

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 5371 OF 2017

AVINASH KISAN RATHOD AND ANOTHER
VERSUS
RURAL RECONSTRUCTION TRUST THROUGH SURESH
BHAGWAN PURI AND OTHERS

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Advocate for Petitioners : Mr. Dhage Hemant U
Advocate for Respondents : Mr Shah Subodh P. For R/3
Mr Deshpande Jagdish V And B N Magar For R/1,2

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CORAM : V.K. JADHAV, J.

Dated: March 01, 2018

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PER COURT :-

1. By consent of the parties, heard finally at admission stage.

2. The petitioners-plaintiffs have instituted the suit R.C.S. No. 409 of 2017 for declaration and permanent injunction. The suit is valued for the purpose of court fees and jurisdiction at Rs.1,000/- and the requisite stamp duty also paid alongwith the same. However, the office has raised objection that the suit is not properly valued and court fees is not paid accordingly. The learned Judge of the trial court by the impugned order

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dated 28.2.2017 directed the petitioners/plaintiffs to value the suit accordingly and pay the court fees as per the objection. Hence, this writ petition.

3. Learned counsel for the petitioners-original plaintiffs submits that, the respondent-defendant No.3 is the registered public trust purchased a piece of land which is described as the suit property, from respondent-original defendant Nos. 1 and 2. Learned counsel submits that the said sale deed is not binding either on the plaintiffs or on the people of Banjara community for whose interest and benefit the suit land was purchased. The petitioners-plaintiffs have accordingly prayed in the suit that the registered documents bearing registration No.696 of 2014 registered before the S.R.O. Aurangabad may be declared as invalid, illegal and not binding on the plaintiffs as well as on the persons belonging to Banjara Community for whose betterment the trust was established and the suit property was purchased. Learned counsel submits that so far as the aforesaid

sale deed is concerned, the petitioners-plaintiffs are not the executants and, as such, they are not required to value the suit in terms of the provisions of Section 6(iv) (ha) of the Maharashtra Court Fees Act. The petitioners/plaintiffs have sought a relief of declaration in respect of the said sale deed to the effect the said sale deed is not binding on the plaintiffs. Learned counsel submits that the ratio laid down in the judgment of the Apex Court in the case of **Suhrid Singh @ Sardool Singh vs. Randhir Singh and others, reported in AIR 2000 SC 2807** squarely applies to the facts of the present case.

4. Learned counsel for the petitioners, in order to substantiate his submissions placed reliance on the following cases :-

- i) Suhrid Singh @ Sardool Singh Vs. Randhir Singh and others, reported in A.I.R 2000 S.C. 2807 : (2010) 12 SCC 12; 2010 ALL SCR 1027.
- ii) Prism Reality, Pune vs. Govind Yashwant Khalade and others, reported in 2015 (2) Mh.L.J. 472

- iii) Abdul Sattar Gulabbhai Bagwan vs. Vaibhav Laxmangiri Gosawi and others, reported in 2012(2) Mh.L.J. 285,
- iv) Niraj s/o Narendra Walle vs. Vijaya w/o Narendra Walle and others, reported in 2017(4) Mh.L.J. 402.
- v) Shailendra Bhardwaj and others vs. Chandra Pal and another, reported in (2013) 1 SCC 579;
- vi) Amruta Babaji Mozar vs. Kondabai Babaji Mozar and another, reported in (1994) (2) Mh.L.J. 1663
- vii) Common Piru Caudhari Vs. Berubai Chendu Redhiwale and others reported in 2017 (4) ALL MR 283.
- viii) Smt. Jubeda Panabhai Inamdar Vs. Mr. Shamshuddin Pappubhai Mulani and others reported in 2017 (4) ALL MR 284.

