

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 10427 OF 2016

Narayan Maruti Tarange

..PETITIONER

VERSUS

Motilal Devichand Gadiya and Others

..RESPONDENTS

....

Mr. A.R. Devakate, Advocate for petitioner.

Mr. Shaikh Shoyab, Advocate for Respondent No.1.

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CORAM : T.V. NALAWADE, J.

DATED : 27th OCTOBER, 2016

ORDER :

1. The petition is filed to challenge the order made on Exhibit 41 in Special Civil Suit No. 3 of 2016 presently pending in the Court of Civil Judge, Senior Division, Paranda, District Osmanabad. Both sides are heard.

2. The suit is filed by present Respondent No.1 – Motilal against the petitioner for relief of declaration that he has purchased land Gut No. 327 and not 330 from Defendant Nos.1 and 2. It is his case that by mistake number is mentioned as 330 in the sale deed and he is in actual possession of Gut No. 327. After execution of sale deed in his favour, the

defendants have executed sale deed in respect of Gut No. 327. It is the case of plaintiff that defendants sold land Gut No. 327 to third party when property was already sold to him. By making this contention, he has claimed relief even in respect of sale deed executed in favour of third party by Defendant No.2.

3. Learned Counsel for petitioner submitted that in ordinary course, the suit could have been entertained by Civil Judge, Junior Division, as relief of declaration only was sought and there was no necessity of relief of setting aside the sale deed. He submitted that intentionally and to bring the suit within pecuniary jurisdiction of Civil Judge, Senior Division, such contentions are made and the court fees is paid. It was submitted that, this point was raised before the Trial Court, but Trial Court has not considered the point and so decision needs to be set aside.

4. Learned Counsel for petitioner places reliance on some reported cases as *1970 Mh.L.J. 641 (Balgonda Appanna Vs. Ramgonda Shivgonda)*, *2015 SCC OnLine Bom 1324 (Aman Harishkumar Vij Vs. Shantabai Anandrao Patil and Others)*, *(2016) 1 Bom C.R. 462 (Jayant Bhimsen Joshi and Others Vs. Raghavendra Bhimsen Joshi*

and Others), (2010) 12 SCC 112 (*Suhrid Singh alias Sardool Singh Vs. Randhir Singh and Others*). These cases cannot be made applicable in present matter as in most of the matters, property involved was of joint Hindu family and particular share was claimed. These cases are of different nature.

5. It appears that sale deed executed in favour of plaintiff in the year 2010 bear signature of presnet petitioner though as witness. The vendor and petitioner are related as maternal uncle and nephew.

6. Nature of relief shows that in one way the plaintiff wants declaration that his vendor was owner of Gut No. 327. He also wants declaration that sale deed executed by Narayan cannot bind him as Narayan had no title in respect of Gut No. 327. So he wants declaration that sale deed executed by Narayan is not binding on him and he wants relief of that nature. Considering the nature of relief, this Court holds that even Court could have raised objection regarding payment of court fees on the basis of value shown in sale deed as declaration is claimed in respect of that sale deed. The contention of the present petitioner that the suit is over valued intentionally to bring it within the jurisdiction of Civil Judge, Senior Division, cannot be accepted in view of aforesaid

circumstances. If there are other circumstances due to which the petitioner has apprehension, he has liberty to file proceeding like transfer application before the Principal District Judge. With these observations, petitions is disposed of.

(T.V. NALAWADE, J.)

SSD