

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

CIVIL REVISION APPLICATION NO. 358 OF 2016

M/s. Diamond Developers]
Office at 209, Ashish Plaza,]
Plot No. SDC-01, Sector No.27A,]
Near Bhel Chowk, Pradhikaran Nigdi,]
Pune - 411 044]
Through it's partner/proprietor/promoter]
Mr.Dineshbhai Premjibhai Patel]
Age Adult, Occupation Business]
Add. same as above] ... Applicant

V/s.

1. Mr.Krishna Sitaram J. Shetty]
Age 47 Years, Occupation Service,]
R/at.Rajdeep Bungalow, Survey No.]
131/1/1, Plot No.16, Bijali Nagar,]
Near Water Tank, Chinchwad,]
Pune - 411 033]
2. Mr.Satyanarayan Sitaram Jakkamshetty]
Age 52 Years, Occupation Service]
R/at.Survey No.114/A, Sai Nath Colony,]
Nadhe Nagar, Kalewadi, Pimpri,]
Pune - 411 017]
3. Mrs.Lalita Laxmanrao Kukalla]
Age 51 Years, Occupation Housewife]
R/at.As Bestes Colony, Kukkat Pelli,]
Hyderabad, Andhra Pradesh]
4. Mr.Nandkumar Bhalchandra Bhondve]
Age 43 Years, Occupation Business]
R/at.Ravet, Tal.Haveli, Dist.Pune] ... Respondents

- Mr.Shivam Nagalia i/b. Triyama Legal for the Applicant.
- Mr.Himanshu Kode for Respondent No.1.

CORAM : DR.SHALINI PHANSALKAR-JOSHI, J.

RESERVED ON : 13th DECEMBER, 2017.

PRONOUNCED ON : 20th DECEMBER, 2017.

JUDGMENT :

1] Rule. Rule made returnable forthwith. Heard finally with consent of learned counsel for both the parties.

2] By this Civil Revision Application, the Applicant is challenging the order dated 11th April, 2016 passed by the Joint Civil Judge, Junior Division, Pune, on the application below Exh.51 filed in Regular Civil Suit No. 2065 of 2012. The said application was filed by the present Applicant, who is original Defendant No.4, in the trial Court, under Order-7 Rule-11 of the Civil Procedure Code, for rejection of the plaint on the ground that, the valuation of the suit claim made by Respondent No.1-Original Plaintiff is not proper.

3] The said suit was filed by Respondent No.1 for partition and separate possession of his share in the joint family properties. Respondent No.2 is his brother and Respondent No.3 is their sister. During pendency of the suit, by way of amendment

of the plaint, Respondent No.4 and present Applicant are impleaded in the suit as Defendant Nos.3 and 4, respectively, and the Sale-Deed executed by Defendant No.1 in favour of Respondent No.3 on 21st May 2010 and the Sale-Deed executed by Respondent No.4 in favour of the Applicant on 22nd June 2010 came to be challenged, seeking a declaration that the said Sale-Deeds are not binding on the share of the Plaintiff. According to the Applicant, however, the Plaintiff has not properly valued the suit claim for the relief of declaration. Though the amended suit claim for declaration was required to be valued as per Section 6(iv)(ha) of the Maharashtra Court Fees Act, (*for short "the Act"*), Respondent No.1 has valued the same under Section 6(iv) (j) of the Act. It was, thus, contended that, the valuation of the suit claim should have been on the consideration amount mentioned in the Sale-Deeds, as the declaration is sought for avoidance of the said Sale-Deeds for the purpose of granting the relief of partition and separate possession, as claimed by Respondent No.1. As Respondent No.1 has not done so, it was submitted that, the plaint is liable to be rejected on that count.

