

**IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE**

BEFORE

HON'BLE SHRI JUSTICE VIVEK RUSIA

ON THE 2nd OF JANUARY, 2024

MISC. PETITION No. 3176 of 2023

BETWEEN:-

RAMCHANDRA BANARSI S/O DEVILAL BANARSI, AGED ABOUT 59
1. YEARS, OCCUPATION: AGRICULTURIST, R/O GRAM MALENDI, POST
KODARIA, MHOW, DISTRICT INDORE (MADHYA PRADESH)

SHAIENDRA BANARSI S/O RAMCHANDRA BANARASI, AGED ABOUT
2. 32 YEARS, OCCUPATION: AGRICULTURIST, R/O GRAM MALENDI,
POST KODARIA, MHOW, DIST. INDORE (MADHYA PRADESH)

JİYALAL BANARSI S/O DEVILAL BANARSI, AGED ABOUT 56 YEARS,
3. OCCUPATION: AGRICULTURIST GRAM MALENDI, POST KODARIA,
MHOW, DIST. INDORE (MADHYA PRADESH)

PRADEEP BANARSI S/O JİYALAL BANARSI, AGED ABOUT 22 YEARS,
4. OCCUPATION: AGRICULTURIST, R/O GRAM MALENDI, POST
KODARIA, MHOW, DIST. INDORE (MADHYA PRADESH)

MAYA BANARSI W/O JİYALAL BANARSI, AGED ABOUT 50 YEARS,
5. OCCUPATION: HOUSEWIFE, R/O GRAM MALENDI, POST KODARIA,
MHOW, DIST. INDORE (MADHYA PRADESH)

SHAKUNTLA BANARSI W/O RAMCHANDRA BANARSI, AGED ABOUT
6. 54 YEARS, OCCUPATION: HOUSEWIFE, R/O GRAM MALENDI, POST
KODARIA, MHOW, DIST. INDORE (MADHYA PRADESH)

SHEELA BANARSI W/O SHAIENDRA BANARSI, AGED ABOUT 28
7. YEARS, OCCUPATION: HOUSEWIFE, R/O GRAM MALENDI, POST
KODARIA, MHOW, DIST. INDORE (MADHYA PRADESH)

.....PETITIONERS

(BY SHRI RISHI TIWARI, ADVOCATE.)

AND

1. RADHABAI @ DEVKABAI W/O KANHAIYALAL CHOUDHARY, AGED
ABOUT 52 YEARS, OCCUPATION: AGRICULTURIST AND HOUSEWIFE,

**R/O HOUSE NO.9 PENSIONPURA, MHOW, DISTRICT INDORE
(MADHYA PRADESH)**

**PARVATIBAI W/O POORAN SINGH, AGED ABOUT 66 YEARS,
2. OCCUPATION: HOUSEWIFE, R/O GRAM MALENDI, POST KODARIA,
MHOW, DIST. INDORE (MADHYA PRADESH)**

**MULIABAI W/O OMSINGH, AGED ABOUT 62 YEARS, OCCUPATION:
3. AGRICULTURIST, R/O GRAM KATKATKHEDI, POST KODARIYA,
MHOW, DIST. INDORE (MADHYA PRADESH)**

**SHANTIBAI W/O GAURI SHANKAR, AGED ABOUT 54 YEARS,
4. OCCUPATION: AGRICULTURIST, R/O GRAM KATKATKHEDI, POST
KODARIYA, MHOW, DIST. INDORE (MADHYA PRADESH)**

**5. THE STATE OF MADHYA PRADESH THROUGH COLLECTOR
COLLECTOR OFFICE, INDORE (MADHYA PRADESH)**

.....RESPONDENTS

(NO.1 BY SHRI RISHIRAJ TRIVEDI, ADVOCATE.)

*This petition coming on for orders this day, the court passed the
following:*

ORDER

Petitioners/defendant Nos.1, 2, 4, and 8 to 10 have filed this present petition being aggrieved by the order dated 04.05.2022 whereby the learned Civil Judge, Senior Division has rejected the application filed under Order VII Rule 11 of CPC.

