

MHAH190003592022



ORDER BELOW EXH. 61 IN RCS NO. 74/2022

Defendant No.1 has filed this application under Order VII Rule 11 (b) of the Code of Civil Procedure, 1908, for rejection of the plaint on the ground that the suit is undervalued. The application is supported with an affidavit. The plaintiff strongly resists the application by filing his reply.

2. Heard Ld. Advocate Shri. A. V. Kakade for defendant and Ld. Advocate Shri. D. A. Shelake for the plaintiff.

3. Ld. Advocate for defendant No.1 has submitted that, the plaintiff has filed a present suit for partition, separate possession, declaration, and injunction in respect of Gat No. 1111. The said suit property is a non-agricultural property situated at Shevgoan. The plaintiff has not valued the suit as per market value of the said property. The plaintiff has erroneously contended Gat No. 1111 as agricultural property. As such, the suit property has not been properly projected and valued. As such, the plaint be rejected for intentional undervaluation of the plaint under Order VII Rule 11(b) of the Code of Civil Procedure, 1908.

4. The plaintiff resisted the application contentions by submitting that he has properly valued court fee on his share of 1/6th over the suit property. The defendant has filed a present application only to prolong the matter. The application is not tenable. Accordingly, the plaintiff prayed for rejection thereof.

5. Before going into merits of the application, it is necessary to recite the legal provision contemplated under Rule 11 (b) of Order VII CPC. It reads as

Rejection of plaint

(b) Where the relief claimed is undervalued, and the plaintiff want to be required by the Court to correct the valuation within a time to be fixed by the Court, fails to do so.

6. On the backdrop of above provision, defendant No. 1 has contended that, Gat No. 1111 is nonagricultural land and the plaintiff has neither properly valued the suit, nor paid court fees according to market price. On the other hand, the plaintiff has claimed that Gat No. 1111 is agricultural land and has properly paid court fees based on his share in the suit property.

7. From the rival contentions of the parties firstly it is necessary to see as to whether Gat No. 1111 is treated as agricultural or nonagricultural land for computation of court fees. On this point Ld. Advocate for the defendant has submitted that, Form 12 of the 7/12 extract of the suit property projects the nature of the land to be Binsheti Pad (non – agricultural and infertile). Further, he has produced one sale deed of a plot situated in the Gat no. 1111. In the said deed order of the collector is annexed which shows Gat no. 1111

is merged into Gavthan of Shevgoan. Therefore, by relying on these documents, it is submitted that Gat no. 1111 is treated as non-agricultural land. On the other hand, the plaintiff has submitted that the defendant has made vague submissions. The defendant has not produced the NA order of the collector. 7/12 extract is not a proper document which could be relied upon, to treat the suit property as non-agricultural one.

8. I have minutely perused the documents filed on record. The first document on which the defendant places reliance upon, is revenue 7/12 extract of Gat no. 1111. I do agree with the submissions advanced by Ld. Advocate of the plaintiff that, From 12 of the revenue record is not a proper document to hold property as nonagricultural land. I am of the opinion that, it is the document which merely shows that, a portion of land is not under cultivation for some reason.

9. Upon perusal of Extract of Gat scheme filed along with list at Exh. 70, it projects survey numbers which are converted into block numbers. On perusal of the said document, it appears that Survey number 121 was converted into Gat no. 1111 i.e block number 1111. Upon perusal of the sale deed of the plot situated in the Gat no. 1111 filed along the list at Exh. 70, it is evident that, order dated 02/08/1972, as passed by the Collector is annexed with the sale deed. For the better understanding I think it is necessary to reproduce the said order here, the said order reads as under:

“Whereas Government in their resolution Revenue Department No. Crs-5760/22408-O dated 16-03-1964 have sanctioned the scheme of introduction of Gavthan survey in the State of Maharashtra and wherein the collector of Ahmednagar considers that the land and

areas showing in the accompanying statement should for the purpose of extension of Shevgoan village be included within gavthan limits of the Shegaon village and collector thereof directs that the all the lands mentioned in the accompanying statement shall be included in the Gavthan limits of village Shevgoan Tal: Shevgoan, Dist Ahmednagar for the said purpose.”

On the perusal of the accompanying statement of this order, it shows that Survey No. 121 i.e present Gat No. 1111 is included in the periphery of the village site / *Gavthan* of village Shevgoan.

10. On collective reading of Gat Scheme Extract and Order of the Collector along with a list of survey numbers, I have no hesitation in concluding that, Gat No. 1111 is included in the Shevgoan Gavthan. Hence, it is nonagricultural property, and mere nomenclature “Gat number” is not sufficient to hold the property as agricultural property.

11. Now, it is necessary to see whether the plaintiff has properly valued the suit. On this point Ld. Advocate for the defendant has submitted that, suit property i.e Gat no. 1111 is nonagricultural land. Hence the plaintiff has to pay court fees on the market value of it.

12. On the other hand, Ld. Advocate for the plaintiff has submitted that, the plaintiff has to pay court fees as per Section 6 (V) of the Maharashtra Court Fees Act as land includes both agricultural land as well as nonagricultural land. To substantiate the contention, the plaintiff relied on the judgment of - **Radhabai Wd/O Mahadev Thakur Vs. Gajanan Shriram Akone and ors 2009 (4) ALLMR 364**. It is held therein that, for the purpose of Court fees, the valuation of the property shall be equal to 40 times survey assessment, however

for the purpose of jurisdiction, the value shall be equal to 200 times the assessment payable in respect of the land as per the provisions of Rules under Maharashtra Suit Valuation Rules. In the above-mentioned case, the suit properties in question are agricultural lands. In the above-mentioned judgment, Hon'ble High Court nowhere mentioned that, for the purpose of computation of Court fees, the term "land" includes both "agricultural land" as well as "nonagricultural land". Further, in the above-mentioned case Hon'ble High Court clarifies the valuation of agricultural land, and in the case in hand suit property is nonagricultural land therefore, the caselaw cited by the plaintiff, with great respects, does not apply to the facts of the case in hand.

13. I have perused the plaint. It shows that the plaintiff has treated all the suit properties as agricultural properties. In fact, for the reasons above, land Gat number 1111 being nonagricultural land, it is necessary to pay court fees on the market value thereof. Plaintiff and defendant no. 1 both have produced market valuation reports of the Sub-registrar Shevgoan. Both reports show different market values of the suit property. However, the defendant has produced a recent market value of the suit property. Therefore, for calculating court fees, the recent valuation report filed by the defendant needs to be taken into consideration. Therefore, I am of the opinion that plaintiff has paid deficient court fees. The plaintiff has to pay court fees as per Section 6(vii) of the Maharashtra Court Fees Act on the market value of Gat No. 1111. Hence, in the result, I pass the order:

ORDER

- 1) Application (Exh.61) is partly allowed.
- 2) Plaintiff shall pay Court fees in terms of Section 6 (vii) of the Maharashtra Court Fees Act treating suit property no. 1 (c) as non-agricultural property within one month of this order. On failure of the plaintiff to value suit within the prescribed time the plaint will be rejected in accordance of Order VII Rule 11(b) of the Civil Procedure Code.
- 3) No order as to cost.

Place: Shevgoan

Date: - 17.01.2024

SD/-

(Monali A. Bendre)
2nd Jt. Civil Judge Jr. Division,
Shevgaon.