4] This application came to be resisted by Respondent No.1-Plaintiff contenting, *inter-alia*, that the provisions of Sections 6(iv)(ha) of the Act are not applicable to the relief of declaration,

which the Plaintiff is seeking in the present suit, it being a suit for partition and the Plaintiff being the co-sharer is claiming declaration that the Sale-Deeds are not binding on his share. In such situation, as the Plaintiff has already paid the proper court fees for the purpose of claiming relief of partition and separate possession of his share in the property, which is transferred under the said Sale-Deeds also forms part of the properties, in respect of which the Plaintiff has sought the relief of partition and separate possession and paid the court fees thereon, the Plaintiff need not pay the court fees, as required under Section 6(iv)(ha) of the Act.

5] After hearing learned counsel for both the parties, the trial Court has accepted the submission advanced on behalf of the Plaintiff and rejected the application filed by the present Applicant. Being aggrieved thereby, this Revision Application is preferred by the Applicant.

6] The submission of learned counsel for the Applicant is that, to the facts of the present case, the law laid down by this Court in the case of *Goel Ganga Developers Pvt. Ltd. vs. Shatrunjay Constructions & Developers Pvt. Ltd. & Anr.*, Writ Petition No.7926 of 2012, dated 5th December, 2012 (Coram :

Ranjit More, J.) and in the case of *M/s.Prism Reality vs. Mr.Govind Yashwant Khalade & Ors., Writ Petition (Stamp) No. 24111 of 2014, dated 20th January, 2015 (Coram : R.M. Sawant, J.)*, is squarely applicable and in both of these judgments, it was held that, when the relief sought is for declaration of the Sale-Deeds, being not binding and, in other words, for avoidance of the sale, then the valuation has to be made under Section 6(iv)(ha) of the Act.

7] Per contra, learned counsel for Respondent No.1 has placed reliance on the judgment of another Single Judge of this Court in the case of *Shri Jayant Bhimsen Joshi & Ors. vs. Shri Raghvendra Bhimsen Joshi & Ors., Appeal From Order No. 149 of 2014, Dated 23rd October, 2015 (Coram: Mrs.Mrudula Bhatkar, J.)*.

8] In all these three decisions of this Court, the judgment of the Apex Court in the case of *Suhrid Singh @ Sardool Singh vs. Randhir Singh & Ors., (2010) 12 SCC 112*, was considered. In the first two decisions, it was tried to be distinguished; whereas, in the third decision, it was relied upon.

9] Now, in order to appreciate the rival contentions and the

submissions advanced at bar by learned counsel for both the parties, it would be illuminating to reproduce the provisions of Section 6((iv)(j) and Section 6(iv)(ha) of the Act. They read as under :

“6. Computation of fees payable in certain suits.-

(i) for money ...

(ii) ...

(iii) ...

(iv) (a) ...

(b) ...

(c) ...

(d) ...

(e) ...

(f) ...

(g) ...

(h)

(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 movable or immovable property is void (one half) of ad valorem fee leviable on the value of the property.*

(hb) ...

(i) ...

(j) for other declarations. *- In suits where declaration is sought, with or without injunction or other consequential relief and the subject-matter in dispute is not susceptible of monetary evaluation and which are not otherwise provided for by this Act --ad valorem fee payable, as if the amount or value of the subject-matter was one thousand rupees.*

In all suits under clauses (a) to (i) the plaintiff shall state the amount at which he values the relief sought, with the reasons for the valuation;”

10] Thus, as per Section 6(iv)(j) of the Act, where the

declaration is sought, with or without injunction, or, other consequential relief and the subject-matter in dispute is not susceptible of monetary evaluation and which is not otherwise provided for, by this Act - ad valorem fee is payable, as if the amount or value of the subject-matter was one thousand rupees.

11] Whereas, as per Section 6(iv)((ha) of the Act, 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 is leviable on the value of the property.

12] In the case of *Suhrid Singh @ Sardool Singh vs. Randhir Singh & Ors.*, (2010) 12 SCC 112, while considering the provisions of Section 7(iv)(c)(v) and Schedule II Article 17(iii) of the Court Fees Act, 1870 (as amended in the State of Punjab), it was held as follows:

“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 con- sideration 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 the Sec- ond 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 con- sequential relief of possession, he has to pay an ad valorem court fee as provided under [Section 7\(iv\)\(c\)](#) of the Act.