The facts of the case in short are as under:

02. Respondent No.1 being a plaintiff has filed a civil suit for declaration, permanent injunction, partition, possession, and cost of the suit, etc. against petitioners and respondent Nos.2 to 5. By way of the aforesaid suit, the plaintiff is seeking the partition of agricultural land of various Survey numbers and areas mentioned in paragraph No.3 of the plaint. In paragraph No.12 of the plaint, the plaintiff valued the suit

Rs.10,000/- for the relief of declaration, Rs.10,000/- for the relief of permanent injunction and Rs.2,160/- (Lagaan Rs.108 X 20) for partition and possession, in total valued the suit Rs.22,160/- and paid the court fees of Rs.840/-.

03. The petitioners appeared before the Civil Court and filed an application under Order VII Rule 11 of CPC seeking rejection of the plaint on the grounds of non-payment of improper valuation as well as non-payment of *ad-valorem* court fees on the basis of the market value of the suit land. The application was opposed by the plaintiff and vide order dated 04.05.2022, the learned Civil Judge, Senior Division dismissed the application. Hence, this present petition before this Court.

04. Shri Rishi Tiwari, learned counsel for the petitioners submits that the Learned Court has failed to appreciate the provisions of subsections (vi-a) of Section 7 of the Court Fees Act, 1870. Since the plaintiff is out of possession of the property of which he claims to be a coparcener or co-owner and such claim is denied, therefore, the value of such share is liable to be ascertained on the basis of the market value of the property not on the basis of the land revenue. In support of his contention, Shri Tiwari learned counsel has placed reliance on a judgment passed by the Co-ordinate Bench of this Court in the case of ***Umar Farukh V/s Nabi Baksh and others in Misc. Petition No.734 of 2023 decided on 16.03.2023*** in which it has been held that when the relief of partition is also sought this Court has no hesitation to hold that section 7 (vi-a) would be applicable in the facts and circumstances of the case and merely because the land is agricultural land, it would not fall under section 7(v) as has been wrongly held by the learned judge of

the trial Court.

06. Shri Rishiraj Trivedi, learned counsel for respondent No.1 / plaintiff submits that this Court in case of ***Bhagwati V/s Chamar Rai in Civil Revision No.1236 of 1979 decided on 13.02.1980 [1980 (II) M.P.W.N. 22]*** had held that the legislative intention is thus clear that when a plaintiff claims partition and separate possession on the ground that he is out of possession, the claim is to be valued just like a suit for possession simpliciter. A harmonious construction of paragraphs, (v) and (vi) of section 7 will show that the legislature intended that the market value of a land revenue paying land for both the clauses will be the same, that is, twenty times the land revenue as provided under clause (v). A different interpretation will create a conflict between these two clauses. He has also placed reliance on a judgment passed by another Co-ordinate Bench in the case of ***Basant Kumar V/s Ved Prakash*** reported in ***2014 SCC OnLine MP 2209*** in which also the property in question was an agricultural land which is an ancestral property of the family and the petitioner was claiming the possession of the land based on this right of the property. Relying on a law laid down in the case of ***Bhagwati*** (supra) this Court has held that the claim is to be valued just like a suit for possession simpliciter i.e. 20 times the land revenue.

07. Shri Trivedi learned counsel has also placed reliance on a judgment passed in the case of ***Gorelal Lodhi and others V/s Ratanlal Lodhi and others in Civil Revision No.176 of 2013*** decided on 11.10.2013 and submits that the court fee is liable to be decided on the basis of sections 7(v) and 7(vi-a) of the Court Fees Act as the plaintiff has claimed the possession as well as the partition and admittedly the

land is agricultural. It is further submitted that this issue of valuation and court fees is a blended question of facts and law which can be decided after framing of issues not by way of application under Order VII Rule 11 hence, the present petition is liable to be dismissed.

