

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Writ Petition NO. 2931 OF 2016

Narayan Govind Khandekar
(since Decd) Through LRs. And Anr.

...Petitioners

Versus

Dinesh Dharmeshji Shah And Ors.

...Respondents

WITH

Writ Petition NO. 2932 OF 2016

WITH

Writ Petition NO. 2933 OF 2016

WITH

Writ Petition NO. 2934 OF 2016

WITH

Writ Petition NO. 3897 OF 2016

....

Mr. Vivek V. Salunke, Advocate for the petitioners.

Mr.S.P. Kanuga, Advocate for the respondents.

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CORAM : R. G. KETKAR, J.

DATE : 18th JANUARY, 2017

P.C.

1. Heard Mr.Vivek Salunke, learned Counsel for the petitioners and Mr.S.P. Kanuga, learned Counsel for respondent

No.1, at length.

2. Rule. Mr. Kanuga waives service on behalf of respondent No.1. As respondent No.1 is the only contesting respondent, notice on rest of the respondents is dispensed with. Having regard to the narrow controversy raised between the parties as also at the request and by consent of the parties, Rule is made returnable forthwith and the petitions are taken up for final hearing.

3. By these petitions under Article 227 of the Constitution of India, the petitioners in all the petition, have challenged orders dated 28.12.2015 passed by the learned trial Judge. By first order dated 28.12.2015, the learned trial Judge directed the petitioners, hereinafter referred to as plaintiffs, to correct valuation of suit and pay court fee over Rs.33,60,000/-. By the second order dated 28.12.2015, the learned trial Judge has framed issue of pecuniary jurisdiction under section 9-A of C.P.C

3. Mr. Salunke submitted that in all the petitions, the consideration mentioned in the sale deed is Rs. 3 Lacs. Even accepting the finding of the learned trial Judge that the suit is

for cancellation of the sale deed and court fee payable under section 6(iv)(ha) of the Maharashtra Court Fees Act, the plaintiffs will have to pay court fee one half of ad valorem fee leviable on the value of the property. He submitted that the learned trial Judge, however, directed the plaintiffs to pay court fee on the market value, namely, 33,60,000/-. He submitted that if value mentioned in the sale deed is considered, namely, 3 Lacs, then it is not necessary to frame issue of pecuniary jurisdiction.

4. Section 6(iv)(ha) reads thus:

“(ha) for avoidance of sale, contract for sale, etc.

In suits for declaration that any sale, or contract or 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”s

5. Mr.Kanuga invited my attention to the order dated 2.4.2016. Mr.Salunke submitted that as per that order, the petitioners have paid deficit court fees on the basis of the consideration shown in the sale deed, namely, Rs.3 Lakhs. Statement made by Mr.Salunke on instructions is recorded.

6. Mr. Kanuga fairly submitted that the impugned orders

may be set aside and the learned trial Judge may be directed to dispose of the suit expeditiously. Apart from the concession given by Mr.Kanuga, Mr. Salunke relied upon the decision of this Court in ***Asha Sopan Maithane v. Ramkrushna Punjaji Wanare and others, 2010(6) ALL MR 673*** and in particular paragraph-12 thereof. The learned Single Judge of this Court considered the provisions of Section 6 of the Act and has observed that the Legislature has given different meaning to word “value” and “market value” and has not used one or the other to imply same thing. In Section 6(iv)(ha) the value is to be made on the basis of **value of the property and not the market value.** [Emphasis supplied]

7. In view thereof, by consent of the parties, the petitions are disposed of in following terms :

- i. The impugned orders in each of the petitions are set aside.
- ii. Having regard to the fact that some of the parties are senior citizens, the learned trial Judge is requested to dispose of the suit expeditiously. Liberty is reserved to the parties to file applications for deciding the suit in a time

bound manner. If such applications are made, the learned trial Judge will pass appropriate order.

iii. Rule is made absolute in aforesaid terms with no order as to costs in all the petitions. Order accordingly.

(R. G. KETKAR, J.)

Deshmane (PS)