

FARAD CONTINUATION SHEET
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.7270 OF 2012

Surashtra Estate Pvt.Ltd. and Anr. .. Petitioner

vs.

Shri Runja Laxman Lokhande & Ors. .. Respondents

WITH

WRIT PETITION NO.8473 OF 2014

Surashtra Estate Pvt.Ltd. and Anr. .. Petitioner

vs.

Mrs.Sunita Runja Lokhande & Ors. .. Respondents

Mr.Atul Damle Sr.Counsel i/b Ms.Leena Patil for the petitioners

Mr.R.D.Soni i/b Mr.Sujay N. Gawade with Mr.Ajay Sharma for the
respondent no.1

CORAM : K. K. TATED, J.
DATE : AUGUST 3, 2016

PC.:

1 Heard.

2 Both these petitions can be disposed of by common order as the principle on which it is to be decided is same i.e. “whether non-executant of the document when seeks annulment of the deed, is liable to pay ad valorem court fees on market value of property.”

3 In both the matters, respondent plaintiff filed Suit for partition and separate possession of the suit property and also for declaration that development agreement dated 26.3.1999 was not binding on the plaintiff. During the pendency of both the Suits, defendants executed sale deed of suit property on 2.2.2011 in favour of Saurashtra Estate Pvt.Ltd. in both the matters. Hence, plaintiff preferred application for amendment of the plaint for joining subsequent purchasers in the suit as defendants and for declaration that the sale deed executed by some of the defendants in favour of subsequent purchasers i.e. petitioner hereinabove is not binding on the plaintiff. That application was allowed by the Trial Court. Thereafter, plaintiff carried out amendment in the plaint to that effect. After carrying out amendment, petitioner subsequent purchasers preferred application under Order VII Rule 11 of the Code of Civil Procedure, 1908 on the ground that plaintiff failed to pay the court fees on sum of Rs.4,42,84,000/- which was consideration of sale deed dated 2.2.2011. The Trial Court after considering the judgment of this court in the matter of ***Abdul Sattar Gulabbhai Bagwan vs. Vaibhav Laxmangiri Gosawi and others, 2012(2) Mh.L.J. 285*** and other judgments held that the plaintiff was not a party to the sale deed dated 2.2.2011 and hence, there is no question of directing them to pay the court fees on the said amount. Hence, the present Writ Petition.

4 The learned Senior counsel for the petitioners/subsequent purchasers submit that the Trial Court erred in coming to the conclusion that the plaintiff in both the Suits are not liable to pay the court fees on consideration of sale deed dated 2.2.2011. He submits that by way of amendment plaintiff carried out amendment in the Suit seeking declaration that the sale deed dated 2.2.2011 executed by

some of the defendants in their favour is not binding on him. He submits that indirectly, plaintiff is seeking to set aside sale deed and hence, as per the provisions of Bombay Court Fees Act particularly Section 6(iv) (ha) and (j), they are liable to pay court fees. In support of this contention, the learned counsel for the petitioner relies on the judgment of our Hon'ble Court in the matter of *Abdul Sattar Gulabbhai Bagwan vs. Vaibhav Laxmangiri Gosawi and others (Supra)* and in the matter of *Prism Reality, Pune vs. Govind Yashwant Khalade and others, 2015(2) Mh.L.J. 472*. He submits that our Hon'ble Court in the matter of *Prism Reality, Pune vs. Govind Yashwant Khalade and others (Supra)* specifically held that if during the pendency of the suit, the suit property is sold to third party and that transaction is challenged by carrying out amendment then plaintiff have to pay court fees according to law. He relies on paragraph 7, 9 and 10 of that authority which reads thus:

“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.”

“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 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 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)(ha). 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.”

5 The learned Senior counsel for the petitioner/subsequent purchasers submits that in that authority, this court considered judgment of Apex Court in the matter of ***Suhrid Singh @ Sardool Singh vs. Randhir Singh and Ors., AIR 2010 (2) SCC 2807***. On the basis of these submissions the learned counsel for the petitioner submits that impugned judgment and order passed by Trial Court in both the matters is required to be set aside directing plaintiffs to pay the court fees on consideration of sale deed dated 2.2.2011.