Appreciation and conclusion

08. Admittedly, the plaintiff is claiming partition and possession of all the agricultural lands. The court is liable to be paid under section 7(v) of the Court Fees Act in the suit for possession of the land, house, and garden according to the value of the subject matter and further says that such value shall be deemed to be the subject matter in the land. If the suit land is agricultural land then the court fee shall be assessed on the basis of land revenue or land revenue is payable in respect of such land 20 times the land revenue so assessed or payable will be a value of the subject matter. Likewise, in the suit for partition, the court fees would be one-half of the value of the plaintiff's share. Section 7(v-a) of the Court Fees Act, 1870 nowhere says that the value shall be decided on the market value of the property.

09. The Suit Valuation Act, of 1887 prescribes the mode of the determining the jurisdiction of the Court. Part 1 deals with the suit relating to the land. Section 3 gives power to the State Government to make rules for determining the value of the land for jurisdictional purposes. Sub-section (1) says that the State Government makes rules for determining the value of the land for jurisdiction in the suits mentioned in the Court Fees Act, 1870 Section 7 paragraph No.(v), (vi) & (x)(d). Section 4 of the Suit valuation Act of 1887 says that the

valuation of the relief in certain suits relating to land is not to exceed the value of land. Section 8 says the Court-fee value and jurisdictional value to be the same in certain suits wherein suits other than those referred to in the Court Fee Act, 1870 section 7, paragraphs (v) (vi) and (ix) and paragraph (x), clause (d), Court-fees are payable ad valorem under the Court Fees Act, 1870 the value as determinable for the computation of court fees and the value for purposes of jurisdiction shall be the same.

10. In a civil suit if a decree of partition of house/shop/garden is being sought partition then the valuation would be certainly based on the market of the suit property but as per Section 7(v) of Act of 1887, the court fees is liable to be paid on the basis of 20 times of the land revenue for the relief of possession. In case multiple reliefs are being claimed like partition, possession, or declaration then the suit is required to be valued as per Section 7(v), (vi), (vi) of the Court Fees Act of 1870 accordingly. Where the relief of possession of land, house, and garden is sought then the valuation would be as per Section 7(v) of Act of 1887 and coupled with the aforesaid partition is also sought then for the purpose of partition the provision of Section 7(vi-a) would apply. Section 7(vi-a) only says that according to the value of such share and value of share and the value of subject matter shall be decided as per Section 7(v). hence the learned civil court rightly dismissed the application filed under O-7&R-11 of Civil Procedure Code. In the case of *Narayanprasad v. Jagdish*, reported in **(2011) 2 MP LJ 116** this court had held as under :-

5. In the matter of *Gujabai v. Salubai*, AIR 1947 Nagpur 243, it has been held that where in a suit the plaintiff, who is a co-owner whose right as a co-owner is challenged and who is excluded from possession, claims possession of his share of the property as a co-owner and wants his share to be partitioned off, though partition is claimed, it can still be regarded as a suit

