

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

WRIT PETITION NO. 3768 OF 2017

Balasaheb Ramchandra Aavhad & Ors.	...	Petitioners
V/s.		
Sadashiv Ganpat Aavhad & Ors.	...	Respondents

- Mr.Girish R. Agrawal for the Petitioners.
- Mr.Sachin Gite for Respondent Nos.1 to 3.

CORAM : DR.SHALINI PHANSALKAR-JOSHI, J.

DATE : 9th MARCH, 2018.

P.C. :

1] Heard learned counsel for the Petitioners and the Respondent Nos.1 to 3.

2] By this Writ Petition filed under Article 227 of the Constitution of India, the Petitioners are challenging the order dated 23rd February 2017 passed by Jt. Civil Judge Junior Division, Sinnar below Exhibit-17 in Regular Civil Suit No. 138 of 2016.

3] The Application at Exhibit-17 was filed by the Respondents before the trial Court for framing of preliminary issue under Section-9A of Civil Procedure Code (*for short, "C.P.C."*) on the ground that, if the correct and proper valuation of the suit claim is made, then it

will oust the pecuniary jurisdiction of the Court to entertain the suit.

4] The contention raised by the Respondents/Defendants before the trial Court was that, in this suit, the present Petitioners are seeking the declaration for cancellation of the sale-deed dated 9th July 2015 executed by Defendant No.2 in favour of Defendant No.1 on the ground that, it is illegal and void *ab-initio*, along with the relief of perpetual injunction restraining the Respondents from causing obstruction to their possession over the suit property. Hence, it is submitted that, this being a suit for cancellation or avoidance of the sale-deed, in view of the provision of Section 6(iv)(ha) of Maharashtra Court Fees Act, 1959, as interpreted by this Court in the case of *Prism Reality, Pune V/s. Govind Yashwant Khalade & Ors, 2015(2) Mh.L.J. 472*, the Petitioners have to pay the Court Fees Stamp on one half *ad-valorem* fee leviable on the value of the suit property. However, as the Petitioners have not done so and valued the suit claim under Section 6(iv)(j) of the Maharashtra Court Fees Act, they are liable to correct the valuation of the suit claim.

5] The trial Court has, accordingly, directed the Petitioners to correct the valuation according to the prevailing market price of the suit property as mentioned in the impugned sale-deed and pay requisite one-half of *ad-valorem* fee leviable on the value of the

property, in view of the provision of Section 6(iv)(ha) of the Maharashtra Court Fees Act. The trial Court further framed the preliminary issue, as to, whether after proper valuation of the suit claim, the trial Court will have pecuniary jurisdiction to entertain the suit.

6] While challenging this order of the trial Court, the submission of learned counsel for the Petitioners is that the suit property had come to the share of the Petitioners in pursuance of the Partition-Deed dated 18th January 2006. The Petitioners were not party to the sale-deed executed and in such situation, they are not liable to pay the Court Fees Stamp on the one half *ad-valorem* fee leviable on the value of the suit property.

7] However, in view of the legal position, as laid down by this Court in the case of *Prism Reality(supra)* it is clear that, when the suit is filed for declaration that any sale or contract for sale or termination of contract for sale of any movable of immovable property, then valuation of the suit claim has to be under Section 6(iv)(ha) and not under Section 6(iv)(j). Therefore, proper Court Fees Stamp has to be paid under Section 6(iv)(ha) of the Maharashtra Court Fees Act. It is not necessary that the concerned party seeking cancellation of the sale-deed should be executant of the sale-deed. In the instant case,

therefore, the contention raised by the Petitioners cannot be accepted. Learned counsel for the Petitioners has relied upon the judgment of this Court in the case of *Saurashtra Estate Pvt. Ltd. And another V/s. Runja Laxman Lokhande And others in Writ Petition No.7270 of 2012 dated 3rd August 2016* to submit that when the non-executant of the document seeks annulment of the deed, he is not liable to pay *ad-valorem* fee on market value of the property. However, it can be seen that in the said Writ Petition, the suit was filed for partition and separate possession of the suit property and in that suit relief for declaration that development agreement dated 26th March 1999, executed during *pendency* of the suit was not binding on the Plaintiff was sought. In that view of the matter, it was held that the valuation of suit claim under Section 6(iv)(j) of the Act is proper.

8] This Court has also 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 20 th December 2017* held that, when suit is for partition of the property and the property covered in the sale-deed is also covered under the relief of partition, there is no necessity of paying the Court Fees Stamp on the market value of the suit property as mentioned in the sale-deed. Here, in the case, as admittedly the suit is not for partition, therefore, the judgment relied

upon by learned counsel for the Petitioners cannot be made applicable.

9] At this stage, learned counsel for the Petitioners submits that the Petitioners may be permitted to amend the suit for claiming the relief of partition. The Petitioners can make such prayer before the trial Court and trial Court will consider it in accordance with law.

10] For the present, as the relief of partition is not claimed in the plaint, the order passed by the trial Court directing the Petitioners to pay the Court Fees as per Section 6(iv)(ha) of the Maharashtra Court Fees Act needs to be confirmed, with a clarification that under the said provision, the Court Fees is to be paid one half *ad-valorem* fee leviable on the value of the property and not necessarily on the market price mentioned in the impugned sale-deed.

11] With this clarification, the Writ Petition being devoid of merit, stands dismissed.

[DR.SHALINI PHANSALKAR-JOSHI, J.]