

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 4515 OF 2025

Namdeo Sahebrao Nikam	}	
Age 57, Occu: Agriculturist	}	
R/o at Natepute, Tal-Malshiras,	}	
District-Solapur	}	Petitioner
	}	(Orig. Plaintiff)

V/s.

1.Mr. Sonba Bhujaba Gharat	}
Age: 59, Occu: Agriculturist	}
2.Mr. Subhas Bhujaba Gharat	}
Age: 55, Occu: Agriculturist	}
3. Mr. Dnyndeo Bhujaba Gharat	}
Age 49, Occu: Agriculturist	}
4. Mr. Sanjay Bhujaba Gharat	}
Age 58, Occu: Agriculturist	}
5. Smt. Sakhubai Bhujaba Gharat	}
Age 53, Occu: Agriculturist	}
Nos. 1 to 5 all R/o at Natepute	}
(Pune-Pandharpur Road) Tal-	}
Malshiras, District-Solapur.	}
6. Sou Jayashree Kantilal Magar	}
Age 44, Occu: Agriculturist	}
R/o at Nimgao (M) Tal-Malshiras,	}
Dist-Solapur	}
7. Sou Vaishali Pradeep Bondre	}
Age 35, Occu: House hold	}
R/o at Rangao (Shivajinagar) Tal-	}
Indapur, District-Pune	}

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8. Shri Dinkar Dhanaji Jagtap	}	
Age 39,	Occu: }	
Agriculturist/Advocate R/o	At }	
Natepute, Tal- Malshiras,	Dist: }	Respondents
Solapur.	}	(Orig. Defendants)

Mr. Ajay Joshi, for the petitioner.

Ms. Manisha Devkar with Siddhi Patil, for the respondent nos.1 to 5.

CORAM : N.J. JAMADAR, J.

DATE : 16TH APRIL 2025.

JUDGMENT:

1. Rule.
2. Rule made returnable forthwith and with the consent of the counsel for the parties heard finally.
3. This petition under Article 227 of the Constitution of India assails the legality, propriety and correctness of an order dated 31st July 2024 passed by the learned Civil Judge, Malshiras whereby an application preferred by the defendant nos. 1 to 5 for the rejection of the plaint, came to be partly allowed and the petitioner/plaintiff was directed to pay Court Fee in terms of Section 6(vii) of the Maharashtra Court Fees Act, 1959 treating the suit land bearing Gat No. 289 as non-agricultural land, within a period of one month; failing which the consequences envisaged by order VII Rule 11 of the Code of Civil Procedure ('Code') would follow.
4. The petitioner has instituted a suit for partition and

separate possession of his share in the land bearing Gat Nos. 288 and 289 situated at Mauje Natepute, Tal-Malshiras, District- Solapur (the suit lands) with the assertions that Ganpati Gharat was the common intestor. He had two sons; Bhujaba and Sahebrao. Plaintiff and Defendant no 6 are the son and daughter of Sahebrao. Defendant nos. 1 to 5 are successors in interest of Bhujaba. The defendant nos. 7 and 8 are the heirs of Mangal, the deceased sister of the plaintiff. During the lifetime of the fathers of the plaintiff and defendant nos. 1 to 5, by way of family arrangement, they started to cultivate separate portions of the suit lands. There are residential houses of the plaintiff and the defendants in the suit lands. The defendant nos. 1 to 5 have made known their intent to sell the suit lands. Therefore, the suit for partition and separate possession of plaintiff's share in the suit lands.

5. The defendant nos. 1 to 4 filed an application for rejection of the plaint, *inter alia*, contending that the defendants have constructed 13 rooms in Gat No. 289. 20 R land area appurtenant to the said 13 rooms is used for non-agricultural purposes. The value of the said residential houses is about Rs.16,00,000/- Therefore, till the value of the suit claim is corrected and the Court fees is paid on the market value of the said residential property, the suit cannot be proceeded with and if the plaintiff commits default in correcting valuation and payment of Court Fees, the plaint deserves to be rejected under the provisions Order VII Rule 11(b) of the Code.

6. By the impugned order, the learned Civil Judge directed the plaintiff to pay Court Fee treating the suit land, Gat No. 289 as non-agricultural land. The learned Civil Judge was of the view that, though

there was no record to show that Gat No. 289 was converted into non-agricultural use, yet from the pleadings of both the parties it emerged that the land bearing Gat No. 289 was being used for residential purposes and, therefore, the plaintiff was required to pay Court Fees on the premise that Gat No. 289 was a non-agricultural land.

7. Mr. Joshi, learned counsel for the petitioner, submitted that learned Civil Judge committed a manifest error in law in directing the plaintiff to pay the Court Fees treating the entire Gat No. 289 which admeasures 2 Hectar 66 R as land put to non-agricultural use. What the plaintiff has asserted in the plaint is that, in an area of around 20 R, there are residential houses of the defendant nos. 1 to 5. Likewise, there are residential houses of the plaintiff in the suit land. These assertions, according to Mr. Joshi, however, do not change the character of the suit lands. The learned Civil Judge, thus could not have directed the payments of Court Fee treating the entire Gat No. 289 as the land put to non-agricultural use.

