

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.7879 OF 2015

- | | |
|---------------------------------|--------------------|
| 1. Anjanabai Ratan Bahirat, |] |
| Age : 62 years, Occ. Household, |] |
| R/at S. No.165, Malwadi, |] |
| Hadapsar, Pune - 411 028. |] |
| 2. Shantabai Bhiku Talekar, |] |
| Age : 72 years, Occ. Household |] |
| 3. Shakuntala Maruti Dhore, |] |
| Age : 42 years, Occ. Household, |] |
| R/at S. No.93, Mahadev Nagar, |] |
| Manjari Budruk, Tal. Haveli, |] |
| District Pune. |] Petitioners |

Versus

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|---|---|
| 1. Bajirao Baban Talekar, |] |
| Age : 63 years, Occ. Agriculturist, |] |
| R/at Anand Society, Warje Bus Stop, |] |
| Pune - 411 058. |] |
| 2. Shivaji Baban Talekar, |] |
| Age : 60 years, Occ. Agriculturist, |] |
| R/at Post - Manjari Budruk, Gaothan, |] |
| Near Vitthal-Rakhumai Mandir, |] |
| Tal. Haveli, Dist. Pune - 412 307. |] |
| 3. Pushpa <i>alias</i> Pushpalata Sambhaji Darekar, |] |
| Age : 56 years, Occ. Household & Agri., |] |
| R/at 116, Ganesh Peth, Laxmi Nivas, |] |
| Plot No.102, Pune - 411 002. |] |
| 4. Vidya Bajirao Talekar, |] |
| Age : 55 years, Occ. Agri. & Household |] |

5. Yogesh Bajirao Talekar,]
Age : 31 years, Occ. Service.]
6. Nilesh Bajirao Talekar,]
Age : 29 years, Occ. Agriculturist,]
Respondent Nos.4 to 6 above are residing]
at Anand Society, Warje Bus Stop,]
Pune - 411 058.]
7. Sadhana Shivaji Talekar,]
Age : 52 years, Occ. Agri. and Household.]
8. Gajanan Shivaji Talekar,]
Age : 29 years, Occ. Agriculturist.]
9. Rahul Shivaji Talekar,]
Age : 23 years, Occ. Agriculturist.]
Respondent Nos.7 to 9 above are residing]
at Post - Manjari Bk., Gaonthan,]
Near Vitthal-Rakhumai Mandir, Tal. Haveli,]
District Pune - 412 307.]
10. Savita Shashikant Danga,]
Age : 32 years, Occ. Household,]
R/at Post - Vadgaon Dhayari,]
Tal. Haveli, Dist. Pune.]
11. Pallavi Sandeep Doundkar,]
Age : 26 years, Occ. Household,]
R/at Post - Boriaindi, Tal. Haveli,]
Dist. Pune.]
12. Nigappa Nilappa Pattanshetti,]
Age : 65 years, Occ. Agriculturist,]
R/at Post - 207, Dindwar,]
Tal. Basavanna Bagewadi,]
Dist. Vijapur, Karnataka - 586 203.]
13. Rakesh Balasaheb Patil,]

Age : 38 years, Occ. Service,	]
R/at Post – Mirpur, Tal. Sangamner,	]
Dist. Ahmednagar – 4137736.	]
14. Mangal Mahadev Avhad,	]
Age : 45 years, Occ. Household,	]
R/at Building E-4, Flat No.702,	]
Bhimashankar Co-op. Housing Society,	]
Nerul, Navi Mumbai – 400 706.	]
15. Dattatray Narayan Tupe,	]
Age : 58 years, Occ. Business / Agri.	]
R/at Sadesatara Nali, Hadapsar,	]
Pune – 400 028.	] Respondents

Mr. Chaitanya Nikte for the Petitioners.

Mr. Vijay Killedar for Respondent Nos.1 to 3, 12 and 14.

Mr. Mandar Limaye for Respondent No.15.

CORAM : DR. SHALINI PHANSALKAR-JOSHI, J.

DATE : 5TH MARCH 2018.

ORAL JUDGMENT :

1. Rule. Rule is made returnable forthwith. Heard finally, at the stage of admission itself, by consent of Mr. Nikte, learned counsel for the Petitioners, Mr. Killedar, learned counsel for Respondent Nos.1 to 3, 12 and 14, and Mr. Limaye, learned counsel for Respondent No.15.

2. By this Writ Petition, filed under Article 227 of the Constitution of India, the Petitioners are challenging the order dated 21st January 2015 passed by the 11th Joint Civil Judge, Junior Division, Pune, below “Exhibit-53” in Regular Civil Suit No.837 of 2013.

3. The application at “Exhibit-53” was filed by Original Defendant Nos.1 to 6, under the provisions of Order 7 Rule 11(b) and (c) of the Civil Procedure Code, 1908, for rejection of the plaint on the ground that, valuation of the suit claim was not proper. The Trial Court has, accepting the contention raised by Original Defendant Nos.1 to 6, who are the Respondents in the present case, directed the Petitioners to value the suit claim as per Section 6(iv)(ha) of the Maharashtra Court Fees Act.

