

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.1280 OF 2018

Vishwajit Vasant Diwan	 Petitioner
V/s.	
Sunanda Vasantrao Nalawade & Ors.	 Respondents

Mr. N.J. Patil, i/by Mr. Amey N. Patil, for the Petitioner.

None for the Respondents.

CORAM : DR. SHALINI PHANSALKAR-JOSHI, J.

DATE : 8TH MARCH 2018.

P.C. :

1. Heard Mr. Patil, learned counsel for the Petitioner.

2. By this Writ Petition, filed under Article 227 of the Constitution of India, the Petitioner is challenging the order dated 8th November 2017 passed by the 6th Joint Civil Judge, Senior Division, Kolhapur, below “Exhibit-80” in Special Civil Suit No.367 of 2011.

3. The application at “Exhibit-80” was filed by the present Petitioner, who is Original Defendant No.1, and Defendant No.2 contending that, the valuation of the suit claim made by the Respondents-Plaintiffs is not

proper and hence, the plaint is liable to be rejected under Order 7 Rule 11(b) and (c) of the Civil Procedure Code, 1908, and Section 8 of the Maharashtra Court Fees Act, 1959.

4. This application was resisted by the Respondents-Plaintiffs and the Trial Court, after hearing learned counsel for both the parties, was pleased to reject the said application.

5. Being aggrieved thereby, this Writ Petition is preferred. While challenging the impugned order passed by the Trial Court, the submission of learned counsel for the Petitioner is that, as regards the reliefs of partition and cancellation of the 'Sale-Deed', which Respondents are claiming in the Suit, Respondents have properly valued the suit claim. However, the Respondents are also claiming the relief of declaration that, the 'Will-Deed' executed by the father of the Petitioner is false and bogus and hence, not binding on their share. It is urged that, the Respondents should have paid the Court Fee Stamp on the market-value of the property mentioned in the 'Will-Deed'. In support of this submission, learned counsel for the Petitioner has relied upon the provisions of Section 6(iv)(a) of the Maharashtra Court Fees Act, 1959.

6. However, in my considered opinion, this Court has already taken a

view in the case of *M/s. Diamond Developers Vs. Mr. Krishna Sitaram J. Shetty and Ors.*, in Civil Revision Application No.358 of 2016, dated 20th December 2017, relying upon another Judgment of this Court [*Coram : Mrs. Mrudula Bhatkar, J.*] in the case of *Shri Jayant Bhimsen Joshi and Ors. Vs. Shri Raghvendra Bhimsen Joshi and Ors.*, in Appeal from Order No.149 of 2014, dated 23rd October 2015, that, when the Suit is for partition and the prayer is made therein for cancellation of the 'Sale-Deed' executed by the co-owner, then, as valuation of the suit-claim is already covered in the relief of partition and the property is also the part of the relief of partition, it is not necessary to pay again the separate Court Fee Stamp on the market-value of the 'Sale-Deed' and hence, the provisions of Section 6(iv)(ha) of the Maharashtra Court Fees Act are not applicable to such relief. The Trial Court has also, in this respect, rightly placed reliance on the following observations of this Court in the case of *Shri Jayant Bhimsen Joshi and Ors. (Supra)* :-

“7. The subject-matter depends on the reliefs claimed in the plaint. This is a suit claiming share in the joint property, which is covered under Section 6(vii) of the Court Fees Act, which states that a co-owner has to pay the Court fees according to the value of the share in respect of which he instituted a suit. Prayer clause (a) pertains to declaration of 'Will' dated 22.9.2008 as false and fabricated. Prayer clause (b) seeks declaration that the plaintiff and the other defendants are the only legal heirs and successors. Thus, prayers (a) and (b) are

pure declaratory reliefs, which are to be covered under Section 6(iv)(j) of the Act, as they are not monetarily susceptible.”

7. As regards the authority relied upon by learned counsel for the Petitioner that of *Shailendra Bhardwaj and Ors. Vs. Chandra Pal and Anr. (2013) 1 SCC 579*, the Trial Court has considered the said authority and rightly held that, the provisions referred therein are Section 7(iv)(a) of the Court Fees Act, as amended by the U.P. Amendment Act, and, therefore, the said authority cannot be made applicable to the facts of the present case.

8. As regards the declaration relating to 'Will-Deed', this Court has taken a view in the case of *Roopa Kailash Ganatra Vs. Reena Sabherwal, 2013 (2) Mh.L.J. 663*, that,

“The provisions of Section 6(iv)(h-a) of the Maharashtra Court Fees Act have no application in the teeth of the fact that, in the present suit, the relief sought is a declaration in respect of the 'Will-Deed'. There is no declaration of ownership sought or there is any relief claimed, which would result in avoidance of sale or contract of sale. The Trial Court has, by a long drawn process, sought to apply the provisions of Section 6(iv)(d) and 6(iv)(h-a) of the Maharashtra Court Fees Act. The Trial Court has failed to take into consideration the fact that, even if the declaration in respect of the 'Will-Deed' is ultimately issued, the plaintiffs would have to file an independent

proceeding for claiming their right in the property or share in the property. It is in such a suit that the provisions of Section 6(iv)(d) of the Maharashtra Court Fees Act may probably become applicable.”

9. Thus, the Trial Court has rightly relied upon the above-said observation and rejected the Petitioner's application.

10. Writ Petition, therefore, stands dismissed.

[DR. SHALINI PHANSALKAR-JOSHI, J.]