[Emphasis Supplied]

[Section 7\(iv\)\(c\)](#) provides that in suits for a declaratory decree with consequential relief, the court fee shall be computed according to the amount at which the relief sought is valued in the plaint. The proviso thereto makes it clear that where the suit for declaratory decree with consequential relief is with reference to any property, such valua- tion shall not be less than the value of the

property calculated in the manner provided for by clause (v) of [Section 7](#).”

13] Thus, as per the legal position enunciated in this judgment, where the executant of a Deed wants it to be annulled, he has to seek cancellation of the Deed. Hence, he has to pay ad-valorem court fees on the consideration stated in the Sale-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 and hence, so far as the declaration sought by non-executant of the Deed is concerned, he need not pay ad-valorem court fees on the consideration stated in the Sale-Deed, but, he has to pay a fixed court fee, as provided under Section 6(iv)(j) in the Maharashtra Court Fees Act.

14] This very judgment of the Apex Court was considered by the Single Bench of this Court in the case of *Goel Ganga Developers Pvt. Ltd. (Coram : Ranjit More, J.) (Supra)* and also in the case of *M/s. Prism Reality (Coram : R.M. Sawant, J.) (Supra)*, and it was distinguished on the ground that, in the said judgment, the Apex Court was concerned with the provisions of Court Fees Act, 1870, as amended in the State of Punjab. However, the said Act does not contain the provisions similar to Clause (ha) of Section 6(iv) of the Maharashtra Court Fees Act. It was held that,

in the absence of provisions similar to Clause (ha) of Section 6(iv) of the Maharashtra Court Fees Act in the Punjab Court Fees Act, the Apex Court has held in the said judgment that, the non-executant of the Deed need not file a suit for cancellation of the Deed and mere declaration that the Deed is invalid or non est or illegal is sufficient. Accordingly, it was held that, the court fees was computable under Section 7(iv)(c) of the Court Fees Act.

15] Thus, in both these judgments of the Single Judges of this Court, it was held that, the provisions of Clause (ha) of Section 6(iv), which are in Maharashtra Court Fees Act, are applicable when the relief sought by the Plaintiff is for declaration that the Sale-Deed executed by the Defendants is not valid and the Plaintiff is not bound by the same; it is irrespective of the fact, whether the Plaintiff is a executant of the Sale-Deed or not. It was further held that, such relief, as sought by the Plaintiff, for avoidance of sale in a suit for declaration, is squarely covered under Section 6(iv)(ha) of the Maharashtra Court Fees Act and hence, the judgment of the Apex Court in *Suhrid Singh @ Sardool Singh (Supra)* cannot be applicable so far as the suits filed in this State under Maharashtra Court Fees Act.

16] As against it, in the case of *Shri Jayant Bhimsen Joshi &*

Ors. (Coram : Mrs.Mrudula Bhatkar, J.) (Supra), another Single Judge of this Court held that, while deciding the correct valuation of the suit claim, the averments made in the suit cannot be taken on their face value, but the real reliefs claimed in the plaint are required to be considered to determine the exact valuation of the subject matter and in the light of the same, it was held that, in a suit for partition and separate possession, as the Plaintiff is claiming share in the joint family property, which relief is covered under Section 6 (vii) of the Court Fees Act, which states that the owner has to pay the court fees according to the value of the share in respect of which he instituted a suit, the provisions of Section 6(ha) of the Maharashtra Court Fees Act cannot have the application. For arriving at this conclusion, reliance, to some extent, was also placed on the judgment of *Suhrid Singh @ Sardool Singh (Supra)*.

17] According to learned counsel for the Applicant, however, these first two judgments of the two different Single Benches of this Court in the case of *Goel Ganga Developers Pvt. Ltd. (Coram : Ranjit More, J.) (Supra)* and *M/s.Prism Reality (Coram : R.M. Sawant, J.) (Supra)*, were not brought to the notice of the third Single Judge in the case of *Shri Jayant Bhimsen Joshi & Ors. (Coram : Mrs.Mrudula Bhatkar, J.) (Supra)* and, therefore, as,

apparently, there are two conflicting views taken by two Single Judges on one side and third Single Judge on another side, this Court should refer the issue to the Division Bench for its decision.

