

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION (STAMP) NO.24111 OF 2014

M/s Prism Reality,)
Through it's Proprietor,)
Mr. Milind Bhagwat Pokharkhar,)
Age:- Adult,)
Occupation:- Business and Agriculture,)
Office- 25, 'A' Wing, third Floor,)
Kamla cross, Pimpri, Pune-18.) .. Petitioner

Versus

1. Mr. Govind Yashwnt Khalade,)
Age-75, Occ- Agriculturist & business,)
R/at- Kuldeep Complex,)
Kodolkar Colony,)
Talegaon (Dhabhade), Tal. Mavale,)
Pune.)
2. Shri. Subhash Yashwant Khalade,)
Age-56 years Occ- Agriculturist & business,)
R/at- Yashwant Bangalow,)
Near State Bank, Kadolkar Colony,)
Talegaon (Dhabhade), Tal. Mavale,)
Pune.)
3. Shri. Murlidhar Yashwant Khalade,)
Age-63, Occ- Agriculturist & business,)
R/at- 1107/187/3, Khadale Mala,)

- Mumbai Pune Road,)
Talegaon (Dhabhade),)
Tal. Mavale, Pune.)
4. Shri. Vilas Yashwant Khalade,)
Age-55 years, Occ- Agriculturist,)
R/at- 1107/187/3, Khadale Mala,)
Mumbai Pune Road,)
Talegaon (Dhabhade),)
Tal. Mavale, Pune.)
5. Mrs. Mayuraraje Rajesh Acharekar)
Age-43 years, Occ-)
R/at-227/9, Origin Bunglow)
Tarabai Park, Kolhapur)
6. Shri. Prem Chelaram Tilokchandani)
Age-52, Occ- Business,)
R/at- B-Block, 31/1,)
Pimpri, Pune-17.)
7. Shri. Khubo Mohandas Mangtani)
Age-45 years, Occ- Business,)
R/at- B-Block, 31/1,)
Pimpri, Pune-17.)
8. Shri. Bhagwan Topandas Lalwani,)
Age-Adult, Occ-Business & Agriculturist)
R/at-13/10, 'B' Block,)
Pimpri, Pune-17.)
- .. Respondents

Mr. Abhijit A. Desai, Advocate for the Petitioner.

Mr. Subhash B. Desai, Advocate for the Respondents No.1 to 4.

CORAM : R.M. SAVANT, J.

DATE : 20th JANUARY, 2015

ORAL JUDGMENT

1. Rule, with the consent of the Learned Counsel for the parties made returnable forthwith and heard.

2. The writ jurisdiction of this Court under Article 227 is invoked against the order dated 30.07.2014 passed by the learned Civil Judge, Junior Division, Wadgaon Maval, Pune, by which order the application Exh.21 filed by the Petitioner herein under Order VII Rule 11 of the CPC on the ground that the suit be dismissed as the proper Court Fees have not been paid came to be rejected.

3. It is not necessary to burden this order with unnecessary details, suffice it to say that the Respondents No.1 to 4 herein are the original Plaintiffs who have filed the suit in question being RCS No.130 of 2013. The substantive relief sought in the suit is a declaration that the Development Agreement No.9272 of 2006 and the Power of Attorney No.9273 of 2006 dated 14.12.2006 are bogus, illegal and not binding on the Plaintiffs. A further declaration that is sought is that the Sale Deed

executed by Defendants No.2 and 3 on behalf of Smt. Ranjanaraje Virdhaval Dabhade by virtue of Power of Attorney executed by her, which Sale Deed has been executed in favour of the Defendants No.4 and 5 bearing No.5794 dated 15.09.2009 is bogus, illegal and not binding on the Plaintiffs. Hence, a declaration is sought in respect of the Development Agreement and the Power of Attorney dated 14.12.2006 executed by the original owner in favour of Defendants No.4 and 5, as also declaration is sought in respect of the Sale Deed executed by Defendants No.2 and 3 in favour of the Defendants No.4 and 5. It is required to be noted that the Respondents No.1 to 4 herein that is the original Plaintiffs have also filed a suit against the original owner claiming title to the suit property by adverse possession, the said suit is RCS No.130 of 2013.