5. Learned counsel for respondents submits that the respondent/defendant No.3 had purchased the land under registered sale deed for consideration of Rs.6.00 Crores and some odd amount and declaration for cancellation of the said sale deed was sought and as such clause 6 (iv) (ha) of the Maharashtra Court Fees Act would be applicable and not clause 6 (iv) (j). Learned counsel submits that, in terms of clause 6 (iv)

(ha), the relief as sought is susceptible to monetary evaluation. Learned counsel submits that the ratio laid down by the Supreme Court in the case of **Suhrid Singh @ Sardool Singh vs. Randhir Singh and others** (*supra*) is not applicable in the instant case. Learned Judge of the trial court has failed to notice that this Court in the case of **Prism Reality, Pune vs. Govind Yashwant Khalade and others, reported in 2015 (2) Mah. L.J. 472** has put its own gloss thereon and as such, the same is binding on all courts in the State concerned until outweighed by a later decision of the Supreme Court or Larger Bench of the High Court. The relief claimed by the respondent-plaintiff cannot be granted without setting aside the aforesaid sale deed. Learned counsel submits that in the case of **Niraj Narendra Walle vs. Vijya Narendra Walle, reported in 2017 (4) Mh.L.J. 402**, the learned Single Judge of this court (Coram: Z. A. Haq. J.) has taken a view that though in consonance with the judgment of Supreme Court in the case of **Suhrid Singh @ Sardool Singh**

(*supra*), however, the earlier view of this Court in the case of ***Prism Reality*** (*supra*) was not brought to the notice of the Court in later decision.

6. Learned counsel for the respondent/original defendant No.1 submits that the suit itself is not maintainable in the form instituted before the trial court. The petitioners are not seeking declaration in respect of the suit land as not bidding on them but they are seeking a declaration, such declaration is not binding on entire Banjara Community. Learned counsel submits that the suit is not instituted in the representative capacity nor any specific cause of action shown to have been arisen so far as the petitioners' claim is concerned. Learned counsel submits that, the trial court, has, therefore, rightly directed the petitioners-plaintiffs to pay the court fees as per the monitory evaluation of the aforesaid sale deed. No interference is required. There is no substance in the writ petition.

7. On careful perusal of the pleadings and the relief sought in the suit, it appears that the petitioners-plaintiffs as per their pleadings seeking declaration in respect of the sale deed as not binding on them for the reasons as detailed in the plaint.

8. Section 6 (iv) (ha) of the Maharashtra Court Fees Act which is relevant here for discussion, is reproduced herein below:-

“6 (iv)(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 *advalorem* fee leviable on the value of the property.”

9. In the case of **Suhrid Singh @ Sardool Singh vs. Randhir Singh and others** (*supra*) in para 7 of the judgment, the Supreme Court has made the following observations:-

“7. 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 executants of the deed, seeks cancellation of the deed, he has to pay ad valorem court fee on the consideration 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 Second Schedule of the Act. But if 'B', a non-executants, is not in possession, and he seeks not only a declaration that the sale deed is invalid, but also the consequential relief of possession, he has

to pay an ad valorem court fee as provided under Section 7(iv)(c) of the Act.”

10. Though, in the aforesaid judgment, the Apex Court was concerned with the case under Punjab Court Fees Act and provisions akin to clause 6 (iv) (ha) of the Maharashtra Court Fees Act, probably such a provision does not find place in the Punjab Court Fees Act, as observed by this Court in the case of **Prism Reality** (*supra*). Considering the proposition laid down by the Supreme Court in the aforesaid judgment by giving illustration, the respondents/plaintiffs are not required to pay ad-valorem court fees as per the provisions of clause 6(iv)(ha) of the Maharashtra Court Fees Act. This Court in later decision in the case of **Niraj Narendra Walle** (*supra*) has also taken similar view.

11. So far as the submissions made by the respondents/original defendants are concerned, the respondents/original defendants are at liberty to raise preliminary objection about maintainability of the suit.

However, this writ petition is restricted to the extent of valuation and whether the court fees has been paid in accordance with the said valuation or not.

12. In view of the above, I find that the trial court has not considered the observations made by this Court in later decision in the case of **Niraj Narendra Walle** (*supra*). Hence, the following order:-

O R D E R

- I. Writ petition is hereby allowed. No costs.
- II. The impugned orders dated 28.2.2017 and **25.9.2017** passed by the learned Civil Judge, Senior Division, Aurangabad below Exh.1 in Regular Civil Suit Kacha No.409 of 2017 are hereby quashed and set aside.
- III. The trial court is hereby directed to register the suit as per the valuation shown and the court fees paid accordingly and can proceed with the suit in accordance with law.

III. Writ petition is disposed of. Pending civil application, if any, also stands disposed of.

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(V. K. JADHAV, J.)

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