

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

WRIT PETITION NO. 3715 OF 2017

Harishchandra Pandurang Bhoi	...	Petitioner
V/s.		
Musab Anis Dolare & Ors.	...	Respondents

- Mr.Sagar A. Joshi for the Petitioner.
- Mr.R.M. Haridas a/w. Mr.Kishor Patil for Respondent No.1.

CORAM : DR.SHALINI PHANSALKAR-JOSHI, J.

DATE : 26th FEBRUARY, 2018.

P.C. :

1] Heard learned counsel for the Petitioner and the Respondent.

2] By this Writ Petition, filed under Article 227 of the Constitution of India, the Petitioner is challenging the order dated 28th February, 2017 passed by the 2nd Jt. Civil Judge Senior Division, Kalyan, below Exhibit-42 in Special Civil Suit No.348 of 2016.

3] The application at Exhibit-42 was filed by the present Respondent No.1 under Order-7 Rule 11 (b) & (c) of the Civil Procedure Code (*for short, "C.P.C."*) for rejection of the plaint on the ground that the suit claim is not properly valued. It was submitted

that the present Petitioner who is the Plaintiff, before the trial Court has filed the suit for declaration that the judgment and decree dated 3rd February, 2016 passed in Special Civil Suit No.303 of 2015 is obtained by fraud and not binding on him. The Petitioner has valued the suit claim accordingly on the amount of Rs.7,50,000/-, which is on the same amount of valuation as made in Special Civil Suit No.303 of 2015. As regards the valuation of this suit claim made by the Petitioner, the Respondent has not raised any grievance.

4] However, as regard the prayer made in the suit in Clause (f), it was submitted that by this prayer, the Petitioner was seeking further declaration that sale-deed dated 17th May, 2016 executed by Defendant No.2 to 6 in favour of Defendant No.1 and registered with the Sub-Registrar under Serial No.4952 of 2016 is illegal, void, *ab-initio*, non-est, bad in law and not binding upon the Plaintiff and his family members. The Petitioner has, however, valued this claim at Rs.1000/- under Section 6(iv)(j) and paid the Court Fees Stamp of Rs.400/- only. It was submitted that the said valuation should have been as per Section 6(iv)(ha) and not as per Section 6(iv)(j) of the Maharashtra Court Fees Act.

5] The trial Court has accepted this contention raised by the Respondent No.1 herein and held that the Petitioner should pay the

Court Fees Stamp accordingly on the market value of the suit property in view of the provisions of Section 6(iv)(ha) of the Maharashtra Court Fees Act.

6] While challenging this order of the trial Court, the submission of learned counsel for the Petitioner is that, the prayer made in Clause (f) of the plaint, relating to declaration that sale-deed is illegal, void ab-initio, non-est, bad in law and not binding on the Petitioner and his family members is a consequential relief, as the said sale-deed is executed in pursuance of the judgment and decree dated 3rd February, 2016 passed in Special Civil Suit No.303 of 2015. It is urged that, once the Petitioner has valued the suit claim and also paid the Court Fees Stamp for setting aside the said decree and accordingly, once the decree is set-aside, then naturally the sale-deed executed in pursuance of the said decree is bound to be declared as null and void. Therefore, it being a consequential relief, it stands covered under the principal relief for declaration of setting aside the judgment and decree dated 3rd February, 2016. Such relief of declaration being not susceptible to monetary evaluation, the Petitioner has valued the suit claim on the amount of Rs.1,000/- as per Section 6(iv)(j) of the Act. According to learned counsel for the Petitioner, therefore, the trial Court has committed an error in directing the Petitioner to pay the

Court Fees Stamp on the market value of the suit property as per Section 6(iv)(ha) of the Act.

7] It is true that the first relief claimed by the Petitioner is that of setting aside the decree passed in Special Civil Suit No.303 of 2015 and the valuation made by the Petitioner, therefore, on the suit claim of that suit is correct. However, as regards the next relief which the Petitioner has claimed that of declaring the sale-deed executed in pursuance of the said decree as null and void is concerned, the Petitioner has valued the suit claim under Section 6(iv)(j) of the Act only on the amount of Rs.1,000/-, which cannot be called as correct in view of the decision of this Court in the case of *Prism Reality vs. Govind Yashwant Khalade & Ors.*, 2015(4) Bom.C.R.370, wherein clearly held that, when the relief sought is for the cancellation of any development agreement or the sale-deed, then the suit should have been valued in terms of clause 6(iv)(ha) of the Maharashtra Court Fees Act on the market value of the suit property, as it is susceptible to monetary evaluation and the valuation made under Section 6(iv)(j) of the Maharashtra Court Fees Act cannot be correct.

8] Here, in the case, even if it is accepted that, this relief of declaration that sale-deed is null and void and not binding on the Petitioner/Plaintiff is a consequential relief, in terms of setting aside

the decree itself, however the fact remains that the Petitioner is claiming such relief separately and also valuing the same under Section 6(iv)(j) of the Act. Now once the separate claim for declaration that sale-deed is null and void and not binding on the share of the Plaintiff is made and valued under Section 6(iv)(j) of the Act, then it follows that such relief in view of the judgment of this Court in the *Prism Reality (supra)* has to be valued in terms of Section 6(iv)(ha) of the Maharashtra Court Fees Act. The trial Court has accordingly rightly directed the Petitioner to correct the valuation and pay the Court Fees Stamp accordingly.

9] The impugned order passed by the trial Court, therefore, does not call for any interference.

10] Writ Petition hence stands dismissed.

[DR.SHALINI PHANSALKAR-JOSHI, J.]