IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO.339 OF 2016

Ravindra Narayan Rajarshi & Ors. … Applicants

Vs.

Smt.Rohini Ganpatrao Heblikar & anr. … Respondents

with
CIVIL REVISION APPLICATION NO.438 OF 2016

Nilima Vinayak Rajarshi & Ors. ... Applicants

Vs.

Rashmikant Kantilal Shah & anr. … Respondents

with
CIVIL REVISION APPLICATION NO.481 OF 2016

Laxman Narayan Rajarshi & Ors. ... Applicants

Vs.

Rekha Milind Heblikar & anr. … Respondents

with
CIVIL REVISION APPLICATION NO.561 OF 2016

Smt.Sulbha Balkrushna Rajarshi & Ors. ... Applicants

Vs.

Smt.Leena Rashmikant Shah & anr. … Respondents

with
CIVIL REVISION APPLICATION NO.562 OF 2016

Shri Govind Narayan Rajarshi
since deceased, through his Lrs
(a) Smt.Ratnaprabha Govind Rajarshi & Ors. … Applicants

Vs.

Shri Chetan Mohanlal Desai & anr. … Respondents

with
CIVIL REVISION APPLICATION NO.563 OF 2016

Shri Vishnu Narayan Rajarshi & Ors. … Applicants

Vs.

Shri Chetan Mohanlal Desai & anr. … Respondents

Mr.S.S. Kanetkar for the Applicants in all CRAs
Mr.A.B.Avhad for Respondents in all CRAs

CORAM: Mrs.MRIDULA BHATKAR, J.
JUDGEMENT RESERVED ON: JULY 4, 2017
JUDGEMENT DELIVERED ON: JULY 31, 2017

JUDGEMENT:

1. In all these Civil Revision Applications, the order dated 26.3.2015 passed by the 16th Joint Civil Judge, Junior Division, Pune, is challenged. The issue pertains to payment of Court fees under the Maharashtra Court Fees Act. The plaintiffs i.e., the

respondents, have filed respective suits for specific performance, declaration and injunction. The land is owned by the original defendant Nos.1 to 4 and the original defendant Nos.5 to 16 have given consent for the same. So, different agreements were executed with original plaintiffs i.e., the respondents on 12.4.1991 and thereafter as the original defendants, the original landlords, did not act pursuant to the agreement, so the first purchasers i.e., the original plaintiffs, filed suits for specific performance. The original plaintiffs had knowledge that on 3.3.2005, the defendant Nos.1 to 6 had entered into agreement with defendant No.17 in respect of the sale of the said lands. Further, the sale deed dated 3.5.2007 was executed by defendant Nos.1 to 6 and defendant No.7 and defendant Nos.19 to 36. Therefore, during pendency of the suit, subsequently, defendant Nos.19 to 36 were added as party defendants by way of amendment. Thus, in the original suit, alongwith the prayer for specific performance of the agreement dated 12.4.1991, a prayer asking for execution of the sale deed and also handing over peaceful possession of the suit property was sought. It was further prayed that the agreements between defendants Nos.1 to 6 and defendant No.17 dated 3.3.2005 is to be declared void and *ab initio*. These being Suits for specific performance, the plaintiffs have valued their suits ad-valorem to the amount of consideration and their claim of possession in the suit property. Besides, the main prayer and other prayer for declaration, the plaintiffs valued the suit under section 6(iv)(j) of the Bombay Court Fees Act. During the pendency of the suit, application under Order VII Rule 11 of the Civil Procedure Code was made that the plaintiffs have failed to value the suit correctly and they have not paid proper court fees as per the provisions of the Bombay Court Fees Act which should be valued under section 6(iv) (ha). Amendment was sought and prayer made that the Sale Deed dated 3.5.2007 executed by defendant Nos.1 to 6 in favour of defendant Nos.18 to 35 be declared void and not binding on him. The said application was rejected by the trial Court and held that the suit was properly valued. Hence, these Civil Revision Applications.