8. Mr. Joshi would urge that under the provisions of the Maharashtra land Revenue Code, 1966 a holder of any land held for the purpose of agriculture is entitled to erect farm, building or make any other improvement thereon, for more convenient use of the land. Therefore, the averments in the plaint that there are residential houses of the plaintiff and defendant nos. 1 to 5 in the suit lands would not justify an order to pay Court Fee treating the entire land as a non-agricultural land.

9. To buttress this submission, Mr. Joshi placed reliance on the

judgment of the Supreme Court in the case of '*M/s Commercial Aviation and Travel Company and Ors. Vs. Mrs. Vimla Pannalal*¹', wherein it was enunciated that Order VII Rule 11 (b) contemplates correct valuation and not approximate correct valuation and such valuation of the relief has to be determined by the Court. If the Court cannot determine the correct valuation of the relief claimed, it cannot require the plaintiff to correct the valuation and, consequently, Order VII Rule 11(b) will not be applicable.

10. In opposition to this, Ms. Devkar the learned counsel for the respondents/defendant nos. 1 to 5 endeavoured to support the impugned order. It was submitted that the plaintiff himself had averred in the plaint about the existence of the residential houses of both the plaintiff and defendant nos. 1 to 5 and, yet, omitted to value the suit claim by taking into account the value of those structures. Moreover, those structures are not makeshift farmhouses but properly constructed rooms. Therefore, the plaintiff ought to have computed the value of those structures and paid Court Fee thereon.

11. Ms. Devkar, however, fairly submitted that the order passed by the learned Civil Judge treating the entire Gat No. 289 as a non-agricultural land may not be sustained. This Court may, therefore, appropriately modify the impugned order to the extent of valuation of the suit claim and payment of Court Fees on the residential structures, submitted Ms. Devkar.

12. I am afraid to accede to the submission of Ms. Devkar. Even

¹ (1988) AIR SCC 1636

if the averments in the plaint are taken at par and construed against the plaintiff, it would appear that the plaintiff had referred to existence of 13 rooms of the defendant and a farmhouse of the plaintiff in the suit land bearing Gat No. 289. However, that does not necessarily change the character of the suit land. If the suit is for partition and separate possession of a share in a joint family property or to enforce right to share in any property that is a joint family property, under the provisions of Section 6 (vii) of the Maharashtra Court Fees Act, 1959 the value of such land shall be deemed to be the value as determined under Para(v) of the said section. Para (v), in turn, mandates that where the land is held on settlement for a period not exceeding thirty years and pays the full assessment to Government, a sum equal to forty times the survey assessment, would be the value of the land for the purpose of the Court Fee.

13. Incontrovertibly, the suit is for partition and separate possession of the plaintiff's purported 1/6 share in the suit land. It is not put in contest that the suit lands are assessed to land revenue.

14. The facts that there is a building or residential structure erected over the suit land does not change the character of the suit land. Under Section 41 of the Maharashtra Land Revenue Code, 'A holder of any land assessed or held for the purpose of agriculture is entitled by himself, his servants, tenants, agents or other legal representatives to erect farm, building, construct wells or tanks or make any other improvements thereon for the better cultivation of the land, or its more convenient use for the agricultural purpose'. Thus, the

existence of residential structures on the suit land by itself does not justify treating the suit land as a non – agricultural land. At any rate, the learned Civil Judge could not have directed treating the entire Gat No. 289 as a non-agricultural land. There is no basis for such ascertainment of the value of the suit land

15. In the case of '**Kamaleshwar Kishore Singh Vs. Paras nath Singh and Ors.**²' the Supreme Court enunciated that, *'it is well settled that the court fee has to be paid on the plaint as framed and not on the plaint as it ought to have been framed unless by astuteness employed in drafting the plaint the plaintiff has attempted at evading payment of court fee or unless there be a provision of law requiring the plaintiff to value the suit and pay the court fee in a manner other than the one adopted by the plaintiff. The court shall begin with an assumption, for the purpose of determining the court fees payable on plaint, that the averments made therein by the plaintiff are correct. Yet, an arbitrary valuation of the suit property having no basis at all for such valuation and made so as to evade payment of court fees and fixed for the purpose of conferring jurisdiction on some court which it does not have, or depriving the court of jurisdiction which it would otherwise have, can also be interfered with by the court. It is the substance of the relief sought for and not the form which will be determinative of the valuation and payment of court fee. The defence taken in the written statement may not be relevant for the purpose of deciding the payment of court fee by the plaintiff. If the plaintiff is ultimately found to have omitted to seek an essential relief which he ought to have prayed for,*

2 (2002) AIR SCC 233

and without which the relief sought for in the plaint as framed and filed cannot be allowed to him, the plaintiff shall have to suffer the dismissal of the suit’.

16. The reliance placed by Mr. Joshi on the judgment in the case of ‘***M/s Commercial Aviation and Travel Company*** , (*supra*) appears to be well founded. Unable to determine the correct valuation of the relief claimed, the learned Civil Judge could not have directed the plaintiff to correct the valuation treating the entire Gat No. 289 as a non-agricultural land. Therefore, the entire order being, wholly unsustainable, deserves to be quashed and set aside.

17. Hence, the following order:

ORDER

- i) The petition stands allowed.
 - ii) The impugned order dated 31st July 2024 stands quashed and set aside.
 - iii) The application (Exhibit-39) stands rejected.
- No costs.

18. Rule is made absolute to the aforesaid terms.

(N.J. JAMADAR, J)