

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.1224 OF 2014

1. Shri. Sushil Baburao Jadhav,)
Age:-47 years, Occu:-Contractor,)
R/o:-Plot No.8, Shastrinagar, E ward,)
Kolhapur.)

2. Shri. Anil Baburao Jadhav,)
Age:-49 years, Occu:-Contractor,)
R/o:-Plot No.8, Shastrinagar, E ward,)
Kolhapur.)

.. Petitioners

Versus

1. Shri. Ashok Pandurang Jadhav,)
Age:-61 years, Occu:-Business,)
R/o:-C.S. No.2375, A ward,)
in front of Saraswati talkies,)
Kolhapur.)

2. Shri. Anil Ramchandra Yadav,)
Age:-38 years, Occu:-Business,)
R/o:-16/17, Ramling Krupa,)
Tulajabhavani Nagar, Ujalaivadi,)
Kolhapur.)

.. Respondents

Mr. Abhijit M. Adagule, for the Petitioners.

Mr. Amit B. Borkar, for Respondent No.1.

CORAM : R.M. SAVANT, J.

DATE : 12th FEBRUARY, 2015

ORAL JUDGMENT

1. The Writ Jurisdiction of this Court is invoked against the order dated 25.11.2013 passed by the Learned 15th Joint Civil Judge, Junior Division, Kolhapur, by which order the application Exh.33 filed by the Defendant No.1 invoking Section 8 of the Bombay Court Fees Act on the ground the suit has not been properly valued by the Plaintiff came to be rejected.

2. Shorn of unnecessary details a few facts can be stated thus-

3. The Respondent No.1 herein is the original Plaintiff who has filed the suit in question being Regular Civil Suit No.339 of 2011 for declaration and permanent injunction. The declaration sought was in respect of certain shop units and flats which were agreed to be given to the Plaintiff and the injunction is sought on the basis that the Defendant No.1 is alienating the flats units to the third parties. The Plaintiff in view of the fact that the Defendant No.1 was not acting in terms of the agreement cancelled the said development agreement by issuing a public notice dated 04.04.2002 and filed the instant suit. It seems that during the pendency of the suit, the Defendant No.1 executed two registered Sale

Deeds in favour of the Defendant No.3. Upon which the Plaintiff amended the suit and incorporated new prayers thereby seeking declaration that the Sale Deeds executed in favour of the Defendant No.3 is null and void and not binding on his share. The said prayers are by way of prayer clauses (AA). By the said amendment, the Plaintiff has also prayed for possession of his 1/3 share in the suit property.

4. In view of the incorporation of prayer clauses (AA) and (AB), the Defendant No.1 filed the instant application Exh.33 invoking Section 8 of the Bombay Court Fees Act. By the said application, the Defendant No.1 had prayed that the Plaintiff be directed to value the suit properly in the light of the challenge to the two Sale Deeds executed in favour of the Defendant No.3 in respect of which Sale Deeds prayer clauses (AA) and (AB) have been incorporated. The said application was replied to on behalf of the Plaintiff. It was contended that since the Sale Deeds have been executed by persons who have no authority to do so, there is no requirement to pay the Court fees in respect of the declaration that is sought in respect of the Sale Deeds. The Trial Court considered the said application and has by the impugned order dated 25.11.2013 rejected the same. Before the Trial Court the parties placed reliance on the judgments of this Court as well as the Apex Court. In so far as the Defendants are concerned, they placed reliance on the judgments of the Learned Single

Judges of this Court reported in **2012(2) Mh.L.J. 285** in the matter of **Abdul Sattar Gulabbhai Bagwan Vs. Vaibhav Laxmangiri Gosavi** and **2005(3) ALL MR 179** in the matter of **Abdul Gaffar Abdul Samad Vs. Niranjan Kumar Ramnath Prasad Dwivedi**, whereas on behalf of the Plaintiff's reliance was placed on the judgment of the Apex Court in **AIR 2010 SC 2807** in the matter of **Suhrid Singh @ Sardool Singh Vs. Randhir Singh and others**. The gist of the reasoning of the Trial Court whilst rejecting the application Exh.33 was that the Plaintiff was not party to the said two Sale Deeds and that being so, the suit was not required to be valued in terms of Section 7(iv)(ha) and the Plaintiff was required to pay the *ad valorem* fees as provided under Section 7(iv)(c) of the Act. The Trial Court has referred to the judgment of the Apex Court in **Suhrid Singh @ Sardool Singh's case (Supra)**, as indicated above the said order dated 25.11.2013 is taken exception to passed by the Trial Court by way of the above Petition.

