

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 9652 OF 2010

Laxman Dinkar Dagade & Ors. .. Petitioners
vs.
Bhagwan Bhausahab Thorat & Ors. .. Respondents

Mr. S. V. Sadavarte for Petitioners.
Mr. A. A. Deshpande for Respondents.

CORAM : M. S. SONAK, J.
DATE: 16 APRIL 2015

P.C. :-

1] This petition challenges order dated 31 August 2010 made by the 10th Joint Civil Division, Junior Division, Pune, directing the petitioners - plaintiffs to pay requisite court fees for their share according to the valuation of the suit property at the time of institution of the suit.

2] In the suit as instituted, the petitioners - plaintiffs, have applied for the following reliefs:-

- (a) Avoidance of instruments dated 7 July 1971 and 3 October 1979;
- (b) Partition ad share in respect of suit properties described in paragraphs 1(a) and 1(b) of the plaint;
- (c) Permanent injunction against the defendants from interfering with the suit property.

3] The valuation clause is paragraph 8 of the plaint which states that the value of the properties indicated in the instruments dated 7 July 1971 and 3 October 1979, together amount to Rs.13,350/- and accordingly, appropriate *ad valorem* court fees is paid thereon. In respect of the remaining reliefs i.e. partition and permanent injunction, the suit is valued at Rs.1,000/- and again appropriate court fees is paid thereon.

4] The impugned order, upholds the objection raised by the respondents - defendants by relying upon the provisions under Order 7 Rule 11 of the CPC read with Section 6(iv)(ha) of the Bombay Court Fees Act, 1959 ('said Act').

5] The provisions of Section 6(iv)(ha) of the said Act provide that any suits for declaration that any sale, or contract for sale or termination of contract for sale, of any moveable or immovable property is void, then the court fee payable shall be one half of the *ad valorem* fee leviable on the value of the property. Significantly, this provision makes reference to '*value of the property*' and not '*market value of the property*'.

6] The impugned order, however takes the view that market value of the property and not the value of the property as prevalent

in the years 1971 and 1979 can be taken into account for the purposes of determining valuation and payment of court fees. This approach, is contrary to the law laid down by this Court, in the cases of *Abdul Gaffar Abdul Samad vs. Niranjan Kumar Ramnath Prasad Dwivedi & Ors.*¹ and *Sau. Asha Sopan Maithane vs. Ramkrushna Punjaji Wanare & Ors.*², wherein this Court has held that the words employed in Section 6 (iv)(ha) of the said Act are '*value of the property*' and not '*market value of the property*'. Accordingly, value of the property for which the sale deed was executed would be relevant and not its market value in the matter of determination of court fees.

7] The impugned order incorrectly placed reliance upon the decision of this Court in the case of *Mohd. Salim Abdul Salam & Ors. vs. Smt. Sabiha Maqsood Khan & Ors.*³, where there was no occasion for interpretation of the provisions contained in Section 6(iv)(ha) of the said Act. The paragraph quoted in the impugned order, was in the context of the fact that the plaintiff in the said suit had himself stated that the value of the suit property would be more than Rs.50,000/- and considering said statement as also attendant circumstances like inflation rate and increase in the value of the property since the year 1977, this Court in the case of *Mohd. Salim*

1 2005 (3) Bom. C.R. 879

2 2010 (5) AIR Bom. R. 326

3 2007 (2) Mh. L. J. 465

(supra) observed that the concerned Civil Court would have no peculiar jurisdiction to entertain the suit. The situation, in the present case is completely different, in as much as what falls for consideration is the provision contained in Section 6(iv)(ha) of the said Act which have since been interpreted in the cases of *Abdul Gaffar* (supra) and *Asha Sopan* (supra). Accordingly, following the law laid down by this Court in the said two judgments, the impugned order shall have to be set aside and is accordingly set aside. Rule is made absolute in terms of prayer clause (b). There shall however be no order as to costs.

(M. S. SONAK, J.)

Chandka