

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

WRIT PETITION NO. 4324 OF 2014

Sunil Shantaram Sadhaphal and Another ..PETITIONERS

VERSUS

Ratnamala Ramrao Gaikwad and Others ..RESPONDENTS

....
Mr. A.S. Gandhi, Advocate for petitioners.

Mr. A.G. Talhar, Advocate for Respondent Nos. 2 to 4.

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**CORAM : RAVINDRA V. GHUGE, J.
DATED : 18th JULY, 2017**

ORDER :

1. The petitioners are aggrieved by the order dated 12th June, 2013 by which application Exhibit 44 filed by the petitioners has been rejected.

2. I have considered the submissions of learned Counsel for the respective sides. With their assistance, I have gone through the plaint and the declaration as regards payment of court fees in paragraph no.10 and the prayer clauses in paragraph nos. 11(a)(b) and (c).

3. There is no dispute that the plaintiffs have made a declaration in paragraph no.10 with regard to the amount of court fees that they are paying. Prayer clause 11(a) deals with partition of the suit land and allotment of shares

by metes and bounds. The prayer clause 11(b) specifically indicates that the plaintiffs seek a declaration that the sale contract/agreement to sell at issue is not binding on the plaintiffs to the extent of their shares and the same should be declared as void to that extent. It is therefore apparent that alongwith the prayer for partition and allotment of shares, the plaintiffs are seeking declaration that a particular agreement to sell is void.

4. The Trial Court, by the impugned order has concluded that Section 6(v) would be applicable to the case of plaintiffs. For clarity, Section 6(v) is reproduced as under:

“6(v) : In suits for the possession of land, houses and gardens – according to the value of the subject-matter; and such value shall be deemed to be, where the subject-matter is a house or garden – according to the market value of the house or garden and where the subject-matter is land, and -

(a) where the land is held on settlement for a period not exceeding thirty years and pays the full assessment to Government – a sum equal to forty times the survey assessment;

(b) where the land is held on a permanent settlement, or on a settlement for any period exceeding thirty years, and pays the full assessment to Government – a sum equal to eighty times the survey assessment; and

(c) where the whole or any part of the annual survey assessment is remitted – a sum computed under sub-paragraph (a) or sub-paragraph (b), as the case may be, in

addition to eighty times the assessment or, the portion of assessment so remitted;”

5. Section 6(iv)(ha) reads as under:-

“6(iv)(ha) : In suits for declaration that any sale, or contract for sale or termination of contract for sale, of any movable or immovable property is void one-half of ad valorem fee leviable on the value of the property;”

6. It is therefore obvious that the suit in which a declaration is sought that any contract for sale of any movable or immovable property is void, one half of ad-valorem fees would be leviable on the value of the property as court fee.

7. In my view, the case of the plaintiffs does not fall under Sections 6(v)(b). In the light of the above, this petition is partly allowed. The impugned order dated 12th June, 2013 concluding that the case of the plaintiffs falls under Section 6(v)(b) is quashed and set aside. Application at Exhibit 44 is allowed by concluding that Section 6(iv)(ha) of the Maharashtra Stamp Act would be applicable to the case of the plaintiffs.

8. It is informed that the plaintiffs have not set out the description of their shares. As such, the plaintiffs shall calculate the court fees leviable under

Section 6(iv)(ha) and shall deposit the said court fees within one month from today. In the event, any litigating party has any grievance about the payment of court fees, they would be at liberty to tender an application before the Trial Court and the Trial Court shall accordingly deal with the same on its own merits. Needless to state, if the plaintiffs fail in depositing the amount of court fees as directed above, the suit shall stand dismissed without reference to the Court.

(RAVINDRA V GHUGE, J.)

SSD