

IN THE HIGH COURT OF JUDICATURE AT BOMBAY***CIVIL APPELLATE JURISDICTION*****CIVIL REVISION APPLICATION NO. 200 OF 2014****Sandip Maruti Jagdale****..... Applicant****VERSUS****Ramdas Hiranman Ambekar & Ors.****..... Respondents**

Mr.Ketan Chotani, a/w. Ms.Manjiri Parasnis for the Applicant.

Mr.Drupad Patil, a/w. Mr.B.G.Ligade for the Respondent no. 1.

Mr.A.P.Kulkarni for the Respondent nos. 2 to 4.

CORAM : R.D. DHANUKA, J.**DATE : 3rd SEPTEMBER, 2018****P.C.**

By this civil revision application filed under section 115 of the Code of Civil Procedure, 1908, the applicant has impugned the order dated 6th December,2013 passed by the learned 18th Joint Civil Judge, Junior Division, Pune in Regular Civil Suit No.2038 of 2013 below Ex.22 rejecting the application filed by the defendants *inter alia* praying for the rejection of the plaint.

2. The original plaintiff had filed a suit for declaration that the sale deed bearing no. 9794/2013 dated 30th August, 2013 be declared illegal and void and also sought various other reliefs.

3. Admittedly, the original plaintiffs were not the parties in the said sale deed bearing no. 9794/2013 dated 30th August, 2013.

4. The learned trial judge rejected the application filed by the petitioner (original defendant no.1) along with other defendants following the judgment of Supreme Court in case of ***Suhrid Singh @ Sardool Singh vs. Randhir Singh, 2010(2) SC 670***. However, the learned counsel for the applicant would submit that the original plaintiffs were required to pay the court fees under section 6(iv)(ha) in view of the fact that the plaintiff has applied for declaration that the sale deed was illegal and void. He submits that the learned trial court could not have held that the court fees was not payable under section 6(iv)(ha) but was payable under section 6(iv)(j). In support of this submission he placed reliance on the judgment of this court in case of ***Prism Reality vs. Govind Yashwant Khalade & Ors., 2015(4) Bom.C.R. 370*** and more particularly paragraph (10) thereof and would submit that this court has distinguished the judgment of Supreme Court in case of ***Suhrid Singh @ Sardool Singh*** (supra) on the ground that Punjab Court Fees Act and the provisions of Maharashtra Court Fees Act are different.

5. Mr.Patil, learned counsel for the plaintiffs on the other hand invited my attention to the prayers in the suit filed by his client in the trial court and would submit that admittedly the plaintiffs were not the parties to the sale deed. The plaintiffs had applied for a declaration that the sale deed which was executed by the defendant nos. 2 to 4 in favour of the defendant no.1 was void and not binding on the plaintiffs. He submits that thus the suit was rightly valued by his clients under section 6(iv)(j) which provides for a relief of declaration and

injunction.

6. Learned counsel for the original plaintiffs distinguished the judgment of this court in case of ***Prism Reality*** (supra) on the ground that the prayers considered by this court in the said judgment were in a suit filed by the power of attorney holder on behalf of the original owner and thus in that case this court has held that the suit would be governed by under section 6(iv)(ha) and not under 6(iv)(j).

7. Learned counsel placed reliance on an unreported judgment of this court delivered on 6th June, 2017 in case of ***Dattatreya Dnyanoba Ghule & Anr. vs. Krushnabai Parshuram Ghule & Ors.***, in Writ Petition No.10813 of 2015 in which this court has adverted to the judgment of Supreme Court in case of ***Suhrid Singh @ Sardool Singh*** (supra) and has held that if the plaintiff is not a party to the document which document is sought to be declared as illegal and not binding, such case would fall under section 6(iv)(j) and not under section 6(iv)(ha). He submits that the facts before this court in case of ***Dattatreya Dnyanoba Ghule & Anr.*** (supra) are identical to the facts of this case and the said judgment would be binding on this court.

8. A perusal of the prayers in the suit filed by the respondents clearly indicates that the respondents had applied for a declaration that the sale deed executed between the defendant nos. 2 to 4 and defendant no.1 was not binding upon the plaintiffs in view of the fact that the plaintiffs were not the parties to the said document.

9. Similar issue has been considered by this court in the said unreported judgment in case of ***Dattatreya Dnyanoba Ghule & Anr.*** (supra). This court in the said judgment has adverted to the judgment of Supreme Court in case of ***Suhrid Singh @ Sardool Singh*** (supra) and has held that the plaintiff being not a party to the sale deed and had applied for a declaration that the said deed is not binding upon the plaintiff and thus his case would fall under section 6(iv)(j) of the Maharashtra Court Fees Act and not under section 6(iv)(ha) of the said Act. In my view, the said judgment of this court in case of ***Dattatreya Dnyanoba Ghule & Anr.*** (supra) which is passed after following the principles of law laid down by the Supreme Court in case of ***Suhrid Singh @ Sardool Singh*** (supra) applies to the facts of this case and is binding on this court. I am respectfully bound by the said judgment.

10. Insofar as the judgment of this court in case of ***Prism Reality*** (supra) relied upon by the learned counsel for the applicant is concerned, it is not in dispute that the said judgment was delivered in a situation where a constituted attorney of the original defendant had filed the said suit and had applied for injunction. The facts before this court in the said judgment were totally different and are clearly distinguishable in the facts of this case.

11. With the assistance of the learned counsel for both the parties, I have perused the documents filed by both the parties and the order passed by the learned trial judge. In my view the learned trial judge has after considering the prayers and the averments made in the plaint

has rightly rendered a finding that the plaintiff not being the party to the said deed, has rightly valued the suit under section 6(iv)(j) of the Maharashtra Court Fees Act and not 6(iv)(ha) of the Act. I do not find any infirmity in the impugned order passed by the trial judge.

12. Civil revision application is devoid of merit and is accordingly dismissed. No order as to costs.

[R.D. DHANUKA, J.]