in ejectment and, therefore, is primarily a suit which falls under section 7(v). In the matter of *Ganesh v. Radhelal*, 1972 MPLJ Short Note 78, wherein in a suit for partition, possession and *mesne profits* in respect of lands of the defendant's joint family, the plaintiff's claim was decreed and the appeal preferred by the defendants was dismissed *inter alia* on the ground that Court fee ought to have been paid on the market value, this Court held that defendants had paid Court fee on the basis of 20 times the land revenue. It was further held that since the decree did not in terms direct delivery of possession of a portion of a Khasra number, but it directed demarcation of $\frac{1}{4}$ th share of the plaintiff, therefore Court fee was payable only on the basis of 20 times the land revenue and not on the market value. In the matter of *Ramkali Bai v. Babu Ram*, 1975 MPLJ Short Note 28, wherein plaintiff suing for joint possession of agricultural land and defendants pleading construction of a petrol pump and development of a garden, this Court held that no Court fees need be paid on the market value of the structures or the garden. In the matter of *Ambaram v. Narbad*, 1976 MPLJ Short Note 2, wherein the suit is for definite share of land, this Court held that in case where plaintiff is not claiming any particular piece of land but a definite share $\frac{1}{4}$ th or $\frac{1}{3}$ rd, in that case the value is to be determined on the land revenue paid and not on the basis of market value. In the matter of *Rehmatulla Khan v. Aziz Khan*, 1980 JIJ Short Note 36, wherein Lower Court held that suit being for cancellation of will, must pay the Court fees accordingly, this Court held that suit of the plaintiff was that his share be declared $\frac{1}{12}$ th and be put in possession, hence section 7(iv)(c) attracted and plaintiff can sue for possession without asking for a declaration and cancellation. In the matter of *Bhagwati v. Chamar Rai*, 1980 (II) MPWN Note 22, wherein the suit was instituted for partition and separate possession of $\frac{1}{4}$ th share in the suit lands which are separately assessed to land revenue, this Court held that perusal of clause (vi-a) of section 7 shows that in a suit for partition, without claiming separate possession, the suit has to be valued according to one-half of the value of the plaintiffs share of the property. This is indicative of the facts that Court fees payable on such a suit is less than the Court fee payable when a suit is instituted for partition and separate possession on the ground that the plaintiff is out of possession. The Legislative intent is thus clear that when a plaintiff claims partition and separate possession on the ground that he is out of possession, the claim is to be valued just like a suit for possession simpliciter. In fact, when a co-owner files a suit for partition and separate possession, on the ground that he is out of possession, there is no difference between such a suit and a

suit for possession based on title. The amendment to the Court Fees Act (Act No. 4 of 1976) with effect from 1-3-1976 was introduced to clarify that even in cases where possession of a part of the land separately assessed to land revenue was claimed, Court fees payable on such claim will be proportionately worked out for such part of the land. This clarification had become necessary to get over some judgment which had laid down that where the claim was for the entire land separately assessed to land revenue, its market value would be deemed to be twenty times the land revenue but if it was for a part of land and that part was not separately assessed, the claim will have to be valued on the actual market value. The intention was to provide relief to agriculturist and the owners of land revenue paying lands.

11. The Coordinate Bench of this Court while passing the judgment in the case of *Umar Farukh V/s Nabi Baksh and others in Miscellaneous Petition No.734 of 2023* did not consider the judgment passed in the case of *Narayanprasad v. Jagdish (supra)*, *Bhagwati (supra)*, *Basant Kumar (supra)* and *Gorelal (supra)*, hence not binding on this court. In view of the law laid down by the Full Bench of this Court in the case of Jabalpur Bus Operators Association V. State of M.P. and others reported in 2003 (1) M.P.L.J. 531 the above judgment i.e. *Narayanprasad v. Jagdish(supra)* is having binding precedent. The judgment passed in the case of *Umar Farukh V/s Nabi Baksh and others in Misc. Petition No.734 of 2023 decided on 16.03.2023* will not help the petitioner.

12. Even otherwise, Section 12 of the Court Fees Act,1870 gives authority to the civil Court to decide every question relating to the valuation for the purpose of determining the amount of any fees chargeable under this chapter of the plaint and memorandum of the appeal and such decision shall be final between the parties. Sub-section (2) of Section 12 says where any suit comes before a Court of appeal,

reference, or revision if such Court considers that the said question has been wrongly decided, to the detriment of the revenue, it shall require the party by whom such fee has been paid to pay so much additional fee as would have been payable had the question been rightly decided, and the provisions of section 10, paragraph (ii), shall apply. The appellate Court shall determine again the question of valuation and if it is found that the excess amount of court fees has been paid then the appellate Court shall direct for a refund of the fee or vice versa, therefore, issue of court fees and valuation is liable to be decided on the basis of the evidence along with other issues and any decision on the said issue shall be final and can be reexamined again if the judgment is brought before the appellate Court.

13. In view of the above, the suit is not liable to be dismissed for want of court fees and valuation. With the aforesaid, the Miscellaneous Petition is dismissed.

(VIVEK RUSIA)
JUDGE

Divyansh