

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

WRIT PETITION NO.1133 OF 2017

Govind Ramchandra Patil (since deceased)
through his legal heirs

1a) Vina Jitendra Cinchu & Anr.

.. Petitioners

Vs.

Liyakat Ali, Fidahussian Shaikh & Ors.

.. Respondents

Mr.Amey Deshpande for the petitioners.

None for the respondents.

CORAM : R.D. DHANUKA, J.

DATE : 23rd August 2018

P.C.:

. None appears for the respondents though served.

2. By this petition filed under Article 227 of the Constitution of India, the petitioners have impugned the order dated 5th December 2016 below Exhibit-141 directing the petitioners herein (original plaintiffs) to correct the suit valuation and to pay the deficit court fee stamp on the value of consideration amount of both the sale deeds as per Section 6(iv)(ha) of the Bombay Court Fees Act, 1959.

3. It is the case of the petitioners that the petitioners were not the parties to the sale deed and had prayed for declaration that those sale deeds were not binding on the petitioners.

4. Learned counsel appearing for the petitioners placed reliance on the judgment of the Supreme Court in the case of **Suhrid Singh @**

Sardool Singh Vs. Randhir Singh & Ors., AIR 2010 SC 2807 holding that the prayer was for a declaration that the deeds do not bind the “co-parcenary” and for joint possession. The appellant before the Supreme Court was not party to the sale deeds. The Hon'ble Supreme Court accordingly held that the Court Fees payable was under Section 7(iv)(c) of the Court Fees Act, 1870 applicable to parties thereto and not as per section which is *pari materia* to Section 6(iv)(ha) of the Bombay Court Fees Act, 1959. In my view, the principles of law laid down by the Supreme Court in the case of ***Suhrid Singh @ Sardool Singh (supra)*** would squarely apply to the facts of this case. The petitioners herein were also not the parties to the sale deed.

5. The petitioners are thus not liable to pay deficit court fees under Section 6(iv)(ha) of the Bombay Court Fees Act, 1959 but under Section 6(iv)(j) of the Bombay Court Fees Act. The order dated 5th December 2016 is accordingly quashed and set aside. Writ petition is allowed in aforesaid terms. No order as to costs.

R.D. DHANUKA, J.