

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

WRIT PETITION NO.10813 OF 2015

Dattatreya Dnyanoba Ghule & anr. ... Petitioners

Vs.

Krushnabai Parshuram Ghule & Ors. ... Respondents

Mr.D.S. Patil for the Petitioners
Mr.S.S. Suryawanshi for Resp. Nos.1 & 3

**CORAM: Mrs.MRIDULA BHATKAR, J.
DATED: JUNE 6, 2017**

P.C. :

1. This petition is directed against the judgment and order dated 14.7.2015 passed by the learned Civil Judge, Junior Division, Pune, below exhibits 41 and 43 in Regular Civil Suit No.11 of 2015. The petitioners are the original defendant Nos.5 and 6, who have filed the application under order 7 Rules 10 and 11 of the Civil Procedure Code that the suit is under valued under the Bombay Court Fees Act and hence, is not maintainable.

2. The learned Counsel for the petitioner has submitted that the petitioner has prayed for partition and also sought declaration that power of attorney dated 5.1.2005 and development agreement

dated 29.5.2012 and sale deed dated 21.12.2012 are to be declared void and not binding on the plaintiff. The learned Counsel has submitted that the suit ought to have been valued as per section 6(iv)(ha) of the Bombay Court Fees Act instead of section 6(iv)(j) of the said Act. He has submitted that the learned Judge while rejecting the applications below exhibits 41 and 43 has erred in giving a finding that the suit is properly valued and correct and proper court fees has been paid. He submitted that considering the prayers, the suit ought to have been valued under section 6(iv) (ha) of the Act. In support of his submissions, he relied on the ratio laid down in the following judgments of the Bombay High Court:

- i) **Abdul Gaffar Abdul Samad vs. Niranjan Kumar Ramnath Prasad Dwivedi & Ors.**¹
- ii) **Abdul Sattar Gulabbhai Bagwan vs. Vaibhav Laxmangiri Gosawi & Ors.**²
- iii) **Prism Reality vs. Govind Yashwant Khalade & Ors.**³
- iv) **Goel Ganga Developers Private Ltd. vs. Shatrunjay Constructions and Developers Pvt. Ltd. & anr.**⁴

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

2 2012 Bom.C.R.

3 2015 (4) Bom.C.R. 370

4 Writ Petition No.7926 of 2012 order dated 5.12.2012

3. He further submitted that the ratio laid down in the case of **Suhrid Singh @ Sardool Singh vs. Randheer Singh & Ors.**⁵ is in the case of Court Fees Act of State of Punjab and considering the facts of the case, it is not applicable to the present case. The learned Counsel for the original plaintiff has submitted that the plaintiff is a widow and an illiterate lady. She has pleaded that the power of attorney, the development agreements were not executed by her but that has been obtained by playing fraud on her. He submitted that the respondent had not received any amount of consideration for her undivided share in the suit land and, therefore, she cannot be said that she was a party to these agreements. In the case of **Suhrid Singh (supra)**, the supreme Court while dealing with a similar issue where in the suit for declaratory relief and consequential relief in respect of annulment of deeds were sought, the Supreme Court explained and distinguished between the executant and non-executant of the deed and the plaintiff Suhrid Singh not being the executant, ad-valorem Court fee on market value was held not applicable. The trial Court has referred to the said ratio and has taken a view that

5 (2010) 12 SCC 112

the plaintiff is a co-parcener and **Suhrid Singh's case (supra)** is applicable to the facts of the case. A view is taken that though it is declared that the said sale is not binding on her, it is not to be construed to mean that it amounts to cancellation of the sale deed. However, after going through the pleadings in R.C.S. No.11 of 2015 and prayer clause 11, the plaintiff has sought cancellation. The plaintiff has in prayer clause 11b, has sought for undivided share. In prayer clause 11c, she has asked for cancellation of power of attorney dated 5.1.2005 and also asked that the development agreement and sale deed dated 29.5.2012 is not binding on her. In prayer clause 11d, she sought that power of attorney dated 21.12.2012 executed by defendant No.8 is to be cancelled and pursuant to which, the sale deed executed is not binding on him.

4. I have perused the development agreement dated 5.1.2005 and sale deed dated 21.12.2012. The consideration mentioned in the development agreement is Rs.60,000/- and the sale deed is of around Rs.10,10,000/-. Perused the prayers made in clause 11 of the plaint as in order to ascertain whether the suit is correctly valued or not, the Court has to take into account the pleadings and

the prayer in the plaint. The plaintiff has prayed that the said development agreement and the sale deed is to be declared not binding on her. On verification of the development agreement and sale deed, it is found that the plaintiff has signed those documents and thus, the executant of these documents. As per the ratio laid down in the case of **Suhrid Singh's case (supra)**, if the executant of a deed seeks cancellation of the deed, then he has to pay ad-valorem court fee on the consideration stated in the said deed and if a non-executant seeks declaration that the deed is null and void and not binding on him or his share, then, he has to merely pay a fixed court fee. In the case of **Prism Realty (supra)**, the learned Judge of this Court has held that if cancellation of the development agreement or sale deed is sought, then, it is susceptible to monetary evaluation as per section 6(iv)(ha) and not under 6(iv)(j) of the Bombay Court Fees Act. In the present case, though the plaintiff is not directly seeking the relief of annulment of the development agreement and the sale deed but she has prayed that it is not to be binding on her. Thus, it is worded in a different manner. As per her averments, having undivided share in the ancestral property, she in fact seeks that it is not to be binding on her to the extent of her share in the ancestral property and thus,

the suit property is to be evaluated as per her share in the total consideration amount of the development agreement and the sale deed.

5. Thus, the learned Judge has erred in holding that the suit is property valued. Hence, the petition is allowed and the impugned judgment and order dated 14.7.2005 of the learned Civil Judge, Junior Division, is hereby quashed and set aside. Rule made absolute in terms of prayer clause (a).

6. Writ Petition is disposed of accordingly.

(MRIDULA BHATKAR, J.)