

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO.5034/2015

Ankush s/o Shalikram Zade (Dead) through his Legal Heirs Smt. Madhuri wd/o
Ankush Zade and another
...Versus...
Mangala wd/o Domaji Zade and others

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri P.R. Puri, Advocate for petitioners
Shri P.A. Markandeywar, Advocate for respondent nos.1 to 3,5 and 7

CORAM : SMT. VASANTI A NAIK, J.
DATE : 03.02.2017

By this petition, the petitioners challenge the order of the Civil Judge, Junior Division, Umrer, dated 3.7.2015 allowing an application filed by the respondent for a direction against the petitioners/plaintiffs to pay the appropriate court fee and directing the petitioners to pay one half of the *ad valorem* court fee on the value of suit property.

The petitioners are the original plaintiffs. According to the petitioners, the suit property belonged to their grandfather Domaji, who expired in the year 1996. The petitioners are the sons of Shalikram who was the son of Domaji and had expired on 13.7.2011. Mangala, the defendant no.1 is the second wife of Domaji and Bhojanti, the defendant no.2 is the daughter of Mangala from her former husband. Domaji had executed a Will dated 12.2.1990 bequeathing the suit property in favour of

Mangala and Bhojanti. Mangala and Bhojanti sold the properties by separate registered sale-deeds to the defendant nos.3 to 7. In the suit filed by the petitioners against Mangala and Bhojanti and the purchasers of the property, i.e., defendant nos.3 to 7, the petitioners sought a declaration that they have half share in the properties of Domaji. The petitioners sought a declaration that the sale-deeds executed by Mangala and Bhojanti in favour of the defendant nos.3 to 7 are not binding on the petitioners. The petitioners sought a declaration that the Will executed by Domaji in favour of Mangala and Bhojanti on 12.2.1990 is sham and bogus. The petitioners further sought the partition and separate possession of the property to the extent of their half share. Certain other ancillary prayers are also made in the suit with which we are not concerned. Since the petitioners had valued the suit at Rs.3,050/- and had paid the court fee of Rs.672/- thereon, the respondents – defendants raised an objection about the payment of deficit court fee by the petitioners. The application filed by the respondents was allowed by the trial Court and by the impugned order dated 3.7.2015, the petitioners were directed to pay the deficit court fee within one month. The order of the trial Court is challenged by the petitioners in the instant petition.

Shri Puri, the learned Counsel for the petitioners submitted that the case of the petitioners stands fully covered by the judgment of the Hon'ble Supreme Court, reported in **2010 AIR SCW 3308**. It is stated that the petitioners had not sought for the cancellation of the sale-deeds executed by Mangala and Bhojanti in favour of the respondent nos.3 to 7. It is stated that in the absence of a prayer seeking the cancellation of the sale-deeds,

the petitioners were not liable to pay the court fees, under Section 6 (iv) (ha) of the Bombay Court Fees Act. It is submitted that the provisions of the Punjab Court Fees Act, that are akin to the provisions of the Bombay Court Fees Act were considered by the Hon'ble Supreme Court in the said judgment and the trial Court was not justified in relying on the judgment of this Court, reported in **2010 (7) Mh.L.J. 380**.

Shri Markandeywar, the learned Counsel for the respondent nos.1, to 3, 5 and 7 supported the order of the trial Court. It is submitted that the judgment of the Hon'ble Supreme Court was considered by this Court in the case of ***Prism Reality, Pune...Versus...Govind Yashwant Khalade and others***, reported in **2015 (2) Mh.L.J. 472** and this Court has held after considering the similar set of facts in the said petition that the plaintiffs therein were seeking the avoidance of the sale-deed and hence, the provisions of Section 6 (iv) (ha) of the Bombay Court Fees Act were applicable. It is submitted that this Court has held in the aforesaid judgment that the statutory provisions in the Punjab Court Fees Act are not similar to the Bombay Court Fees Act and hence, the judgment of the Hon'ble Supreme Court could not have been applied to a case of avoidance, like the one in this case. It is submitted that Section 6 (iv) (a) of the Bombay Court Fees Act clearly provides for payment of one half of the *ad valorem* fee on the value of the property, if a party seeks the avoidance of the sale or contract for sale. The learned Counsel sought for the dismissal of the writ petition.

On a reading of the impugned order and on a perusal of the provisions of the Bombay Court Fees Act and the judgment

of the Hon'ble Supreme Court and the High Court of which a reference is made by the learned Counsel for the parties, it appears that the trial Court has rightly directed the petitioners to pay one half of the *ad valorem* court fee on the value of the suit property. On a reading of the judgment of this Court, reported in **2015 (2) Mh.L.J. 472**, it is apparent that the provisions of the Bombay Court Fees Act are not similar to the provisions of the Punjab Court Fees Act. In the Supreme Court judgment the reference is made to the provisions of Section 7 (iv) (c) of the Court Fees Act as amended in Punjab. In the judgment, reported in **2015 (2) Mh.L.J. 472** after considering the provisions of Section 6 (iv) (ha) of the Bombay Court Fees Act, this Court proceeded to hold that in a case of avoidance of sale-deed like the one in the present case, the plaintiff would be liable to pay one half of the *ad valorem* fee leviable on the value of the property. While holding so, it was observed by this Court that in the case before the Supreme Court, the Hon'ble Supreme Court was concerned with the provisions of Section 7 (iv) (c) of the Court Fees Act as applicable to Punjab and in the instant case, the provisions of Section 6 (iv) (ha) of the Bombay Court Fees Act need to be considered. The Court held that the Hon'ble Supreme Court was not concerned with the provisions akin to the provisions of Section 6 (iv) (ha) of the Bombay Court Fees Act, as probably such a provision does not find place in the Punjab Court Fees Act. It is further held in the said judgment that insofar as the Bombay Court Fees Act is concerned there is a specific provision governing the suits, where a declaration is sought in respect of a sale or contract for sale. It was lastly observed that since the

plaintiffs therein who were not executants or parties to the said documents were seeking the avoidance of the sale-deeds they were liable to pay the court fee as per Section 6 (iv) (ha) of the Bombay Court Fees Act. On a perusal of the judgment of the Hon'ble Supreme Court, reported in **2010 AIR SCW 3308** and this Court, reported in **2010 (7) Mh.L.J. 380**, the trial Court rightly held that since the petitioners had sought a declaration that the sale-deeds were not valid and binding on them, they were seeking the avoidance of the sale-deed and since they had further sought the consequential relief of possession, they were liable to pay one half of the *ad valorem* court fee on the value of the suit property. Since the order of the trial Court appears to be just and proper and in consonance with the provisions of the Bombay Court Fees Act, there is no scope for interference with the same in exercise of the writ jurisdiction.

Hence, the writ petition fails and is dismissed with no order as to costs.

JUDGE

Wadkar