4. This order of the Trial Court is challenged in this Writ Petition by learned counsel for the Petitioners-Original Plaintiffs by submitting that, the Suit filed by the Petitioners before the Trial Court is for partition of their share in the suit property and as an ancillary or consequential relief, they had also challenged the 'Sale-Deeds' dated 31st October 2012 and 20th April 2012, executed by Defendant Nos.1 to 11 in favour of Defendant Nos.12 to 14 and 15, respectively. It is submitted that, accordingly, the Petitioners had valued the Suit 200 times of the Revenue Assessment of the agricultural land in respect of the relief of partition. However, as regards the relief of declaration in respect of

'Sale-Deeds' being not binding on their share, the Suit is valued under Section 6(iv)(j) of the Maharashtra Court Fees Act. Therefore, the said valuation is proper and correct.

5. The Trial Court has, however, relying upon the Judgments of this Court in the case of *Abdul Sattar Gulabbhai Bagwan Vs. Vaibhav Laxmangiri Gosavi and Ors.*, 2012 (2) Mh.L.J. 285, and *M/s. Goel Ganga Developers Pvt. Ltd. Vs. Shatrunjay Constructions & Developers Pvt. Ltd. and Anr.*, in Writ Petition No.7926 of 2012, dated 5th December 2012, held that, as the Petitioners are challenging the 'Sale-Deeds' executed by the Defendants, Petitioners have to pay the 'Court Fee Stamp' on the market value of the 'Sale-Deeds', in view of the provisions of Section 6(iv)(ha) of the Maharashtra Court Fees Act. Accordingly, the Trial Court has directed the 'Nazir' to submit his 'Report' regarding valuation of the present Suit, as per Section 6(iv)(ha) of the Maharashtra Court Fees Act.

6. According to learned counsel for the Petitioners, the impugned order passed by the Trial Court cannot be called as correct and legal, in view of the fact that, this is a Suit for partition and Petitioners have already paid the Court Fee on the 200 times 'Revenue Assessment' of the agricultural lands. Hence, they cannot be called upon to pay Court Fee on the market-value of the 'Sale-Deeds'.

7. Per contra, learned counsel for the Respondents has supported the impugned order passed by the Trial Court by pointing out to the Judgments of this Court in the case of *M/s. Prism Reality Vs. Mr. Govind Yashwant Khalade and Ors.*, in Writ Petition (Stamp) No.24111 of 2014, dated 20th January 2015 [Coram : R.M. Savant, J.], and also in the case of *M/s. Goel Ganga Developers Pvt. Ltd. Vs. Shatrunjay Constructions & Developers Pvt. Ltd. and Anr.*, in Writ Petition No.7926 of 2012, dated 5th December 2012 [Coram : Ranjit More, J.] and by submitting that, when the Suit is filed challenging the 'Sale-Deeds' and indirectly for avoidance or cancellation of the 'Sale-Deeds', the valuation of the suit claim has to be made on the market-value of the suit property, as mentioned in the 'Sale-Deeds', as per Section 6(iv)(ha) of the Maharashtra Court Fees Act and not in terms of Section 6(iv)(j) of the said Act.

8. However, this Court has, in its earlier Judgment 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, has distinguished the Judgment of this Court in the case of *M/s. Prism Reality Vs. Mr. Govind Yashwant Khalade and Ors.*

and *M/s. Goel Ganga Developers Pvt. Ltd. Vs. Shatrunjay Constructions & Developers Pvt. Ltd. and Anr.*, in Writ Petition No.7926 of 2012, dated 5th December 2012 [Coram : Ranjit More, J.], and categorically held in paragraph Nos.22 and 23, as follows :-

“22. Thus, the facts of the first two cases of *Goel Ganga Developers Pvt. Ltd. (Supra)* and *M/s. Prism Reality (Supra)* are different from the facts of the case of *Shri Jayant Bhimsen Joshi and Ors. (Supra)*, in a sense that, first two cases do not pertain to the Suit for partition and separate possession. The Suits in both these cases were simplicitor for declaration that 'Sale-Deeds' executed by the Defendant were not binding on the Plaintiff and, thus, for avoidance of sale. As the Plaintiffs in those Suits had valued the suit claim under Section 6(iv)(ha) of the Maharashtra Court Fees Act, on the spacious plea that, declaration sought was not susceptible for monetary valuation, it was held that, the provisions of Section 6(iv)(ha) of the Maharashtra Court Fees Act will be applicable for the declaration, which the Plaintiffs had sought in the said Suits.