18] However, I am unable to accept this submission, as, in my considered opinion, there is apparently no conflict in the views taken by the two Single Judges in the cases of *Goel Ganga Developers Pvt. Ltd. (Coram : Ranjit More, J.) (Supra)* and *M/s.Prism Reality (Coram : R.M. Sawant, J.) (Supra)* on one hand and third Single Judge in the case of *Shri Jayant Bhimsen Joshi & Ors. (Coram : Mrs.Mrudula Bhatkar, J.) (Supra)* on another side. Because, the facts of the cases in *Goel Ganga Developers Pvt. Ltd. (Coram : Ranjit More, J.) (Supra)* and *M/s.Prism Reality (Coram : R.M. Sawant, J.) (Supra)* are identical or more or less the same; whereas, the facts of the case in *Shri Jayant Bhimsen Joshi & Ors. (Coram : Mrs.Mrudula Bhatkar, J.) (Supra)* are totally different.

19] In the case of *Goel Ganga Developers Pvt. Ltd. (Coram : Ranjit More, J.) (Supra)*, the suit was instituted by the Plaintiff for declaration that the purported termination by Defendant No.1 of the Agreement of Development and the Power of Attorney, both, dated 31st December, 2003, is totally illegal, mala fide,

without any effect and not binding upon the Plaintiff and for permanent injunction against Defendant No.1 from carrying out further construction over the suit property. Moreover, as Defendant No.1 has also, during pendency of the suit, executed registered Sale-Deed dated 28th October, 2010 in respect of the suit property in favour of Defendant No.2, the Plaintiff has, therefore, applied for leave to amend the plaint, which was granted, and then he incorporated the consequential relief seeking declaration that the Sale-Deed dated 28th October, 2010, executed by Defendant No.1 in favour of Defendant No.2, is illegal, malafied, without any effect and not binding upon the Plaintiff. While considering this declaratory relief sought by the Plaintiff, it was held that, the Plaintiff should have valued the suit under Section 6(iv)(ha) of the Maharashtra Court Fees Act, as thereby he was avoiding the Contract or the Sale-Deed.

20] In the similar way, in the case of *M/s.Prism Reality (Coram : R.M. Sawant, J.) (Supra)*, the suit was for declaration that the Development Agreement No.9272 of 2006 and the Power of Attorney No.9273 of 2006 dated 14.12.2006 are bogus, illegal and not binding on the Plaintiffs. A further declaration was sought that the Sale-Deed executed by Defendant Nos.2 and 3 in favour of Defendant Nos.4 and 5 is bogus, illegal

and not binding on the Plaintiffs. In the backdrop of these reliefs, it was held that, the suit was not properly valued and was required to be valued as per Section 6(iv)(ha) of Maharashtra Court Fees Act, as the valuation made under Section 6(iv)(j) cannot be applicable to such suit.

21] As against it, in the case of *Shri Jayant Bhimsen Joshi and Ors.(Supra)* [Coram : Mrs. Mridula Bhatkar, J.], the suit was for partition and separate possession of Plaintiff's 1/4th share in the joint family properties. In prayer clauses (c) and (d), Plaintiff has prayed for declaration that the Gift Deeds executed by the Defendant were not binding on his share. In clause (d), he has further sought a declaration that two Deeds of apartments executed by the Defendant were bogus and not binding on him.

22] Thus, the facts of the first two cases of *Goel Ganga Developers Pvt. Ltd. (Supra)* and *M/s. Prism Reality (Supra)* are different from the facts of the case of *Shri Jayant Bhimsen Joshi and Ors. (Supra)*, in a sense that, first two cases do not pertain to the suit for partition and separate possession. The suits in both these cases were simplicitor for declaration that Sale-Deeds executed by the Defendant were not binding on the Plaintiff and, thus, for avoidance of sale. As the Plaintiffs in those suits had

valued the suit claim under Section 6(iv)(j) of the Act, on the spacious plea that declaration sought was not susceptible for monetary valuation, it was held that, the provisions of Section 6(iv)(ha) of the Act will be applicable for the declaration, which the Plaintiffs had sought in the said suits.

