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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.1327 OF 2013

Anant M. Chavan

...Petitioner

V/s.

Manoj R. Kamble & Ors.

...Respondents

Mr.A.M. Kulkarni for the Petitioner.

Mr.Amol Deshpande for the Respondent No.5.

CORAM : R.D. DHANUKA, J.

DATE : 18TH SEPTEMBER, 2018.

P.C. :-

1. By this petition filed under under Article 227 of the Constitution of India, the petitioner has impugned the order dated 27th February, 2012 and the order dated 2nd January, 2013 passed by the learned Trial Judge below Exhibits 53 and 62 respectively. By an order dated 27th February, 2012, the learned single Judge allowed the application filed by the defendant no.5 under section 8 of the Bombay Court Fees Act, 1959 contending that the plaintiff had instituted the suit along with prayer that the sale deed executed on 3rd November, 2010 and 10th December, 2010 by the defendant nos.1 to 3 in favour of the defendant nos.4 and 5 be set aside. Learned Trial Judge accepted the contentions of the defendant no.5 that the plaintiff was liable to pay requisite court fees under section 6(iv)(ha) of the

Bombay Court Fees Act, 1959 for cancellation of the sale deeds. The revision application filed by the petitioner came to be rejected by the learned Trial Judge on 2nd January, 2013 below Exhibit – 62.

2. This Court in catena of decisions after adverting to the judgment of the Hon'ble Supreme Court in case of **Suhrid Singh @ Sardool Singh vs. Randhir Singh & Ors. AIR 2010 SC 2807** has held that the petitioners being not a party to the sale deed and if there is prayer for cancellation of such sale deed in the plaint, the plaintiff will have to pay the Court fees under section 6(iv)(j) and not under section 6(iv)(ha) of the Bombay Court Fees Act, 1959. In my view, both the orders passed by the learned Trial Judge are contrary to the provisions of law laid down by this Court and are accordingly quashed and set aside. It is made clear that the plaintiff would be liable to pay the Court fees under section 6(iv)(j) of the Bombay Court Fees Act, 1959.

3. The writ petition is allowed in aforesaid terms. There shall be no order as to costs.

Vasant
Anandrao
Idhol

Digitally signed by
Vasant Anandrao Idhol
Date: 2018.09.19
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(R.D. DHANUKA, J.)