

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

**Writ Petition NO. 1381 OF 2016**

SHRI DEEPAK LAXMICHAND BADLANI ...Petitioner

*Versus*

SHRI NISAR GULAM AHMAD KHAMKAR  
AND ORS. ...Respondents

....

Mr.Sunilkumar K. Gawada, Advocate for the Petitioner.

....

CORAM : R. G. KETKAR, J.

DATE : 11<sup>th</sup> FEBRUARY, 2016

P.C.

1. Heard Mr. Sunilkumar Gawada, learned Counsel for the petitioner, at length.

2. By this Petition under Article 227 of the Constitution of India, the petitioner, hereinafter referred to as 'defendant No.2' has challenged the judgment and order dated 4.1.2016 passed by learned Civil Judge, Junior Division at Shriwardhan on preliminary issue framed below Exh.36 in Regular Civil Suit No.40/2015. By that order, learned trial Judge held that the

Court has pecuniary jurisdiction to entertain and try the suit. The Court directed the respondent Nos.1 to 10, hereinafter referred to as the 'plaintiffs', to properly value the suit as observed in the order and accordingly pay deficit court fees within one month.

3. The plaintiffs instituted suit for partition and separate possession of their 19/20<sup>th</sup> share in the suit properties; for declaration that the registered sale deed dated 13.12.2006 executed between defendant Nos.1 and 2 as also sale deeds registered at Sr. Nos.122/2009 and 232/2009 are illegal and are not binding on the plaintiffs' share; for perpetual injunction restraining the defendants from causing obstruction to their peaceful possession or creating third party interest in the suit property.

4. During pendency of the Suit, the plaintiffs took out application for temporary injunction restraining the defendants from causing obstruction to their possession or creating third party interest. Defendant no.2 filed application dated 29.10.2015 at Exh.22 under Section 9A read with Section 151 of Code of Civil Procedure, 1908 (for short, 'CPC') for framing preliminary

issue as to whether the Court has pecuniary jurisdiction to entertain and try the suit. By order dated 10.12.2015, learned trial Judge framed the preliminary issue as to whether the Court has pecuniary jurisdiction. By the impugned order, learned trial Judge has held that the Court has jurisdiction to entertain and try the suit.

5. Mr. Gawada submitted that the plaintiffs have sought declaration in respect of three sale deeds – one executed in the year 2006 and two sale deeds executed in the year 2009. However, in the impugned order and in particular paragraphs-3, 4, 7 and 9, the Court proceeded on the premise that plaintiffs have challenged only two sale deeds. He submitted that this is factually incorrect and contrary to the material on record.

6. Mr. Gawada further submitted that learned trial Judge referred to the decision of the Apex Court in the case of **Suhrid Singh @ Sardool Sing vs. Randhir Singh and Ors, AIR 2010 SC 2807** as also the decision of this Court in the case of **Prism Reality vs. Govind Khalade, 2015(5) ALL MR 620**. After considering these judgments, learned trial Judge specifically

held in para-6 that the decision in the case of **Suhrid Singh** (*supra*) will not assist the plaintiffs for valuation of the suit.

7. In para-7, learned trial Judge held that the prayer for declaration that the sale deeds are not binding on the share of the plaintiffs is covered by Section 6(iv)(ha) of the Maharashtra Court Fees Act (for short, 'the Act'). In para-9, learned trial Judge noted that in the sale deed dated 13.12.2006, consideration amount was Rs.2,20,000/- and in the sale deed dated 7.2.2009, the consideration amount was Rs.2,00,000/-. However, learned trial Judge failed to appreciate that the consideration amount in the third sale deed dated 21.1.2009 is Rs.71,625/-. Learned trial Judge however failed to notice that the market value of the property involved in sale deed dated 13.12.2006 was Rs.7,88,000/-, the market value of the property involved in sale deed dated 7.2.2009 was Rs.4,50,000/- and the market value of the property involved in sale deed dated 21.1.2009 was Rs.2,00,000/-. He, therefore, submitted that the plaintiffs ought to have accordingly valued the suit and paid the Court fees. If the suit is accordingly valued, the Court of Civil Judge, Junior Division will have no pecuniary jurisdiction. In

any case the suit is instituted in the year 2015 and, therefore, while making valuation of the suit, the plaintiffs have to pay Court fees on the basis of the market value of the sale deeds as obtaining on the day of the filing of the Suit. If it is so valued the Court of Civil Judge, Junior Division will have no pecuniary jurisdiction.

8. I have considered the submissions advanced by Mr. Gawada. I have also perused the material on record. Learned trial Judge held that the plaintiffs will have to value the suit as per Section 6(iv)(ha) of the Act. Section 6(iv)(ha) of the Act reads thus :

“6. Computation of fees payable in certain suits :  
(iv) (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 moveable or immoveable property is void - [one half] of *ad valorem* fee leviable **on the value of the property;**” [Emphasis supplied]

9. Perusal of the above said provision shows that one half of *ad valorem* fee leviable '**on the value of the property**'. In para-8 of the impugned order, learned trial Judge has noted that the words 'market value' are not used in Section 6(iv)(ha) of the Act. In the sale deed dated 13.12.2006, the consideration

amount mentioned is undisputedly Rs.2,20,000/ and the market value prevailing as on that date was shown as Rs.7,88,000/-. In the sale deed dated 7.2.2009 the consideration amount mentioned is Rs.2,00,000/- and the market value prevailing as on that date was shown as Rs.4,50,000/-. In the sale deed dated 21.1.2009, the consideration amount mentioned is Rs.71,625/- and the market value prevailing as on that date was shown as Rs.2,00,000/-. Mr. Gawada therefore submitted that even if the market value on the date of execution of the sale deeds is considered and not on the date of institution of the suit, still it exceeds Rs.5 Lakh which is the upper limit of pecuniary jurisdiction of the Court of Civil Judge, Junior Division.

10. I do not find any merit in these submissions. Undoubtedly, the consideration amount in three sale deeds is shown as Rs.2,20,000/-, Rs.2,00,000/- and Rs.71,625/- i.e. totaling to Rs.4,91,625/- which is less than Rs.5 Lakhs. Learned trial Judge has rightly held that in Section 6(iv)(ha) of the Act, the expression used is 'value of the property' and not the market value of the property. In view thereof, no case is made out for

interfering with the impugned order. Hence, the petition fails and the same is dismissed.

11. It is made clear that where a decree is appealed from by the petitioner, any error, defect or irregularity in impugned order, affecting the decision of the case, may be set forth as a ground of objection in the memorandum of appeal as contended by section 105(1) of Civil Procedure Code.

( R. G. KETKAR, J.)

Deshmane (PS)