23] As against it, in the case of *Shri Jayant Bhimsen Joshi and Ors. (Supra)* and in the present case, the Plaintiff has not filed the suit simpliciter for declaration with any consequential relief of injunction, but the Plaintiff has filed the suit for partition and separate possession of his share in the ancestral property, which suit is covered under Section 6(vii) of the Court Fees Act, which states that the co-owner has to pay the court fees according to the value of his share in the suit property. Thus, in a partition suit, the suit property, in respect of which another co-owner - Defendant has created third party interest, is very much part of the joint family property and in respect of the same, for claiming the relief of partition and separate possession, the Plaintiff has already valued the suit claim and paid the court fees under Section 6(vii) of the Maharashtra Court Fees Act. While claiming his share in the whole property, he has paid the court fees on the valuation of his share in the said property also, as required under Clause 6(vii) of the Maharashtra Court Fees Act; hence, now he

need not be called upon to pay further court fee at ad-valorem rate on the consideration stated in the Sale-Deed, as it would amount to asking him to pay double court fee.

24] The law is well settled that the averments and the prayers made in the suit cannot be taken on their face-value, but the real reliefs claimed in the suit are required to be taken into consideration. As held in the case of *Shri Jayant Bhimsen Joshi and Ors. (Supra)*, the plaint may be a specimen of a clever and astute drafting, but that does not deny the Court an opportunity to look into the real claim sought by the Plaintiff to determine the exact valuation of the subject matter.

25] In the present case, the suit is for partition and separate possession of a share in the joint family property, for which the Plaintiff has already paid the court fees according to the value of his share and which valuation of the suit claim squarely falls under Section 6(vii) of the Act. Now, by way of amendment, he is seeking declaration in respect of the same property, for which he has already valued the suit and paid the court fees on its market value. Therefore, the main and substantial relief, which the Plaintiff is seeking, is of partition and separate possession of his share and only as an incidental relief, he is seeking the

declaration that the Sale-Deeds executed by another co-owner in favour of third party are not binding on his share. Hence, he can appropriately value the claim of declaration under Section 6(iv) (j) of the Maharashtra Court Fees Act.

26] Therefore, the facts of the present case are exactly similar to the facts of the case of *Shri Jayant Bhimsen Joshi & Ors. (Coram : Mrs.Mrudula Bhatkar, J.) (Supra)*, where the learned Single Judge of this Court has categorically held that, in a suit for partition and separate possession, the valuation has to be under Section 6(vii) of the Court Fees Act and Section 6(iv) (ha) cannot be applicable, even if the incidental relief claimed therein is of the declaration in respect of the Sale-Deed executed by the co-sharers in favour of other persons.

27] In my considered opinion, on the facts of this case, the law laid down in the case of *Shri Jayant Bhimsen Joshi & Ors. (Coram : Mrs.Mrudula Bhatkar, J.) (Supra)* is applicable; whereas, the facts of the other two cases, namely, *Goel Ganga Developers Pvt. Ltd. (Coram : Ranjit More, J.) (Supra)* and *M/s. Prism Reality (Coram : R.M. Sawant, J.) (Supra)*, being different and distinguishable, as stated above, there is no conflict of opinion.

28] Therefore, relying on the law laid down by this Court in the case of *Shri Jayant Bhimsen Joshi & Ors. (Coram : Mrs.Mrudula Bhatkar, J.) (Supra)*, I hold that, the trial Court has rightly held that this being a suit for partition and separate possession, the valuation made by the Plaintiff under Section 6(iv)(j) of the Act is legal and correct. In revisional jurisdiction of this Court, no interference is warranted in the impugned order of the trial Court.

29] Civil Revision Application, therefore, being without merits, stands dismissed.

30] Rule is discharged.

[DR.SHALINI PHANSALKAR-JOSHI, J.]