

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

WRIT PETITION NO. 484 OF 2015

Sandip Jankiram Lokhande .. Petitioner

Versus

Hussain Khan Aliyar Khan and others .. Respondents

Shri B. S. Shinde, Advocate h/f Shri V. P. Latange, Advocate for the Petitioner.

Shri Quadri Taher Ali, Advocate h/f Shri Shaikh Mujitaba

Gulam Mustafa, Advocate for the Respondent No. 1.

Shri S. H. Joshi, Advocate for the Respondent No. 2.

Shri H. I. Pathan, Advocate for the Respondent No. 3.

Shri R. B. Shingare, Advocate for Respondent Nos. 4 to 8.

CORAM : S. V. GANGAPURWALA, J.

DATE : 13TH DECEMBER, 2017.

FINAL ORDER :

. Mr. Shinde, the learned advocate for the petitioner submits that, the order passed by the Trial Court directing payment of Court fees upon consideration mentioned in the sale deed is erroneous. The petitioner was seeking declaration that the sale deed is not binding on him and was not seeking relief of cancellation. As such, was not required to pay ad-valorem court fees. The petitioner was not executant of the said document. The learned advocate relies on the judgment of the Apex Court in a case of Suhrid Singh @ Sardool Singh Vs. Randhir Singh.

and others reported in **2010 AIR SCW 3308**.

2. The learned counsel for respondents submit that, the petitioner is claiming relief of separate possession and he is required to pay ad-valorem court fees. The learned counsel rely on the judgment of the learned Single Judge of this Court in a case of Common Piru Caudhari Vs. Berubai Chendu Redhiwale and others reported in **2017(5) Mh.L.J. 388** and also another judgment of the learned Single Judge of this Court in a case of Mohd. Salim Abdul Salam and others Vs. Smt. Sabiha Maqsood Khan and others reported in **(2007) 2 All M. R. 347**.

3. I have considered the submissions canvassed by the learned counsel for respective parties.

4. The petitioner has not only claimed relief of declaration that the sale deed is not binding upon him, but has further claimed relief of possession and injunction. The Trial Court has properly construed the issue in hand and directed the petitioner to pay half ad-valorem court fees upon the valuation. The judgment of the Apex Court in a case of Suhrid Singh Vs. Randhir Singh supra would not squarely apply. The Apex Court in the said case also held that, 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 fees. The said judgment of the Apex Court was under the provisions of the Punjab and Haryana Court Fees Act. In the present case, the petitioner is seeking relief of separate possession, so also injunction. The Trial Court has properly applied the provisions of Sec. 6(iv)(ha) of the Bombay Court Fees Act.

5. In view of that, no error is committed by the Trial Court. The writ petition as such is dismissed. No costs.

6. The Trial Court shall endeavour to decide the suit expeditiously.

[S. V. GANGAPURWALA, J.]