



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

WRIT PETITION NO.340 OF 2022

Sardar Gurupreet Singh Gurunam Singh Pandher
Age: 48 years Occ: Business,
R/o: Bansilal Nagar, Aurangabad

.....PETITIONER

VERSUS

1. Sumitrabai Pannalal Khandagle,
Age: 45 years, Occ.: Household
R/o Shahshokta Miyan Dargah Compound,
Near Hamalwada, Dhangarwada, Aurangabad
2. Sardar Manjeet Singh Gurunam Singh Pandher
Age: 45 years, Occ.: Business
R/o. Model Town, Malerkotla
Punjab.

.....RESPONDENTS

Mr. N. S. Muthiyan, Advocate for Petitioner
Mr. P. N. Surwase, Advocate for Respondent no.1

CORAM : ROHIT W. JOSHI, J.

DATED : 01ST JULY, 2025

ORAL JUDGMENT :-

- . Rule. Rule made returnable forthwith.
2. Heard finally with consent of the parties.
3. The present petition is filed by original defendant in Regular Civil Suit No.626 of 2016. The petitioner/ defendant had filed an application under Order 7 Rule 11, *inter alia*

seeking rejection of plaint on the ground that the suit is under valued.

4. The learned Trial Court framed a preliminary issue on the point of pecuniary jurisdiction. However, framing of preliminary issue was not contemplated since the application is under Order 7 Rule 11.

5. It is now well settled that a preliminary issue framed under Section 9-A of the Civil Procedure Code cannot be adjudicated upon leading evidence. The Hon'ble Supreme Court has categorically held that the Code of Civil Procedure does not contemplate two tier adjudication of Civil Suit. The Hon'ble Supreme Court has held that a preliminary issue under Section 9-A of Civil Procedure Code can be framed only if the issue does not involve adjudication of any disputed question of fact.

6. After leading evidence in the matter, the plaintiff moved an application vide Exh.93 interalia praying that the evidence led by him on the preliminary issue should be 'not pressed' and the application be heard on merits.

7. The learned Trial Court has decided the said application

vide order dated 23.11.2021. The learned Trial Court has held that once evidence is recorded, the same cannot be discarded and has accordingly rejected the prayer for treating the evidence of the plaintiff as 'not pressed'. The learned Trial Court has further restrained both parties from leading evidence on the preliminary issue. The learned Trial Court has considered the judgment of the Hon'ble Supreme Court in the matter of *Nusli Neville Wadia Vs. Ivory Properties & Ors.* Reported in *(2020) 6 SCC 557* holding that leading of evidence on preliminary issue is not permissible.

8. Having held so, the learned Trial Court has directed the parties to advance submissions with respect to pecuniary jurisdiction by restraining the parties from leading evidence.

9. In that view of the legal position that preliminary issue of jurisdiction under Section 9-A cannot be decided on the basis of evidence but only on a pure question of law, the learned Trial Court is directed to decide the issue as a pure question of law without taking into consideration, the evidence brought on record by the plaintiff and by not letting the parties to lead evidence on the said preliminary issue at

this stage.

10. The Writ Petition is **disposed** of directing the learned Trial Court to decide the preliminary issue and the application for rejection of plaint in the light of aforesaid observations. However, if the occasion arises during the course of trial, it will be open for the parties to lead evidence on the aspect of pecuniary jurisdiction of the Court, if they so desire. The evidence brought on record by the plaintiff on preliminary issue shall be considered at the stage of final hearing if the said issue arises for consideration at that stage.

11. The Writ Petition is **disposed** of accordingly.

12. Civil Application, if any, stands disposed of.

(ROHIT W. JOSHI, J.)