



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 1379 OF 2026

Pradeep S/o. Pandharinath Ghuge,
Age: 47 years, Occ: Business,
R/o. Plot No.55, Surana Nagar,
Aurangabad.

...Petitioner
(Ori. Plaintiff)

Versus

Jaydeep S/o Pandharinath Ghuge,
Age. 53 years, Occu. Business,
R/o 57, "Raj Sadan" Surana Nagar,
Tq. & Dist. Chh. Sambhajinagar

...Respondent
(Ori. Defendant)

- Mr. J. M. Murkute, Advocate for the Petitioner
- Mr. A. D. Kasliwal, Advocate for the Respondent

CORAM : S. G. CHAPALGAONKAR, J
DATE : APRIL 22, 2026

FINAL ORDER :

1. The Petitioner takes exception to order dated 09.01.2026 passed below Exhibit 16 in RCS No. 829/2025 pending before Civil Judge, Junior Division, Aurangabad.

2. The Petitioner is Plaintiff in RCS No. 829/2025, which is filed for claiming relief of partition, separate possession, perpetual and mandatory injunction in respect of suit property i.e. Gut No. 168, admeasuring 86 R situated at Satara, Tq. & Dist. Chhatrapati Sambhajinagar. In nutshell it is contention of Petitioner that suit property was originally owned by parties. After demise of father and mother,

brothers and sisters of Plaintiff relinquished right in property in favour of Plaintiff and Defendant. The father of Plaintiff, during his illness, expressed his wish that Plaintiff shall keep 45% share in suit property and give 55% share to Defendant. The Plaintiff had agreed to keep wish of his father and kept 55% share for Defendant. However, there was no specific partition in respect of share of Plaintiff and Defendant. They continued as joint owner and possessor.

3. In aforesaid backdrop, Defendant himself demarcated suit property in two parts. He obtained N.A. permission and caused development on valuable commercial piece of land and left remaining land to Plaintiff. According to Plaintiff, while he was busy in taking care of his ill father during period from 2014 to 2025, Defendant developed land in commercial bungalows and apartments without consent of Plaintiff. Subsequently, Plaintiff found from 7/12 extract about division of area of suit property. In this background, Plaintiff sought relief of partition and separate possession. He valued suit as per Section 6(j) & (v) of Maharashtra Court-Fees Act (for short '**the Act**') and accordingly paid court fees.

4. The Respondent-Defendant filed application under Section 8 of the Act read with Order VII, Rule 11(b) of Code of Civil Procedure seeking direction for inquiry under Section 8 of the Act and Suit Valuation Act to ascertain valuation of suit property and also sought direction against Plaintiff to value suit property and pay appropriate Court fees thereon within stipulated period. The Trial Court allowed application vide impugned order dated 09.01.2026 and directed Plaintiff to

properly value suit property and pay Court fees in terms of Section 6(v) and Section 6(vii) of the Act by considering construction as well as non-agricultural nature of suit property till next date. In case Plaintiff fails to comply order, posted matter for further orders in terms of Order VII, Rule 11 (b) of Code of Civil Procedure.

5. Mr. Murkute, learned Advocate appearing for Petitioner, would submit that Trial Court passed impugned order without appreciating factual matrix and provisions regarding valuation of suit. The Plaintiff has specifically averred that suit property is agricultural land. The Defendant illegally converted it for non-agricultural use and developed construction thereon behind back of Plaintiff. The Plaintiff raised his claim on 45% share in suit property by removing or demolishing construction made by Defendant. If Defendant has illegally carried development on agricultural land without consent of Plaintiff, Plaintiff cannot be penalized by directing to pay Court fees on basis of development carried by Defendant. The Plaintiff's claim is for declaration and possession of agricultural land as left behind by his father. He would urge that valuation of suit made by Plaintiff is appropriate. In support of his submissions, he relies upon observations of this Court in case of *Sudhir N. Kothari and Others vs. Vaghu Tatyaba Padwal and Others*, 2016:BHC-AS:7318.

6. Per contra, Mr. Kasliwal, learned Advocate appearing for Respondent submit that land in question is granted non-agricultural permission by Sub-Divisional Officer vide order dated 22.01.2016, Aurangabad. The construction

permission was granted by Municipal Corporation. Accordingly, commencement certificate dated 15.04.2021 was issued. Eventually, construction is completed and occupancy certificate is also granted by Corporation. As such, there cannot be any dispute that land in question is a commercial property with construction developed thereon. Therefore, suit will have governed by Section 6(v) of the Act. The Trial Court has rightly considered aforesaid aspects and issued direction to Plaintiff for correct valuation of suit and payment of Court fees in terms of Section 6(v) and 6 (vii) of the Act. He heavily relied upon observations of Supreme Court in case of *State of U.P. vs. Nand Kumar Aggarwal and Others*, AIR 1998 SC 473, and observations of this Court in case of *Sardar Gurpreetsingh Gurnamsingh Pander vs. Sangeeta Bhagchand Bhavle* and Others, 2022(2) Mh.L.J. 130.

