computing court fee.

27. In nutshell, the Plaintiff has to first value the subject matter for the purpose of pecuniary jurisdiction on the basis of Suits Valuation Act and 1983 Rules. Once, it is done, then amount of court fee is to be ascertained. In some cases, the valuation arrived at as per Rules may be the same valuation for ascertaining the quantum of court fees (Sec.8). In some cases, it may be different.

Suit Valuation Act, Court Fees Act

28. Both these Acts operate in different spare. The Maharashtra Court Fees Act, 1959 deals with fees to be paid in Court and in public offices. Whereas, Suits Valuation Act, 1887 (Central Act) prescribes the mode of valuing certain suits and it is for the purpose of determining the jurisdiction of Courts. **Section 3** of the said Act empowers the State Government to make rules for determining the value for land for the purpose of jurisdiction. There are rules called as the Maharashtra Suits Valuation (Determination of Value of Land for Jurisdictional Purposes) Rules, 1983 framed by the Government of Maharashtra.

29. Rule 2(b) prescribes valuation is “*sum equal to 200 times of assessment payable in respect of land*”. This Rule nowhere prescribes whether land is used for agricultural or non-agriculture purpose. In this case, the valuation of subject matter for jurisdiction is not exceeding the pecuniary limits of CJJD.

About Court fees

30. Valuation for the purpose of court fee depends upon reliefs sought. In the present suit, two declarations are sought. One as to ownership on the basis of adverse possession and second declaration is about nature of rights of the defendants in not obstructing the possession of the plaintiff. That is why first declaration is valued under Section 6 (iv) (d) and second declaration is valued under Section 6 (iv) (j) of the Maharashtra Court fees Act.

31. There is relief of injunction also sought. As per third proviso to Section 6 (iv)(d), whether this injunction can be valued as a consequential relief or as an independent relief is the issue raised or referred by the trial court.

Applicability of ratio in the three judgments

About Sardar Case

32. The facts are different from the facts in present matter. Possession was sought as one of the relief in Sardar's case. Whereas in present suit there is no relief of possession. There is direction to pay Court fees as per the provisions of Section 6 (iv)(d) by considering non agriculture use of the land. Such pleadings are not there in the plaint. So undisputably, Section 6(v) is not applicable. The method of valuation prescribed there in is used for calculating court fee under Section 6(iv) (d).

33. This can be explained in following manner:-

a) If it is declaration under Section 6(iv)(d)	Then 1/4 of ad-valorem leviable for a suit for possession ↓ If is not equal to court fee chargeable in case of suit for possession.
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So ratio in Sardar is not applicable.

About Sudhir's Case

34. There was relief of declaration as to ownership, cancellation of sale deed and other prayers. There was no relief of possession. The issue was how to value the land for the purpose of Court fee. This Court held

valuation done by the plaintiff on the basis of survey assessment is proper. In fact the facts are more or less similar to the facts of the present suit.

About Pushpraj Case

35. Relief of declaration as to ownership, mandatory injunction and other prayers were sought. This Court considered the provisions of third proviso to Section 6 (iv) (d). Admittedly, there was no relief of possession sought. This Court has differentiated in between Section 6(iv)(d) and 6 (v) of the Maharashtra Court Fees Act. The provisions of Section 6(v) will be applicable only when there is prayer for possession. There are different yardsticks for valuing house/garden and for valuing the land. Section 6 (iv) (d) nowhere prescribes market valuation of the land. Even there are no observations in case of Pushparaj about valuing the land on the basis of market valuation. The learned trial Court Judge has misread the observations and committed wrong in issuing the direction. The facts are different. Ratio is not applicable.

Valuation for the purpose of pecuniary jurisdiction

36. Rule 2 of 1983 Maharashtra Rules prescribes the valuation of the subject matter of the suits falling under certain categories mentioned

therein. Therein also there is classification of house/garden and land. There is no direction to value the land on the basis of the market valuation. This provision are also not relevant.

37. For the above reasonings, it is difficult to gather, how the learned trial Court Judge has directed the Plaintiff to value the subject matter on the market valuation. The basis of market valuation finds place only in one part of Section 6(v) [only in case of possession or house/garden]. The subject matter before the learned Trial Court Judge was never house/garden. It was only an agricultural land. Furthermore, no relief of possession was sought. The learned Judge has mixed up two issues.

38. “Applying *the method of valuation in a suit for possession for the purpose of computing the amount of court fees for another suit*” is one aspect and “*doing the valuation when the suit is for possession itself*” is different aspect. Both are different. **We should first ascertain whether our order is justifiable on the basis of some provisions of law.** I find, it is missing in this case, any order should not be on the basis of notions of a particular Judge. **So, I am inclined to set aside the order.**

About approach of trial Court

39. Still, this Court have not understood why the learned trial Court

Judge is emphasizing on power to raise an issue by exercising *suo motu* jurisdiction. When this Court has set aside first order and remanded the matter, at least thereafter, he ought have to been careful in deciding the controversy. However, to utter dismay, he stick him to his earlier view. It could have been justified if the said decision is arrived by reasoning and proper analysis. However, it has not happened.

40. Learned trial Judge has mixed up two issues. One is, valuation for pecuniary jurisdiction and valuation for court fee. On both the counts, doing market valuation of subject matter is not supported by any provision of both the Acts. The order has to be set aside.

41. Hence, there is need to bring it to the notice of learned trial Court Judge to be cautious in exercising judicial powers particularly while taking recourse to *suo moto* jurisdiction. That is why, this Court has dealt with the issues in great detail. For the purpose of information, let Registry to send its copy to Civil Judge Senior Division, Kalyan. through Principal District Judge, Thane. It is also necessary to send copy of this Judgement to Maharashtra Judicial Academy for the purpose of discussion amount the trainees/judicial officers (particularly the cadre of civil judge junior division). Registry of this Court to send copy accordingly. While signing the operative order first, I have

granted liberty to the trial court to decide any objection taken by the defendants about the valuation in future. It is clarified, if objection is taken, it has to be decided by considering the observation about factual aspects and legal aspects as discussed above.

42. For the above discussion, I am inclined to set aside the order.

Hence following order is passed :--

ORDER

- (i) **Writ Petition is allowed.**
- (ii) The **order dated 2nd January 2024** passed by the Court of Civil Judge, Senior Division, Kalyan in Regular Civil Suit No.2 of 2023 in *suo motu* exercise is **set aside**.
- (iii) **The method of valuation done by the Plaintiffs is proper. If, there is any deficit Court fee stamp, the Plaintiffs are directed to pay it within three (3) weeks from uploading of the order.**
- (iv) **The trial Court is directed to proceed with the Suit.**
- (v) The trial court is at liberty to decide any objection taken by the Defendants about the valuation in future on merits.

43. In view thereof, the **Writ Petition stands disposed of.**

[S. M. MODAK, J.]