2. The learned Counsel for the applicants has submitted that the suit is not only for specific performance but there is also a prayer for declaration that the development agreement dated 3.3.2005 between defendant Nos.1 to 6 and defendant No.17 be declared null and void. The learned Counsel has submitted that

the consideration shown in the development agreement is Rs.1,50,00,000/- and which is susceptible to the monetary consideration. He further submitted that by way of amendment, application below exhibit 53, defendant Nos.19 to 36 were impleaded and the prayer clauses c(i), c(e) were included. Thereby, the plaintiffs added the prayers that the sale deed dated 3.5.2007 executed between defendant Nos.1 to 6 in favour of defendant Nos.18 to 35 is not binding on him and the learned Counsel argued that in view of these prayers, in respect of the other deeds, the suit should have been valued as per section 6(iv)(ha) of the Bombay Court Fees Act. The plaintiffs did not carry out the amendment in the valuation of the suit and continued with the valuation which was originally made. Thus, it is not the suit only for specific performance but the other reliefs are also sought and, therefore, the suit is under valued.

3. In support of his submissions, the learned Counsel for the applicants relied on the judgments as follows:

i) Abdul Gaffar Abdul Samad vs. Niranjan Kumar Ramnath Prasad Dwivedi & Ors.[1]

1 2005 (3) Bom.C.R. 879

ii) Asha Sopan Maithane vs. Ramkrushna Punjaji Wanare & Ors.[2]

iii) Chandrika Chunilal Shah vs. Orbit Finances Pvt.Ltd. & ors.[3]

iv) M/s.Nandanvan Co-op. Hsg. Society Ltd. vs. Nandanvan Co-op. Hsg. Society Ltd.[4]

v) Shri Abdulsattar Gulabbhai Bagwan vs. Shri Vaibhav Laxmangiri Gosawi & Ors.[5]

vi) **Prism Reality vs. Govind Yashwant Khalade & Ors.[6]**

vii) **Bishan Sarup vs. Musa Mal & Ors.[7]**

viii) **Shamsher Singh vs. Rajinder Prashad[8]**

ix) **Shailendra Bhardwaj & Ors. vs. Chandra Pal & Anr.[9]**

x) Sardar Tajender Singh Ghambhir & anr. vs. Sardar Gurpreet Singh & Ors.[10]

4. Learned Counsel for the respondents / original plaintiffs while opposing these applications has argued that all these suits are basically suits for specific performance and ad-valorem to their original agreement, the Court fees are paid. Even though development agreement which was executed by the original defendant Nos.1 to 16 with Defendant Nos.17 is challenged and

2 2011(4) Bom.C.R. 637
3 2011 (1) Mh.L.J.898
4 Appeal from Order No.978 of 2011 dated 19.12.2011
5 2-012 (2) ALL MR 310
6 (2015) 0 Supreme (Mah.) 186
7 AIR 1935 Allahabad 817 (FB)
8 (1973) 0 Supreme (SC) 233
9 (2013) 1 SCC 579
10 (2014) 10 SCC 702

further the sale deed which is executed by Defendant Nos.1 to 16 with Defendant Nos.18 to 35, is also to be declared not binding on him, the suit remained a suit filed under the Specific Relief Act and it is not necessary for the plaintiffs to pay Court fees for the other ancillary declaratory reliefs. He relied on the ratio laid down in the cases of Dilip Bastimal Jain vs. Baban Bhanudas Kamble & Ors.[11] and **Khanderao s/o. Bhujangrao Bhujangrao Babar vs. Bharatbai w/o Shrimant Gomsale & Ors.**[12] wherein the suits were filed for the specific performance and prayer for declaration regarding other sale deeds was valued u/s 6(iv)(j).

5. It is useful to cull out the ratio laid down in the cases referred to above by both the learned Counsel for the parties.

6. In the case of **Abdul Gaffar Abdul Samad vs. Niranjan Kumar Ramnath Prasad Dwivedi & Ors. (supra)**, the plaintiff has filed suit for declaration that development agreement executed by defendant No.1 in favour of defendant No.3 is void and not binding upon him. The plaintiff has also sought another relief for perpetual injunction against the defendants. He claimed this relief on the basis of his earlier agreement which was executed between

11 2001 3 Mh. L.J.730
12 2009(3) ALL MR 568

him and defendant No.1. He claimed that he was also put in possession. He valued the suit for Rs.1,000/- as per section 6(iv) (j) of the Bombay Court Fees Act and accordingly Court fees of Rs.200/- was paid upon it. The suit is to be valued as per provisions of section 6(iv)(d) and 6(v) of the Bombay Court Fees Act. The learned Judge in the said case has held that the plaintiff has filed suit for avoidance of contract of sale and development and therefore, the suit is to be valued u/s 6(iv)(ha) of the Bombay Court Fees Act.

