

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Writ Petition NO. 2752 OF 2015

M/s Sai Leela Construction

...Petitioner

Versus

Baban Murdhidhar Deokar

And Ors

...Respondents

....

Mr.Ajay A. Joshi, Advocate for the Petitioner.

Mr.S.V. Sadavarte, Advocate for Respondents No.1 to 3, 5, 6(a) & 6(c).

Mr.Swapnil Patil, Advocate for Respondents No.4 and 6(b).

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CORAM : R. G. KETKAR, J.

DATE : 16th JANUARY, 2017

P.C.

1. Heard Mr.Ajay Joshi, learned Counsel for the petitioner, Mr.S.V. Sadavarte, learned Counsel for Respondents No.1 to 3, 5, 6(a) & 6(c) and Mr.Swapnil Patil, learned Counsel for respondents No.4 and 6(b), at length.

2. Rule. Learned Counsel appearing for the respective respondents waive service. As respondents No.6(a) to 6(c) are really the contesting parties, notice on rest of the respondents is dispensed with. Having regard to the narrow controversy raised in this Petition as also at the request and by consent of

the parties, Rule is made returnable forthwith and the petition is taken up for final hearing.

3. By this Petition under Article 227 of the Constitution of India, the petitioner, hereinafter referred to as the 'plaintiff, has challenged the judgment and order dated 6.11.2014 passed by the learned Civil Judge, Senior Division, Pune below Exhibit-89 in Special Civil Suit No.1842/2007. By that order, the learned trial Judge allowed the application filed by defendant No.6 under Order VII Rule 11(b) of C.P.C. and directed the plaintiff to correct the valuation as per Section 6(iv)(ha) of the Maharashtra Court Fees Act (for short, 'Act') as he has prayed for cancellation of sale deed dated 30.3.2011 executed by defendant No.3 in favour of defendants No.6(a) to 6(c).

4. In support of this Petition, Mr. Joshi submitted that plaintiff instituted Suit for specific performance of contract. During the pendency of the Suit, he took out application for temporary injunction restraining the defendants from creating third party interest. That application was allowed on 06.09.2010. Despite that order, defendant No.3 executed Sale Deed in favour of defendants No.6(a) to 6(c) on 30.03.2011.

Petitioner, therefore, filed application for impleading those purchasers as party defendants. That application was allowed on 22.02.2013. Defendants thereafter filed application under Order 7, Rule 11(b) C.P.C. contending inter alia that they have purchased the suit property for a valuable consideration of Rs.84 lacs and plaintiff must accordingly value the Suit. By the impugned order, the learned trial Judge has allowed the application.

5. Mr. Joshi invited my attention to prayers in the Suit and in particular prayer clause (b) by which the plaintiff sought declaration that the Sale Deed dated 30.03.2011 executed by defendant No.3 in favour of defendants No.6(a) to 6(c) is not binding on the plaintiff's rights. In other words, plaintiff has not instituted Suit for avoidance of the Sale Deed, and therefore, plaintiff is not liable to pay Court fees in view of Section 6(iv)(ha) of the Bombay Court Fees Act, 1959. In support of this submission, he relied upon the judgment of this Court in the case of **Dilip B. Jain Vs. Baban B. Kamble, 2001 (4) Bom.C.R. 374** and in particular paragraph-12 thereof.

6. On the other hand Mr.Sadavarte supported the

impugned order. He has invited my attention to the prayers made by the plaintiff in the suit and in particular prayer clause (bb) thereof. By prayer clause (bb), the plaintiff has sought declaration that the alleged sale deed dated 30.3.2011 executed by defendant No.3 in favour of defendants No.6(a) to 6(c) during pendency of the suit is not binding on the plaintiff's right. The plaintiff will, therefore, have to value the suit as per Section 6(iv) (ha) of the Act. He also invited my attention to paragraph-15 of the plaint and submitted that the plaintiff ought to value the suit on the basis of the value mentioned in the sale deed dt. 30.3.2011 and accordingly ought to pay the court fees. He, therefore, submitted that no case is made out for interfering with the impugned order.

7. I have considered the rival submissions advanced by learned Counsel appearing for the parties. I have also perused the material on record. Perusal of the prayers made in the plaint shows that the plaintiff has basically prayed for specific performance of the agreement and in the alternative damages of Rs.54 Lakhs. Prayers (a) and (b) read thus :

“a) The Defendants may be directed to execute

the sale deed of the suit land after obtain the consent of defendant no.3 to 5. If the defendants did not execute sale deed then the court commissioner may be appointed to execute the sale deed as per the agreement to sale⁷visar pavati. the decree for the specific performance may be granted in favour of plaintiff.

- b) The plaintiff alternatively prays that If it is found that the court is unable to passed the decree for the specific performance then the decree for breach of damages may be passed in favour of plaintiff for Rs.54,00,000/- against the defendant.”

8. It appears that during pendency of the suit, defendant No.3 executed sale deed on 30.3.2011 in favour of defendants No.6(a) to 6(c). The plaintiff, therefore, amended the plaint. Paragraph-15 and added prayer clause (bb). The said prayer reads thus :

“bb) “It be declared that alleged Sale Deed 30/03/2011 in the name of Defendant No.6a to 6c executed by Defendant No.3 during the pendency of this suit is not binding on Plaintiffs right.” ”

9. Mr. Joshi relied upon the decision of this Court in ***Dilip Bastimal Jain v. Baban Bhanudas Kamble & Others, 2001(4) Bom.C.R. 374***. In paragraph-12, this Court observed thus :

“12. Having heard the parties at length, it is necessary to note that in order to decide the question relating to the pecuniary jurisdiction of the court, what is required to be seen is the allegations made, and relief claimed in the plaint. The allegations made in the plaint, if perused, it will be clear that the suit in question is nothing but a suit seeking substantive relief of specific performance of contract. The declaration of the invalidity of the sale deed in favour of the subsequent transferees. i.e., the relief against defendant Nos. 6, 13 and 14 is nothing but an ancillary relief. If the plaintiff is able to establish his case of the specific performance against the defendant No. 1 (respondent No. 1) then it would be enough, if the defendant Nos. 6, 13 and 14 are joined as parties, to the suit because the only decree to be passed in the suit for specific performance against the subsequent transferees would be to ask them

to join in conveyance with the defendant No. 1 owner. In that sense, it was not necessary at all for the plaintiff to ask for any such declaration as he did. It would have been enough for the plaintiff to have joined them as co-defendants so as to contend that the subsequent sale deeds were not binding on him. The argument of the learned Counsel appearing for the petitioner that the relief of declaration prayed for against the defendant Nos. 6, 13 and 14 was required to be valued in terms of money has, therefore, to be rejected.”

10. That apart, it is not disputed that the plaintiff is not a party to the sale deed dated 30.3.2011 executed by and between defendant No.3 with defendants No.6(a) to 6(c). In the case of **Suhrid Singh @ Sardool Singh v. Randhir Singh and others, AIR 2010 SC 2807**, Apex Court has observed in paragraph-6 thus :

“6. 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.”

11. In view thereof, I am of the opinion that the learned trial Judge was not justified in directing the plaintiff to correct the valuation and pay deficit court fees. The impugned order, therefore, is set aside thereby dismissing application Exhibit-89. Rule is made absolute with no order as to costs. Order accordingly.

(R. G. KETKAR, J.)