

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.4982 OF 2015**

Venkateshwar Ramchandra Asade & Anr.

..Petitioners

Vs.

Raghunath Satynarayan Udata & Ors.

..Respondents

Mr. S. S. Shah for the Petitioners

Mr. P. M. Tilak for the Respondents

**CORAM : R. M. SAVANT, J.
DATE : 27th AUGUST, 2015**

P.C.

1 The Writ Jurisdiction of this Court is invoked against the order dated 20-3-2015 passed by the Learned 5th Joint Civil Judge Junior Division, Solapur, by which order, the application filed for framing the preliminary issue as regards the jurisdiction of the Civil Judge Senior Division, Solapur to try and entertain the suit having regard to the prayers sought in the Suit, came to be rejected. The said application has been rejected without framing the issue of jurisdiction but at the same time by adjudicating upon the grounds of objections which were raised on behalf of the Petitioners / Defendants.

2 In the Suit filed by the Respondents i.e. the original Plaintiffs for the purpose of ascertaining the jurisdiction of the Court the following two

prayers are material which in turn also have a bearing on the valuation of the Suit. The said two prayers read thus:

“(b) That it be declared that the defendant has no right in the properties described in para 1A to 1H which are owned and possessed by the plaintiffs.

(c) It be declared that the sale deed executed in favour of the defendant is not binding on the plaintiffs in respect of the suit properties.”

Hence by prayer clause (b) what is sought is a negative declaration that the Defendants have no right in the property described in paragraphs 1A to 1H and which are owned and possessed by the Plaintiffs and by the second prayer what is sought is a declaration that the Sale Deed executed in favour of the Defendants is not binding on the Plaintiffs.

3 In so far as the said reliefs are concerned, on behalf of the Defendants valuation was sought to be questioned on the ground that the Suit was required to be valued in terms of Section 6(iv)(ha) and not Section 6(iv)(j). In so far as the said aspect is concerned, the Trial Court has glossed over the first prayer that is of the negative declaration sought by the Plaintiffs, however taking into consideration the second prayer, the Trial Court has held that the judgment in **Abdulsattar Gulbbhai Bagwan Vs. Vaibhav Laxmangiri**

Gosawi¹ would not apply as the fact situation in the instant case is different from the fact situation in the said case of Abdulsattar.

4 In my view, in so far as the said finding is concerned, having regard to the prayers in Abdulsattar's case as juxtaposed with the prayers in the instant case, the said finding cannot be found fault with. However, it is the first prayer i.e. prayer clause (b) which has been glossed over by the Trial Court that would have to be taken into consideration. As indicated above by the said prayer a negative declaration is sought and if such a declaration is granted to the Petitioner, the sequitur would be the same would result in the recognition of the title of the Plaintiffs to the property in question. Hence by seeking a negative declaration what is sought by the Plaintiffs is claiming title unto themselves. Hence having regard to the said prayer, the same would obviously have to be valued in terms of Section 6(iv)(d) of the Court Fees Act.

5 The Learned Counsel for the Respondents herein fairly concedes to the said position and further states that the Plaintiffs would apply for correction of the valuation having regard to prayer clause (b) and the valuation prescribed by Section 6(iv)(d).

6 Hence though this Court affirms the finding in so far as the applicability of the judgment in Abdul Sattar's case in so far as prayer clause

1 2012(2) Mh.L.J.285

(c) is concerned, in view of the statement made on behalf of the Respondents i.e. the original Plaintiffs, the impugned order dated 20-3-2015 is set aside to the extent of the valuation in respect of prayer clause (b). The Suit would accordingly be valued in terms of the statement made by the Learned Counsel for the Respondents. On such revaluation the Trial Court would consider whether the Suit would lie before it or is required to be transferred to the appropriate Court and would accordingly pass necessary orders. With the aforesaid directions, the Writ Petition is disposed of.

[R.M.SAVANT, J]