4. Having regard to the reliefs sought in the suit, the Defendant No.4 filed an application under Order VII Rule 11(b) of the CPC on the ground that the suit is not properly valued and that consequentially proper Court Fees which are required to be paid under Section 6(iv)(ha) have not been paid. The said application as indicated was founded on the reliefs which were sought in the suit. The said application was opposed to on behalf of the Plaintiffs and the defence taken was that the Plaintiffs are not parties to the said Documents and that since Plaintiffs are claiming declaration in respect of the said documents, it would be Section 6 (iv)(j)

of the Bombay Court Fees Act and that would be applicable and the Plaintiffs are not liable to pay Court Fees as per Section 6(iv)(ha) of the Bombay Fees Act.

5. The Trial Court considered the said application and has by the impugned order dated 30.07.2014 rejected the said application. The gist of the reasoning of the Trial Court is that the Plaintiffs are not parties to the said documents and nor are claiming ownership in respect of the property. The Trial Court also adverted to the fact that the Plaintiffs are claiming a declaration that the Development Agreement, Power of Attorney and Sale Deed be declared as null and void and not binding upon the Plaintiffs and since the said documents were executed during the pendency of the suit filed by the original owners against the Plaintiffs in the instant suit, the Plaintiffs have properly valued the suit. Hence, the contention of the Defendant No.4 could not be accepted. The Trial Court accordingly rejected the application by the impugned order.

6. Heard the learned counsel for the parties. The learned counsel for the Petitioner would contend that though the declaration is sought in respect of the Development Agreement and the Sale Deed, in fact the Plaintiffs have sought setting aside of the said Development Agreement and the Sale Deed. It was further the submission of the learned counsel for

the Petitioner that it is clause 6(iv)(ha) that would be applicable and not clause 6(iv)(j), in terms of clause 6(iv)(ha) the relief sought is susceptible to monetary evaluation. The learned counsel sought to place reliance on judgment of this Court reported in **2012(1) Bom.C.R. 1** in the matter of **Abdulsattar Gulabbhai Bagwan Vs. Vaibhav Lxmangiri Gosawi & Ors.**, wherein Section 6(iv)(ha) was in contention.

7. Per contra, the learned counsel appearing on behalf of the Respondents No.1 to 4 i.e. original Plaintiffs sought to justify the impugned order and would contend that the documents in question are sham and bogus and therefore, the Plaintiffs are not liable to pay Court Fees in terms of Section 6(iv)(ha). The learned counsel would contend that the Sale Deed has been executed by the Defendants No.2 and 3 in favour of the Defendants No.4 and 5 after the demise of the original owner i.e. said Smt. Ranjanaraje Virdhaval Dabhade. The learned counsel also sought to question the documents by referring to certain facts namely the criminal prosecution launched by the original owners against the Defendants No.2 and 3 under Section 138 of the Negotiable Instruments Act. The learned counsel would therefore contend that in respect of the transaction between Defendants No.2 and 3 and Defendants No.4 and 5 the Plaintiffs are not the executants and therefore, the Plaintiffs are not required to value the suit in terms of Section 6(iv)(ha) of the Bombay

Court Fees Act. The learned counsel sought to place reliance on the judgment of the Apex Court reported in **AIR 2010 SC 2807** in the matter of **Suhrid Singh @ Sardool Singh Vs. Randhir Singh and Ors.**, wherein the Apex Court has observed that in the context of suit for declaration that Sale Deed executed by Plaintiff's father is null and void, Court Fee need not be paid on sale consideration mentioned in Sale Deeds.

8. Having heard the learned counsel for the parties and considering the rival contentions, the issue which arises for consideration in the instant case is Section 6(iv)(j) and Section 6(iv)(ha). The said two provisions are therefore, reproduced herein for the sake of ready reference.

“Section 6(ha) for avoidance of sale, contract for sale, etc.- In suits for declaration that any sale, or contract for sale or termination of contract for sale, of any movable or immovable property is void [one-half] of *ad valorem* fee leviable on the value of the property;

(j) for other declarations.- In suits where declaration is sought, with or without injunction or other consequential relief and the subject-matter in dispute is not susceptible of monetary evaluation and which are not otherwise provided for by this Act [ad valorem fee payable, as if the amount or value of the subject-matter was [one thousand rupees;]]

In all suits under clauses (a) to (i) the plaintiff shall state the amount at which he values the relief sought, with the reasons for the valuation;”