7. In the case of **Asha Sopan Maithane vs. Ramkrushna Punjaji Wanare & Ors.** (supra), the plaintiff has filed the suit for cancellation of sale deed and it is to be held illegal which was executed between defendant No.1 and the other defendants. The plaintiff was not party to the said sale deed. The suit was also for separate partition, possession and inquiry of mesne profits. In the said matter, the trial Court has directed the plaintiff to pay deficit court fees as per the provisions u/s 6(iv)(ha) and 6(iv)(d) of the Bombay Court Fees Act. The High Court has also taken the same view that it is susceptible to monetary consideration. However, in the case of **Asha Sopan Maithane** (supra), the learned Single

Judge of the Bombay High Court has distinguished between the terminology used by the Legislature i.e., the market value in section 6(v) at ad-valorem u/s 6(iv)(ha).

8. In the case of **Chandrika Chunilal Shah vs. Orbit Finances Pvt.Ltd. & ors. (**supra), the suit was filed under Maharashtra Ownership of Flats Act by the plaintiffs, the flat purchasers, for specific performance. However, in the said suit, the plaintiffs also sought the relief of cancellation of an agreement of sale which was executed between the original defendant No.1 and subsequent defendants and the learned Single Judge of this Court after considering the ratio laid down in **Maria Philomina Pereira vs. Rodriques Construction**[13] wherein the learned Single Judge of this Court has specifically mentioned that the suit filed under MOFA is for statutory obligation and, therefore, is not to be valued and no ad-valorem court fees are to be paid but it is to be valued notionally under section 6(iv)(j). In the case of Chandrika (supra), the learned Judge has also considered the decision in **Abdul Gaffar Abdul Samad vs. Niranjan Kumar Ramnath Prasad Dwivedi & Ors.** (supra) and held that though

13 1990 Mh.L.J. 445

the suit under MOFA is to be valued under section 6(iv) (j), for addition of further prayers of cancellation of agreement of sale executed between the defendants, it is also to be valued u/s 6(iv)(ha).

9. In the case of **M/s.Nandanvan Co-op. Hsg. Society Ltd. vs. Nandanvan Co-op. Hsg. Society Ltd.** (supra), the plaintiff has filed the suit under MOFA for declaration that he is entitled to the suit land and also asked that the agreement of development between the other two defendants is to be declared bad in law, illegal and contrary to the MOFA. The suit was valued under section 6(iv)(j). The learned Single Judge has referred to all the previous rulings in **Maria Philomina Pereira (supra); Chandrika vs. Orbit Finances Pvt. Ltd. (supra); Asha Sopan Maithane; Vrindavan (Borivali) Co-operative Housing Society Ltd. vs. Karmarkar Bros. & Ors.**[14] and held that the plaint was under-valued in respect of declaration of the sale deeds between the defendants. One and the same learned Single Judge of this court at Aurangabad Bench had decided the cases of **M/s.Nandanvan Co-op. Hsg. Society Ltd. (supra)** and **Khanderao s/o.**

14 1982 Mh.L.J.607

Bhujangrao Bhujangrao Babar vs. Bharatbai w/o Shrimant Gomsale & Ors. (supra). However, he has taken different views on the basis of the subsequent rulings.

10. In the case of **Abdul Sattar Gulabbhai Bagwan vs. Shri Vaibhav Laxmangiri Gosawi & Ors.**[15], the suit was filed for a declaration that the sale deed was got executed from the plaintiff by playing fraud. So, the substantive relief was sought that the said declaration is not binding upon the plaintiff as it is illegal without consideration. After filing of the suit, he had knowledge that the defendant Nos.1 and 2 have executed the sale deed between them and so, by amending the plaint, he added the consequential prayer that the subsequent sale deed executed between the defendants, is not binding on him. The defendants contended that the suit is under-valued and the trial Court directed the plaintiff to pay ad-valorem Court fees. The learned Single Judge has held that in the prayer clause, there is avoidance of the second agreement which took lace between the defendant and therefore, the suit is required to be valued u/s 6(iv)(ha).