6 On the other hand, the learned counsel for the respondent plaintiff vehemently opposed both the Writ Petitions. He submits that the issue involved in both the matters is squarely covered by the Apex Court in the matter of ***Suhrid Singh @ Sardool Singh vs. Randhir Singh and Ors.***(Supra). He relies on paragraph 6 and 7 of that judgment which reads thus:

“6. The second proviso to Section 7(iv) of the Act will apply in this case and the valuation shall not be less than the value of the property calculated in the manner provided for by Clause (v) of the said section. Clause (v) provides that where the relief is in regard to agricultural lands, court fee should be reckoned with reference to the revenue payable under Clauses (a) to (d) thereof; and where the relief is in regard to the houses, court fee shall be on the market value of the houses, under Clause (e) thereof.”

“7. Where the executant of a deed wants it to be annulled, he has to seek cancellation of the deed. But if a non-executant seeks annulment of a deed, he has to seek a declaration that the deed is invalid, or non-est, or illegal or that it is not binding on him. The difference between a prayer for cancellation and declaration in regard to a deed of transfer/conveyance, can be brought out by the following illustration relating to 'A' and 'B' -- two brothers. 'A' executes a sale deed in favour of 'C'. Subsequently 'A' wants to avoid

the sale. 'A' has to sue for cancellation of the deed. On the other hand, if 'B', who is not the executant of the deed, wants to avoid it, he has to sue for a declaration that the deed executed by 'A' is invalid/void and non- est/ illegal and he is not bound by it. In essence both may be suing to have the deed set aside or declared as non-binding. But the form is different and court fee is also different. If 'A', the executant of the deed, seeks cancellation of the deed, he has to pay ad-valorem court fee on the consideration stated in the sale deed. If 'B', who is a non-executant, is in possession and sues for a declaration that the deed is null or void and does not bind him or his share, he has to merely pay a fixed court fee of Rs. 19.50 under Article of Second Schedule of the Act. But if 'B', a non- executant, is not in possession, and he seeks not only a declaration that the sale deed is invalid, but also the consequential relief of possession, he has to pay an ad-valorem court fee as provided under Section 7(iv)(c) of the Act. Section 7(iv)(c) provides that in suits for a declaratory decree with consequential relief, the court fee shall be computed according to the amount at which the relief sought is valued in the plaint. The proviso thereto makes it clear that where the suit for declaratory decree with consequential relief is with reference to any property, such valuation shall not be less than the value of the property calculated in the manner provided for by Clause (v) of Section 7.”

7 The learned counsel for the respondent plaintiff submits that the Apex Court in the matter of ***Suhrid Singh @ Sardool Singh vs. Randhir Singh and Ors.*** (Supra) specifically held that if non executant seeks annulment of deed, then it is not necessary for him to pay the court fees. He submits that the authority relied by the petitioner in the matter of ***Prism Reality, Pune vs. Govind Yashwant Khalade and others*** (Supra) is not applicable in the facts and circumstances of the present case. He submits that Trial Court in impugned order dated 29.6.2012 specifically held that plaintiff was not party to the said transaction i.e. sale deed dated 2.2.2011. Hence, there

is no substance in the present Writ Petition and same is required to be dismissed with costs.

8 I have heard both the sides. There is no dispute that in the present proceeding, during the pendency of the suit the defendants executed the sale deed dated 2.2.2011 in respect of suit property in favour of petitioner subsequent purchasers. Because of that, plaintiff filed application for carrying out amendment and that was allowed by the Trial Court. Plaintiff made prayer for declaration that subsequent sale deed dated 2.2.2011 is not binding on plaintiff's share in the suit property. It is to be noted that apex court in the matter of ***Suhrid Singh @ Sardool Singh vs. Randhir Singh and Ors.*** (Supra) in paragraph 7 specifically held that if non executant seeks annulment of the deed, there is no question of payment of court fees on consideration of sale deed.

9 Considering the judgment of the Apex Court in the matter of ***Suhrid Singh @ Sardool Singh vs. Randhir Singh and Ors.*** (Supra), I am of the opinion that the issue involved in the present matter is squarely covered by that authority. Hence, there is no question of considering the authorities cited by the learned Senior Counsel for the petitioners. Hence, I do not find any reason to interfere with the well reasoned order passed by the courts below.

10 Both the Writ Petitions stand dismissed. No order as to costs.

JUDGE