9. In so far as Section 6(iv)(j) is concerned, the same applies to suits which have been filed for declaration other than those sought in the earlier sections with or without injunctions or other consequential relief and the subject-matter in dispute is not susceptible of monetary evaluation and which are not otherwise provided for by this Act. In so far as Section 6(iv)(ha) is concerned, the same applies to suits for declaration that any sale, contract for sale or termination of contract for sale, of any moveable or immoveable property is void. The said provision therefore, encompasses within itself suits that have been filed for avoidance of sale, contract for sale, etc.. In the light of the reliefs which have been sought in the instant suit vide prayer clauses (a) and (b), the suit as filed is undoubtedly for declaration in respect of the Development Agreement and the Sale Deed and by seeking the reliefs sought, what the Plaintiffs in fact are seeking to do is the avoidance of the said sale or contract. Hence, in so far as the said reliefs are sought, the provisions of Section 6(iv)(ha) can be said to be applicable. The fact that according to the Plaintiffs the said documents are sham and bogus cannot be considered for computing or determining the valuation of the suit and the payment of the Court Fees in respect thereof. The Sale Deed which has been executed by the Defendants No.2 and 3 in favour of the Defendants No.4 and 5 is undisputedly a registered document and clause (4) thereof the consideration has been mentioned and also the fact that the vendors have accepted that payment of the said

consideration has been made to them so also is the Development Agreement. Hence, merely because the Plaintiffs questioned the Sale Deed as being sham and bogus, the Plaintiffs cannot be exempted from the rigours of Section 6(iv)(ha) of the Court Fees Act in the matter of valuation of the suit and payment of the Court Fees.

10. In so far as the judgment of the Apex Court in *Surhid Singh @ Sardool Singh (Supra)* is concerned, the Apex Court was concerned with a case under the Punjab Court Fees Act and especially Section 7(iv)(c) thereof which was in respect of suits seeking various declarations. Since the Plaintiff in the said suit was not the executant of the document and was seeking a declaration that the Apex Court observed that Court Fees would have to be paid in terms of Clause (c) of the said Section 7 and not in terms of the consideration mentioned in the document. It would have to be borne in mind that the Apex Court was not concerned with a provision akin to Section 6(iv)(ha) of the Bombay Court Fees Act, as probably such a provision does not find a place in the Punjab Court Fees Act. However, as indicated above, in so far as the Bombay Court Fees Act is concerned, there is a specific provision governing the suits, where a declaration is sought in respect of a sale or contract for sale or termination of contract is void. Hence, the statutory regime prevailing in the Punjab Court Fees Act being different than the statutory regime prevailing in the Bombay Court

Fees Act, the judgment of the Apex Court in *Suhrid Singh @ Sardool Singh's case (Supra)* would have no application and would not aid the Plaintiffs in the instant case to contend that they are liable to pay Court Fees as per Section 6(iv)(j). The learned counsel appearing for the Respondents also sought to place reliance on the judgment of the Learned Single Judge of the Madras High Court reported in **2006 DGLS (AHS) 16555** in the matter of **Siddha Construction (P) Ltd. Vs. M. Shanmugan and Ors..** The said judgment was rendered in the context of the Madras Court Fees and Suits Valuation Act, 1965, wherein also it appears that there is no provision akin to Section 6(iv)(ha). In so far as the present case is concerned, it is squarely covered by the judgment of this Court in *Abdulsattar Gulabbhai Bagwan's case (supra)*, where the Sale Deed allegedly executed by committing a fraud was sought to be challenged and a declaration sought. This Court in the facts of the said case observed that it would be Section 6(iv)(ha) that would be applicable and that the Plaintiffs though not the executants or parties to the said documents would have to pay Court Fees accordingly as they in fact are seeking the avoidance of the sale or contract.

11. In my view, therefore, the Trial court has committed an error by recording a finding that the Plaintiffs have properly valued the suit. The impugned order dated 30th July, 2014 is therefore, required to be quashed

and set aside and is accordingly quashed and set aside. The application Exh.21 would accordingly stand allowed. The Plaintiffs would have to value the suit and pay Court Fees in terms of Section 6(iv)(ha) of the Bombay Court Fees Act. The same to be done within eight weeks from date. The above Petition is allowed to the aforesaid extent. Rule is accordingly made absolute in the aforesaid terms with parties to bear their respective costs.

[R.M. SAVANT, J]