



IN THE HIGH COURT OF JUDICATURE AT BOMBAY

NAGPUR BENCH, NAGPUR

WRIT PETITION NO.6861/2024

Anil S/o. Madhukar Asegaonkar,
aged about 68 years, Occ:
Agriculturist, R/o. Pramila
Apartment, Flat No. 401, Near
Khamala Motors, Nagpur

... PETITIONER

...VERSUS...

Avinash @ Deepak S/o. Shriram
Asegaonkar, age 70 years, Occ:
Agriculture, R/o. Hatkeshwar
Ward Pusad, Taluka Pusad,
District Yavatmal.

...RESPONDENT

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...RESPONDENT

Shri S.S. Dhengle, Advocate for petitioner
Shri A.B. Patil, Advocate for respondent

CORAM : SMT. M. S. JAWALKAR, J.

DATE OF RESERVING THE JUDGMENT : 28/01/2025

DATE OF PRONOUNCING THE JUDGMENT: 12/02/2025

JUDGMENT

. Rule. Rule made returnable forthwith. Heard learned Counsel for both the parties.

2. All the petitions involving similar issue hence taken up for decision together and Writ Petition No. 6861/2024, is taken as lead case and facts in that case are considered.

3. Being aggrieved by the order dated 12/11/2024 passed by the learned 5th joint Civil Judge Junior Division, Pusad in Regular Civil Suit No. 90/2024 upon application below Exh. 20 dated 30/09/2024 and order passed below Exhibit 16 dated 12/11/2024 by 5th Joint Civil Judge Junior Division, Pusad in Regular Civil Suit No. 92/2024. Order passed below Exhibit 16 dated 12/11/2024 by 5th Joint Civil Judge Junior Division, Pusad in Regular Civil Suit No. 93/2024 filed under Order 7 Rule 11 (c) of the Civil Procedure Code for rejection of plaint and seeking modification of the impugned order.

4. Original plaintiff/respondent has instituted a suit for declaration of ownership by way of adverse possession and sought relief of permanent injunction prohibiting alienation of suit

property. The respondent/plaintiff has valued the suit for the purposes of jurisdiction and court fees to the tune of Rs. 4,000/- only and in view of paragraph No. 18 of the plaint, affixed court fees of Rs. 800 only and valued the claim for declaration under Section 6 (iv) (j) of Maharashtra Court Fees Act. It is the submission of the petitioner/defendant that the plaintiff has neither properly valued the suit nor affixed requisite court fees as required under Section 6 of the Maharashtra Court Fees Act. Therefore, the present petitioner/defendant filed application dated 30/09/2024 under Order 7 Rule 11 (c) of the Civil Procedure Code for rejection of plaint for payment of deficit court fees. The respondent/plaintiff has filed reply to the application of rejection of plaint on 04/10/2024. The learned trial court allowed the application of the petitioner, by order dated 12/11/2024, thereby observing that the plaintiff has not valued the suit properly and has not paid the adequate court -fees therefore respondent/plaintiff is liable to pay court fees on the basis of either 40 times or 80 times of survey assessment as provided in Section 6 (iv) (v) of the Maharashtra Court Fees Act. The aforesaid order is the subject matter of challenge in the present writ petition.

5. Learned Counsel for the petitioner contended that the trial court erred to considered that the Section 6 (iv) (v) applies only for the suits filed for possession of lands, houses and gardens, therein the court fees shall be 40 times and 80 times but the suit property is an agricultural land and suit is not at all filed for possession but filed for declaration of ownership thus, section 6(iv) (v) does not apply at all. Therefore needs interference by this court and impugned order needs to be set aside.

6. Learned Counsel for the respondent supported the order passed by the learned trial court and contended that the learned trial court has rightly taken into consideration that the plaintiff has filed suit for declaration of ownership by way of adverse possession and permanent injunction therefore Sec. 6 (iv) (d) of the Maharashtra Court Fees Act will be applicable and not Sec. 6 (iv) (j) of the Act. Hence, the order needs no interference and needs to be confirmed.

7. The learned Counsel for respondent relied on *Sudhir N. Kothari and another Vs. Vaghu Tatyaba Padwal and others, 2016*

SCC OnLine Bom 3590.

8. Heard both the parties. Considered documents and impugned order and citation relied by the parties. The petitioner/defendant filed an application for rejection of plaint under Order 7 Rule 11 (c) of the Code of Civil Procedure. It is the contention of the petitioner that suit has been filed by the plaintiff claiming relief of declaration of ownership by way of adverse possession along with relief of permanent injunction. Plaintiff has valued the suit for the purpose of jurisdiction and court fee to the tune of Rs.3000/- and affixed court fees of Rs.600/- only, and therein valued the claim for declaration under Section 6 (iv) (j) of the Maharashtra Court Fees Act. It is contended that the present case would fall under Section 6 (iv) (d) of the Maharashtra Court Fees Act and not under Section 6 (iv) (j) of the Maharashtra Court Fees Act. Per Contra, learned Counsel for respondent/plaintiff strongly opposed the petition. It is contended that declaration of ownership by way of adverse possession along with relief of permanent injection is claimed. Therefore, valuation of the suit for the purpose of court fee and jurisdiction is proper and correct.