5. The Learned Counsel appearing for the parties sought to reiterate their cases which were urged before the Trial Court for and against the valuation in respect of the said two prayers under Section 6(iv) (ha) of the Bombay Court Fees Act. Whilst the Learned Counsel appearing for the Petitioners would contend that the Respondent No.1/original Plaintiff is liable to value the suit, in so far as the said two prayers are

concerned, under Section 6(iv)(ha) the Learned Counsel for the Respondent No.1 would contend that since the Respondent No.1 is not a party to the said two Sale Deeds and since a declaration is sought that they are not binding on the Plaintiff, the suit is not required to be valued under Section 6(iv)(ha).

6. Having heard the Learned Counsel for the parties, in my view the impugned order cannot be sustained. In an identical fact situation, where a declaration was sought in respect of Sale Deeds which were executed pending the suit that they are not binding on the Plaintiffs, this Court in Abdul Sattar Gulabbhai Bagwan's case (*Supra*), has held that it is Section 6(iv)(ha) which would be applicable and not Section 6(iv)(j) of the said Act. The reasons therefore are mentioned in paragraph 15 of the said report, which for the sake of convenience is produced herein under :-

“The submission of the learned counsel for the Petitioner that in the said suit what was sought was the declaration of the agreement in question as void which relief is covered by section 6(iv)(ha) of the said Act. However, in the instant case, the Petitioner is not seeking any such relief in the suit but only claiming a declaration that the sale deed dated 15.12.2008 is not binding upon him. In my view, the same would not make any difference as what in effect the Plaintiff is seeking by way of prayer clause A(1) is the avoidance of the said agreement dated 15.12.2008, and therefore, section 6(iv)(ha) would be attracted. As observed herein above, even if prayer clause A were to be granted to the Plaintiff, nevertheless the agreement in question in favour of the Defendant Nos.3 to 5 would have

to be set aside, and therefore, the relief sought by way of prayer clause A(1) would have to be valued in terms of section 6(iv)(ha).”

Apart from the fact that the issue is covered by the judgment in Abdul Sattar Gulabbhai Bagwan's case (*Supra*), the impugned order discloses that the Trial Court has proceeded on totally erroneous premise that Section 7(iv)(c) of the Act applies. The said provision is a provision in the Punjab Court Fees Act with which the Apex Court in Suhrid Singh @ Sardool Singh's case (*Supra*) was concerned, and is not a provision under the Bombay Court Fees Act. The Trial Court therefore having proceeded on a wrong premise, the impugned order is not sustainable. It is further required to be noted that in so far as the Punjab Court Fees Act which the Apex Court was dealing with in Suhrid Singh @ Sardool Singh's case (*Supra*), the regime is different from the regime under the Bombay Court Fees Act. There is no provision akin to Section 6(iv)(ha) in the Punjab Court Fees Act and therefore, apart from the fact that the Trial Court has proceeded on a wrong premise by applying provisions of the Punjab Court Fees Act, the judgment of the Apex Court in Suhrid Singh @ Sardool Singh's case (*Supra*), would have no application in view of the regime under the Punjab Court Fees Act being different than the regime under the Bombay Court Fees Act. In my view therefore, for the reasons as afore stated, the impugned order would have to be quashed and set aside and is

accordingly, quashed and set aside. The application Exh.33 would stand allowed. The Plaintiff would have to value prayer clauses (AA) and prayer clauses (AB) in terms of Section 6(iv)(ha) of the Bombay Court Fees Act. The same to be done by the Plaintiff within four weeks from the date. The Petition is allowed to the aforesaid extent. Rule is accordingly made absolute, with parties to bear their respective costs.

[R.M. SAVANT, J]