15 2012 (2) ALL MR 310

11. In the case of **Bishan Sarup vs. Musa Mal & Ors.** (supra), the Full Bench of the Allahabad High Court while deciding adequacy and inadequacy of the Court fees, held that the court is competent to find out the real nature of the consequential relief and if it finds that the consequential relief has been claimed, then, certainly, the plaintiffs will be liable to pay ad-valorem Court fees, but on the other hand, if deliberately the consequential reliefs are not asked for, then, the Court should not insist for the consequential relief. So, it is open for the plaintiff to frame his suit the manner in which he wants to.

12. In **Shamsher Singh vs. Rajinder Prashad** (supra), it was held by the Supreme Court that in order to ascertain the issue of Court fees, the averments and the prayers in the plaint are to be considered and so, the substantive relief which is asked for is to be looked into. It held that mere astuteness in drafting the plaint will not be allowed to stand in the way of Court looking at the substance of the relief asked for.

13. In the case of **Sardar Tajender Singh Ghambhir & anr. vs. Sardar Gurpreet Singh & Ors.** (supra), the Supreme Court observed that no order to make up deficiency of court fees was

passed by the trial Court. The time must be granted by the Court for payment of Court fees u/s 6 of the Court Fees Act and if despite the order of the Court, deficit court fee is not paid, then, the consequences as provided therein must follow. It held that the High Court was also in error in holding that the deficiency in Court fees in respect of the plaint cannot be made good during the appellate stage.

14. Mr.Avhad, the learned Counsel for the respondents, submitted that by way of amendment, the plaintiffs have challenged the registered agreements which were entered into by defendant Nos.1 to 16 in favour of defendant No.17 on 3.3.2005. He is not a party to the said sale deed. He argued that his case is squarely covered by the judgment of **Surhid Singh @ Sardool Singh vs. Ranjit Singh** (supra).

15. In the case of **Prism Realty (supra)**, the plaintiffs had filed a suit for declaration that the development agreement and power of attorney are bogus, illegal and not binding on the plaintiffs and also for the declaration 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. The suit was also filed against the original

owner claiming title of the suit property by adverse possession. In the case of **Prism Realty** (supra), the relief sought was for avoidance of sale and contract for sale and also the suit was for title where the claim was made by adverse possession. While fixing the valuation under the Maharashtra Court Fees Act, the reliefs asked for are to be considered on the basis of the facts and circumstances of each and every case. In the case in hand, the plaintiff has filed a suit against the defendant not for avoidance but for specific performance, declaration and injunction. During the pendency of the suit, the defendant - owners of the land have executed the sale deed in favour of respondent Nos.19 to 36 and, therefore, the plaintiff has to seek further relief as not binding on the plaintiff and the sale deed is non-est, void. Thus, the transfer by defendant Nos.1 to 17 in favour of defendant Nos.19 to 36 was during the pendency of the suit and, therefore, it was necessary for the plaintiff to seek declaration that the said sale deed is void and not binding on him. If such amendment and prayer would not have been sought and the suit is decreed, then, at the time of execution, these defendants will come as the obstructionists and file application under Order XXI of the Civil Procedure Code and the Executing Court will have to entertain it as a suit. Therefore, the subsequent transferees being necessary parties, are added in the array of the defendants and against the said sale deed, the relief is sought. I rely on **Thomson Press (India) Ltd. Vs. Nanak Builders & Investors Pvt. Ltd. & Ors.**[16]

16. The present suit is for the specific performance and not merely for avoidance or cancellation of contract. The plaintiff is a non-executant to the subsequent sale deed which was executed *lis pendens*. In view of the ratio laid down by the Supreme Court in the case of **Suhrid Singh @ Sardool Singh** (supra), if a person is not an executant to a deed or agreement and seeks a declaration that it is not binding on it as void, then, he is not required to pay ad-valorem Court fees on the consideration amount of the said agreement but is to be valued notionally. It is borne in mind that the plaintiff is compelled to seek relief in respect of such deed and against the transferee as the property is transferred during the pendency of the suit. Insofar as that relief is concerned, it being a consequential relief of declaration, is not susceptible to monetary consideration.