Order 7 Rule 11 of the Code of Civil Procedure which reads as under :

“11. Rejection of plaint. - The plaint shall be rejected in the following cases:-

(a) ...

(b) where the relief claimed is under-valued, and the plaintiff, on being required by the Court to so correct the valuation within a time to be fixed by the Court, fails to do so;”

9. On perusal of this provision, it appears that it operates when the Court satisfies that plaint is undervalued and insufficiently stamped and the plaintiff on being required by the Court to correct the valuation within a time to be fixed by the Court fails to do so. Only in that circumstances Court may reject the plaint. The nature of relief is claimed is that declaration of ownership by way of adverse possession and for permanent injunction. Admittedly, suit property is an agricultural land. For the sake of convenience, Section 6 (iv) (j) and Section 6 (iv) (d) of the Maharashtra Court Fees Act reproduced below “

“6 Computation of fees payable in certain suits

(i).....

(ii).....

(iii).....

(iv) (a)....

(b)....

(c).....

(d) for ownership etc. of immovable property, etc.

In suits for declaration in respect of ownership, or nature of tenancy, title, tenure, right, lease, freedom or exemption from, or non-liability to, attachment with or without sale or other attributes, of immoveable property, such as a declaration that certain land is personal property of the Ruler of any former Indian State or public trust property or property of any class or community one-fourth of ad valorem fee leviable for a suit for possession on the basis of title of the subject-matter, subject to a minimum fee of [one hundred rupees]:

(e)....

(f)....

(g)....

(h)....

(i)....

(j) for other declarations

In suits where declaration is sought, with or without injunction or other consequential relief and the subject-matter in dispute is not susceptible of monetary evaluation and which are not otherwise provided for by this Act "ad valorem fee payable, as if the amount or value of the subject-matter was [one thousand rupees;]

In all suits under clauses (a) to (i) the plaintiff shall state the amount at which the values the relief sought, with the reasons for the valuation;"

10. On bare perusal of Section 6 (iv) (j) of the Maharashtra Court Fees Act, it is clear that wherein suits declaration is sought with or without injunction or other

consequential relief and subject matter in dispute is not susceptible of monetary evaluation and which are not otherwise provided for by this Act “*ad valorem*” fee payable, as if the amount or value of the subject matter was Rs.1,000. However, plaintiff has filed suit for declaration of ownership by way of adverse possession and permanent injunction. Section (iv) (d) of the Maharashtra Court Fees Act will be applicable which has been provided by the Act for the declaration of ownership and permanent injunction.

11. Learned Counsel for the respondent relied on ***Sudhir N. Kothari*** (supra), wherein, plaintiff had filed suit for declaration of ownership by way of adverse possession and permanent injunction. It is held in the matter of ***Sudhir N. Kothari*** (supra), by this Court in paragraph No. 9 as under :

“9. It is not in dispute that the subject matter of the suit is an agricultural land bearing Gat No. 214. The suit is for declaration of ownership. If that be so necessarily the payment of court fee would be governed by section 6(iv) (d) of the Act. Section 6 (iv)(d) lays down that in the suit for declaration of ownership, 1/4th of ad valorem fee leviable for a suit for possession on the basis of title of the subject matter, subject to payment of minimum fee of one hundred rupees is payable. Having regard to the fact that section 6(iv) (d) of the Act refers to a suit for possession, one has to necessarily refer to section 6(v) of

the Act. Section 6(v) of the Act reads thus:

"6. Computation of fees payable in certain suits

The amount of fee payable under this Act in the suits next hereinafter mentioned shall be computed as follows:

.....

.....

.....

(v) for possession of lands, houses and gardens

In suits for the possession of land, houses and gardens according to the value of the subject-matter; and such value shall be deemed to be, where the subject-matter is a house or garden according to the market value of the house or garden and where the subject-matter is land, and-

(a) 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;

(b) where the land is held on a permanent settlement, or on a settlement for any period exceeding thirty years, and pays the full assessment to Government a sum equal to eighty times the survey assessment; and

(c) where the whole or any part of the annual survey assessment is remitted a sum computed under sub-paragraph (a) or sub-paragraph (b) as the case may be, in addition to eighty times the assessment or, the portion of assessment, so remitted;"

12. As such, the plaintiff was required to pay court fee as per Section 6 (iv) (d) and not as per section 6 (iv) (j) of the Maharashtra Court Fees Act. In view of Section 6 (v), plaintiff is required to pay court fee. I do not see any error or perversity in the

order passed by the learned Civil Judge Junior Division, Pusa, holding that plaintiff has not valued the suit properly and has also not paid the adequate court fee on it. In view of Order 7 Rule 11 (b), 15 days time is granted to the plaintiff to correct the valuation of the suit and if not corrected till the specified date, the plaint will be rejected on same day. There is no case made out by the petitioner to reject the plaint under Order 7, Rule 11. Accordingly, petitions stand dismissed. No orders as to cost.

(SMT. M.S. JAWALKAR, J.)

Jayashree..