7. Having considered submissions advanced by learned Advocates appearing for respective parties, moot question arises for consideration is to valuation of suit property and consequential application of Court fees. The Plaintiff has specifically pleaded land in Gut No. 168 admeasuring 86 R situated at Satara was owned by his father. The Plaintiff's brothers and sisters relinquished same in favour of Plaintiff and Defendant, as such, Plaintiff and Defendant acquired ownership in proportion of share to extent of 45% and 55% respectively. According to Plaintiff, there was no specific partition of suit property, however, Defendant himself demarcated same without consent of Plaintiff and developed part of property having commercial value by making construction of commercial bungalows and apartments. The development was made by Defendant in share of Plaintiff without

his consent. The Plaintiff, therefore, claims partition and peaceful vacant separate possession of his share. At this stage, reference can be given to observations in paragraph 21 of judgment of Division Bench of this Court in case of ***Dilip Khushalchand (Srisimal) Jain and Others vs. Hardip Deepakbhai Ramani and Others***, 2023 (3) AIR Bom R 672, which reads thus:

21. This distinction, if not made, will lead to anomalous results rather absurd results. A Plaintiff who is a party to the sale deed seeks avoidance of sale deed on the ground of fraud or mistake of fact, coercion, misrepresentation, etc. In such a case it would be prudent to compute the court fee on the consideration mentioned in the sale deed. But a person who is not a party to the sale deed is completely unaware of the sale deed having been executed. These transactions are executed behind his back. He comes to know of such a transaction only after the deed/instrument is executed. Because of subsequent events he gets the knowledge of the sale deed having been executed by a person who is not the owner of the property or by a person selling his own share and share of other co-owners as well. In such cases, the Plaintiff has not received consideration of the sale deed. It would be unreasonable for the plaintiff who has not received a single farthing or even a penny towards the consideration mentioned in the sale deed to pay the court fee on the entire consideration mentioned in the sale deed. In such cases, he would be penalized twice for no fault of his. First he has lost his property and second he has to pay court fee on the entire consideration. Legislature must not be having such an intention in mind. In the case of the Plaintiff who is a party to the sale deed stands on a different pedestal. He has received the entire consideration in the sale deed but for the reasons enumerated above he seeks avoidance of sale deed or cancellation of sale deed and seeking declaration that the instrument/deed is void.

8. By keeping in mind aforesaid observations, if facts of present case are appreciated, it is evident that Plaintiff has specifically pleaded that, he is in concern

with development carried on suit property. His claim is for vacant and peaceful possession of his share of agricultural land that was left behind by his father. In this backdrop, Plaintiff valued suit on basis of annual survey assessment under Section 6(j) & (v)(vi) of the Act treating suit property as land. The Respondent contend that since property is converted to non-agricultural use and development is made thereon, suit ought to have been valued on basis of market value and Court fees ought to have been paid accordingly. However, this Court find substance in contention of Petitioner that his claim is for possession of agricultural land. He is not claiming any right over development, on other hand, he is aggrieved by unilateral development behind his back by Defendant and seeks relief of mandatory injunction to remove illegal development/construction to extent of his share in property.

9. In aforesaid backdrop, observations of Division Bench of this Court assumes significance. In such cases, where Plaintiff has not received benefit of development and such development is carried behind his back, Plaintiff is put to dual loss. Firstly, he has suffered loss of property and secondly, he would be penalized by asking him to pay Court fees on such illegal development for no fault on his part. Section 6(v) of the Act requires payment of Court fees if suit is for possession of house or garden as per market value, however, if suit is for possession of land, Court fees shall be based on assessment to Government. In present case, although suit property is developed by Defendant, taking into account averments in plaint, Plaintiff cannot be penalized for payment of Court fees on illegal development caused by Defendant. Even it is assumed that suit property is put to

non agriculture use without consent of Plaintiff, property cannot be treated as commercial or non-agriculture for purpose of payment of Court fees.

10. In case of *Sardar Gurpreetsingh Gurnamsingh Pander* (supra), suit was filed in respect of land, which was used for brick kiln by Harnam Singh, who was owner of property. The Petitioner and Defendant both are claiming right in property through him. Admittedly, property was never in agriculture use. In this backdrop, this Court observed that when land used mainly for brick kiln, it cannot be treated as agriculture land by predecessor in title of Plaintiff and their mother Manjulabai. Such is not case here. In present case, non agriculture use is by Defendant behind back of Plaintiff. Similarly, in case of *State of U.P.* (supra) land is used for operating brick kiln. The Hon'ble Supreme Court observed that although such land is recorded as agricultural land, same cannot be treated as agricultural land. Therefore, on basis of use of land for brick kiln business, it is held that Court fees will have to be applied as per non-agriculture use. However, in peculiar facts of present case, at present looking to pleadings in plaint when Plaintiff seems to be aggrieved by unilateral non-agriculture use of suit land by Defendant and filed suit claiming his share in agricultural land that was left behind by his father, he cannot be penalized to pay Court fees owing to illegal development carried by Defendant. Eventually, impugned order directing Plaintiff to value suit and pay Court fees as per Section 6(v) and 6(vii) of the Act by considering construction as well as non-agriculture nature of suit property cannot be countenanced. Needless to state that Trial Court can frame issue on aforesaid aspect and rule an valuation of suit property and

payment of Court fees on basis of evidence laid by parties in trial. Hence, following order:

ORDER

- (a) The Writ Petition is allowed.
- (b) The impugned order dated 09.01.2026 passed below Exhibit 16 in RCS No. 829/2025 by Civil Judge, Junior Division, Aurangabad is quashed and set aside.
- (c) Needless to state here that issue of valuation and payment of Court fees is kept open to be decided by Trial Court on basis of evidence laid by parties on issues and findings recorded thereon in trial.

(S. G. CHAPALGAONKAR, J.)

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