16 Civil Appeal No.1518 of 2013 decided on 21.2.2013

17. The Court fees is to be levied depending on the facts and prayers of the case. For example, if the plaintiff files a suit for specific performance against A, during the pendency of the suit, A sells the property to B and thereafter B sells it to C by registered sale deeds. Thus, the right of B and C is created in the property due to further transactions. The plaintiff is required to make these transferees as party defendants and seek reliefs against their respective sale deeds that they are not binding on him and are void. In doing so, due to these multiple transfers, he should not suffer multiple imposition of Court fees. It will amount to double taxation on the plaintiff which is illegal. The Court Fees Act 1879 is a Central Act and it is basically for the purpose of collection of revenue to the State. Thus, it is a one form of taxation. Initially to control the vexatious and false litigation, the Court Fees Act was introduced. Prior to the British regime in some States as a custom, a winner or a victor in a dispute has to pay some amount to the King's treasury and in some States, the function of administration of justice was free as a part of utmost noble duty of the King. The Britishers introduced the concept of levying the Court fees and to collect the funds to meet the expenditure of the administration of justice. Thus, the scheme of Court Fees Act is based on a concept

that the income earned from the civil litigation is to be spent to meet the expenditure incurred in the criminal litigation. Thus, the criminal administration of justice is always free. The Court Fees Act is a fiscal statute. Though it is to be construed strictly, it is to be kept in mind that the Act was passed not to arm the litigant with a weapon of technicality against his opponent but it is to collect the revenue for the benefit of the State. Thus, the object of the court fee is to secure the revenue and not to coerce the litigant. The Bombay Court Fees Act 1885 is a State Act under the umbrella of the Central Act. Consistent with this object, the Legislature has therefore introduced the concept of notional valuation which is not susceptible to monetary valuation. So also a provision of recovery of deficit court fee is made available and accordingly, the power vests with the Court u/s 149 of the Civil Procedure Code. Keeping this object in mind and after considering the pleadings, the valuation of the suit is to be fixed. While appreciating these transactions and payment of Court fees, the principle laid down in the case of **Suhrid Singh** (supra) is to be kept in mind.

18. In the said case, the apex Court was concerned with a case under the Punjab Court Fees Act and section 7(4)(c) of the said

Act. On the ground that the Supreme Court did not deal with Bombay Court Fees Act, the said case is distinguished by the learned Single Judge of this Court in **Prism Realty's** case (supra). It appears that the Punjab Court fees Act was not placed before the learned Single Judge for the purpose of comparison. However, the principle laid down in the case of **Suhrid Singh** (supra) that if the person is non-executant of the document and prays for the relief that the said document is declared to be void and not binding on him, then, he is not to be required to pay Court fees, is the law of the land and is binding on this Court. The facts of the case of **Prism Realty** (supra) were different than the case in hand. The facts in the present case are directly covered by the ratio laid down in the judgments in **Dilip Bastimal Jain** (supra) and **Khanderao s/o. Bhujangrao Bhujangrao Babar** (supra). At the time of deciding the case in **Chandrika** (supra), the ratio laid down in the case of **Suhrid Singh** (supra) was not considered by the learned single Judge of this Court. The case in hand is for the specific performance and accordingly, the plaintiff has paid ad-valorem Court fees and therefore, the consequential relief of declaration that subsequent sale deed is void and not binding on him is not susceptible to monetary consideration and it is rightly valued u/s

6(iv)(j) of the Bombay Court Fees Act. The learned Judge of the trial Court has taken a correct view. The judgments of the Bombay High Court in Prism Reality (supra) and of the hon'ble Supreme Court in **Suhrid Singh @ Sardool Singh** (supra) were not placed before him and his view is entirely based on the ratio laid down in **Dilip Bastimal Jain** (supra) and **Khanderao s/o. Bhujangrao Bhujangrao Babar** (supra), which is legal and right view.

19. Hence, the impugned order is maintained. Civil Revision Applications are dismissed.

(MRIDULA BHATKAR, J.)