



This order is corrected vide speaking to the minutes order dated 1st of April, 2025.

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

904 CRA NO. 38 OF 2025

Akshatbhai Kaushikbhai Chudgar And Others

VERSUS

Shivram Venkateshrao Chaudhari And Others

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Advocate for applicants : Mr. Y.P. Deshmukh

Advocate for Respondents 1-8 : Mr. D M. Shinde

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CORAM : S. G. CHAPALGAONKAR, J.

Dated : March 19, 2025

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FINAL ORDER :-

1. The applicants/original defendants impugn the order dated 21.9.2023 passed below Exhibit 37 by the Civil Judge Junior Division, Mudkhed, District Nanded in R.C.S. No.119 of 2022.

2. Respondents/plaintiffs instituted Regular Civil Suit No.119 of 2022 seeking relief of declaration of ownership, possession and perpetual injunction in respect of suit land gat no.549, admeasuring 8 Acres, situated at village Mudkhed, District Nanded. Plaintiffs contend that their father Venkatesh Choudhary was original owner of the suit land. It was leased out to one Ranchodlal Jethalal i.e. grand father of the defendants for a period of 100 years from 1334 Fasli (1924)

for installation of Ginning Factory i.e. non-agriculture purpose. Lease period will expire in the year 2024. Plaintiffs further contended that in the year 1961 Tahsildar Nanded mutated name of Ranchodlal in record of rights as possessor. Appeal against the said order is dismissed by the Collector. However, fact remains that Ranchodlal was lease holder. Thereafter, plaintiff filed proceedings under section 155 of the Maharashtra Land Revenue Code for correction of revenue record, upon which directions are issued to the Tahsildar for due inquiry. Defendants are attempting to dispose of suit land before correction of the record. Defendants failed to pay rent since 2012 and reply to notices of plaintiffs. Defendants denied title of the plaintiffs and their predecessor, therefore, suit is appropriately amended.

3. Defendant no.1 filed an application under order VII Rule 10 and 11 of the Civil Procedure Code contending that suit has been improperly valued, although relief of declaration of ownership is claimed with consequential relief of possession, proper court fees is not paid. With these contents, defendant prayed for directions against plaintiffs to appropriately value the suit and pay court fees, in case of failure, to reject the

plaint. Further since valuation of the suit would be beyond pecuniary jurisdiction of the Court, the plaint be returned for presentation before the Civil Judge, Senior Division, Nanded.

4. Learned Trial Court, after considering contentions of the respective parties, opined that the suit is between land-lord and tenant and will have to be valued as per section 6(xii) of the Maharashtra Court Fees Act and provisions of section 6 (iv) (d) and 6(v) would have no application, accordingly, rightly valued suit based on amount of rent as per sub-clause (d) of sub-section (xii) of Section 6 of the Maharashtra Court Fees Act.

5. Mr. Y.P. Deshmukh, learned advocate appearing for the applicants submits that, plaintiffs are claiming declaration of ownership with consequential relief of recovery of possession and perpetual injunction. Market value of the suit land is beyond 6 to 8 crores. Applicants have submitted certificate of valuation, however, Trial Court erroneously applied section 6 (xii) of Maharashtra Court Fees Act holding that it is land-lord tenant dispute, not governed by section 6 (d) of the Act.

6. Per contra, Mr. D.M. Shinde, learned advocate appearing for respondents/plaintiffs supports the impugned order contending that plaintiffs have specifically claimed the relief of possession of the suit property on the basis of landlord-tenant relationship. The property was leased to forefathers of the defendants to run a ginning factory and on expiry of the lease term, possession is sought. Therefore, relief of declaration as claimed cannot be valued as per section 6(d) of the Act for computation of the court fees. In support of his contentions, he relies upon the observations of this Court in case of **Rajaram Bhagwati Tiwari and others Vs. Municipal Corporation of Greater Bombay and others reported in 2004 (3) Mh.L.J. 290** to contend that declaration as sought would not be susceptible to monetary valuation and would be governed by clause 6 (iv) (j) of the Act.

7. Having considered submissions advanced and after conscious reading of the plaint, it can be observed that suit property is admittedly used for non-agriculture purpose. According to plaintiffs, it was leased out to forefathers of the defendants to run Ginning factory. On expiry of lease, plaintiffs are seeking possession thereof. It is pertinent to note

that, at least since 1960 onwards name of Ranchodlal i.e. forefather of defendant has been recorded in ownership column, which has been carried forward during consolidation. Plaintiffs are therefore having reasonable apprehension as to their title. There are reasonable clouds of doubt on their claim as to the title. With all these difficulties, plaintiffs filed suit seeking declaration of ownership and possession.

8. Apparently, plaintiffs are seeking declaration of ownership and possession raising claim of title against the defendants as to suit land. The subject matter of suit would be susceptible to monetary valuation. It is trite law that it is necessary for Court to ascertain real nature of the relief sought, irrespective of the form in which the prayer or prayers for relief are framed. In present case, plaintiff cannot succeed to seek relief of possession unless he establish title. The main relief in absence of essential pleading and material as to alleged lease appears to be declaration of ownership, with consequential relief of possession and injunction. Therefore, the suit will have to be valued for the purpose of jurisdiction on the basis of valuation of the land.

9. The finding recorded by the Trial Court that the suit would be governed by clause (d) of sub-section (xii) of clause 6 does not appear to be correct. Plaintiffs claim would certainly be governed by sub-clause (d) of sub-section (iv) of section 6 and sub-section (v) of Section 6 of the Maharashtra Court Fees Act. In the result, it would be appropriate to quash and set aside the impugned order and direct the Trial Court to re-consider application of defendants in consonance with section 6 (iv)(d) and 6(v) of the Maharashtra Court Fees Act. In the result, following order is passed.

ORDER

- i. Civil Revision Application is partly **allowed**.
- ii. The impugned order dated 21.09.2023 passed by the Civil Judge Junior Division, Mudkhed, District Nanded below Exhibit-37 in Regular Civil Suit No.119 of 2022 is quashed and set aside.
- iii. Trial Court shall re-consider the application below Exhibit-37 in Regular Civil Suit No.119 of 2022 in light of the aforesaid observations.
- iv. Civil Revision Application stands **disposed of**.

(S. G. CHAPALGAONKAR)
Judge

aaa-f.

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