

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 10001 OF 2017

Ramnath Sahebrao Shelke ...Petitioner

versus

Dileep s/o Sakharam Choure and others ...Respondents

.....
Mr. A.R. Devkate h/f Mr. S.P. Telgote, advocate for the petitioner
Mr. V.D. Salunke, advocate for respondent No.1
.....

CORAM : V. K. JADHAV, J.

**Date of Reserving
the Order : 07.11.2017**

**Date of pronouncing
the Order: 21.11.2017**

PER COURT :-

1. By consent, heard finally at admission stage.
2. Being aggrieved by the order dated 01.08.2017 passed by the learned Civil Judge, Junior Division, Beed below Exh.35 in Regular Civil Suit No. 320 of 2017, the petitioner preferred this writ petition.
3. The petitioner and respondent No.12 have purchased the land admeasuring 35 R out of Gat No. 98 situated at Taraf Khod, District Beed from respondent No. 5 to 7 for consideration of Rs.50,70,000/-,

on 30.6.2016. Similarly, on the same day the respondent Nos. 8 to 11 have also purchased the land out of survey No. 98 by registered sale deed for consideration of Rs.94,20,000/- from the respondent Nos. 5 to 7. Since the date of purchase, the petitioner and respondent Nos. 8 to 12 are in possession of the suit property purchased by them. Respondent No.1 to 4 have filed Regular Civil Suit No. 320 of 2017 in the Court of Civil Judge, Junior Division, Beed for declaration that they are owners and possessors of land survey Nos. 98 and 99 and sale deeds dated 30.6.2016 are not binding upon them.

4. The petitioner and the other defendants have filed their written statement and resisted the suit. The petitioner and respondent Nos. 8 to 12 filed application Exh.35 seeking direction to the plaintiffs to value the suit properly. However, the learned Judge of the trial court has rejected application Exh.35. Hence, this writ petition.

5. Learned counsel for the petitioner-defendant submits that declaration has been sought in respect of the sale deed executed by the original defendant Nos. 1 to 3 in favour of defendant Nos. 4 to 9. In fact, the plaintiff has sought declaration for cancellation of aforesaid sale deed and as such clause 6(iv) (ha) of the Maharashtra Court Fees Act would be applicable and not clause 6(iv)(j). In terms

of clause 6(iv)(ha), the relief sought is susceptible to monetary evaluation. Learned counsel submits that the ratio laid down by the Supreme Court in the case of ***Suhrid Singh @ Sardool Singh vs. Randhir Singh and Ors, reported in AIR 2000 SC 2807*** is not applicable in the instant case. Learned Judge of the trial court has failed to notice that this Court in the case of ***Prism Reality, Pune vs. Govind Yashwant Khalade and others, reported in 2015 (2) Mah. L.J. 472*** has put its own gloss thereon and as such, the same is binding on all courts in the State concerned until outweighed by a later decision of the Supreme Court or Larger Bench of the High Court. The relief claimed by the respondent-plaintiff cannot be granted without setting aside the aforesaid sale deed. Learned counsel submits that in the case of ***Niraj Narendra Walle vs. Vijya Narendra Walle, reported in 2017 (4) Mh.L.J. 402***, the learned Single Judge of this court (Coram: Z. A. Haq. J.) has taken a view that though in consonance with the judgment of Supreme Court in the case of ***Suhrid Singh @ Sardool Singh (supra)***, however, the earlier view of this Court in the case of ***Prism Reality (supra)*** was not brought to the notice of the Court in later decision.

6. Learned counsel for the petitioner in order to substantiate his submissions placed reliance on the following cases.

- I) Suhrid Singh @ Sardool Singh vs. Randhir Singh and others, reported in AIR 2000 SC 2807: (2010) 12 SCC 12;
- ii) Prism Reality, Pune vs. Govind Yashwant Khalade and others, reported in 2015 (2) Mh.L.J. 472
- iii) Abdul Sattar Gulabbhai Bagwan vs. Vaibhav Laxmangiri Gosawi and others, reported in 2012(2) Mh.L.J. 285,
- iv) Niraj s/o Narendra Walle vs. Vijaya w/o Narendra Walle and others, reported in 2017(4) Mh.L.J. 402
- v) Shailendra Bhardwaj and others vs. Chandra Pal and another, reported in (2013) 1 SCC 579;
- vi) Amruta Babaji Mozar vs. Kondabai Babaji Mozar and another, reported in (1994) (2) Mh.L.J. 1663

7. Learned counsel for the respondents original plaintiffs submits that in respect of aforesaid transaction amongst defendant Nos. 1 to 3 on one hand and defendant Nos. 4 to 9 on the other hand for execution of sale deed in respect of survey No. 98 dated 30.6.2016, the respondents plaintiffs are not executants and as such, they are not required to value the suit in terms of provisions of Section 6(iv) (ha) of the Maharashtra Court Fees Act. The respondents-plaintiffs have sought relief of declaration in respect of those sale deeds to the effect that those sale deeds are not binding on the respondents plaintiffs. Learned counsel submits that the ratio laid down in the

judgment of Apex Court in the case of ***Suhrid Singh @ Sardool Singh (supra)*** squarely applies to the facts of the present case.

8. On careful perusal of the pleadings and the relief sought in the Regular Civil Suit No. 320 of 2017 by the respondents-plaintiffs, it appears that as per pleadings, though original defendant Nos. 1 to 3 have no concerned at all with the suit land, they have executed the aforesaid two registered sale deeds in favour of defendant Nos. 4 to 9 on 30.6.2016. It has been also pleaded that defendant Nos. 1 to 3 though having no title or interest in the share of plaintiff No.1, executed the above referred sale deeds to cause irreparable loss to the plaintiff No.1. Thus, the respondent-plaintiffs constrained to seek relief that said sale deeds executed by defendant Nos. 1 to 3 in favour of defendant Nos. 4 to 9 in respect of survey No. 98 dated 30.6.2016 are not binding on the plaintiffs.

9. Section 6(iv) (ha) of the Maharashtra Court Fees Act which is relevant here for discussion, is reproduced herein below:-

“6 (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 immovable property is void (one-half) of *ad valorem* fee leviable on the value of the property.”

10. In the case of ***Suhrid Singh @ Sardool Singh vs. Randhir Singh and others (supra)*** in para 7 of the judge, the Supreme court has made the following observations:-

“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 17(iii) 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.”

11. Though in the aforesaid judgment, the Apex Court was concerned with the case under Punjab Court Fees Act and provisions akin to clause 6 (iv) (ha) of the Maharashtra Court Fees Act, probably such a provision does not find place in the Punjab Court Fees Act, as observed by this Court in the case of ***Prism Reality (supra)***. Considering the proposition laid down by the Supreme Court in the aforesaid judgment by giving illustration, the respondents plaintiffs are not required to pay ad-valorem court fees as per the provisions of clause 6(iv)(ha) of the Maharashtra Court Fees Act. This Court in later decision in the case of ***Niraj Narendra Walle (supra)*** has also taken similar view.

12. In view of above, I do not find any fault in the impugned order. The writ petition is thus liable to be dismissed. Hence the following order:-

O R D E R

Writ petition is dismissed. No costs.

(V. K. JADHAV, J.)

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