23. As against it, in the case of *Shri Jayant Bhimsen Joshi and Ors. (Supra)* and in the present case, the Plaintiff has not filed the Suit simplicitor for declaration with any consequential relief of injunction, but the Plaintiff has filed the Suit for partition and separate possession of his share in the ancestral property, which Suit is covered under Section 6(vii) of the Maharashtra Court Fees Act, which states that the co-owner has to pay the Court Fees according to the value of his share in the suit property. Thus, in a partition Suit, the suit property, in respect of

which another co-owner – Defendant has created third party interest, is very much part of the joint family property and in respect of the same, for claiming the relief of partition and separate possession, the Plaintiff has already valued the suit claim and paid the Court Fees under Section 6(vii) of the Maharashtra Court Fees Act. While claiming his share in the whole property, he has paid the Court Fees on the valuation of his share in the said property also, as required under Section 6(vii) of the Maharashtra Court Fees Act; hence, now he need not be called upon to pay further Court Fee at ad-valorem rate on the consideration stated in the 'Sale-Deed', as it would amount to asking him to pay double Court Fee.”

9. It was categorically held in paragraph No.25 of the said Judgment that,

“When the Suit is for partition and separate possession of a share in the joint family property, for which the Plaintiff has already paid the Court Fees according to the value of his share and which valuation of the suit claim squarely falls under Section 6(vii) of the Maharashtra Court Fees Act. Now, by way of amendment, he is seeking declaration in respect of the same property, for which he has already valued the Suit and paid the Court Fees on its market value. Therefore, the main and substantial relief, which the Plaintiff is seeking, is of partition and separate possession of his share and only as an incidental relief, he is seeking the declaration that the 'Sale-Deeds' executed by another co-owner in favour of third party are not binding on his share. Hence, he can appropriately value the claim of declaration under Section 6(iv)(j) of the Maharashtra Court Fees Act.”

10. In paragraph No.27 of the said Judgment, it was further held that, on the facts of the case, the law laid down in the case of *M/s. Goel Ganga Developers Pvt. Ltd. [Coram : Ranjit More, J.] (Supra)* and *M/s. Prism Reality [Coram : R.M. Savant, J.] (Supra)*, cannot be made applicable to the facts of the case, when the Suit is filed for partition and separate possession.

11. Here in the case, admittedly, the Suit is filed for partition and separate possession of the suit property and, as can be seen from the averments made in paragraph No.20 of the plaint, Petitioners had paid the Court Fee Stamp on 200 times of the Revenue Assessment of the agricultural land in respect of his one half share. Therefore, the said valuation is squarely falling under Section 6(vii) of the Maharashtra Court Fees Act, which reads as follows :-

“Section 6. Computation of Fees Payable in Certain Suits :

(vii) For Share in Joint Property :

In Suits for partition and separate possession of a share of joint family property or of joint property, or to enforce a right to a share in any property on the ground that it is joint family property or joint property whether or not the plaintiff is in actual or constructive possession of the property of which he claims to be a co-

parcener or co-owner according to the value of the share in respect of which the suit is instituted.

Explanation - For the purpose of this paragraph, if the property in which a share is claimed consists of or includes any land assessed to land revenue for the purposes of agriculture, the value of such land shall be deemed to be the value as determined under paragraph (v) of this section.

(v) *For Possession of Lands, Houses and Gardens*

In Suits for the possession of land, houses and gardens according to the value of the subject-matter; and such value shall be deemed to be, where the subject-matter is a house or garden according to the market value of the house or garden and where the subject-matter is land, and -

- (a) where the land is held on settlement for a period not exceeding thirty years and pays the full assessment to Government a sum equal to forty times the survey assessment;*
- (b) where the land is held on a permanent settlement, or on a settlement for any period exceeding thirty years, and pays the full assessment to Government a sum equal to eighty times the survey assessment; and*
- (c) where the whole or any part of the*

annual survey assessment is remitted a sum computed under sub-paragraph (a) or sub-paragraph (b), as the case may be, in addition to eighty times the assessment or, the portion of assessment, so remitted.”

12. Petitioners are not required to pay separate Court Fee Stamp on the market-value of the 'Sale-Deeds', even though they may be seeking avodance or cancellation of the 'Sale-Deeds'. It will amount to double paying of the Court Fee Stamp. Though the Court Fees Act is a fiscal statute and is required to be construed strictly, it must be borne in mind that, the Act was passed not to arm the litigant with a weapon of technicality against the opponent, but, it is to collect the revenue for the benefit of the State. The object of the Court Fee is to collect the revenue and not to coerce the litigant to pay the Court Fee multiple times.

13. Learned counsel for the Respondents has, however, tried to submit that, though this Court has in the case of *M/s. Diamond Developers (Supra)* followed the law laid down in the Judgment of the learned Single Judge of this Court in the case of *Shri Jayant Bhimsen Joshi and Ors. (Supra)*, in that case, the exact issue of valuation of the suit claim under Order 7 Rule 11(b) and (c) of the CPC was not raised. It was an Appeal preferred against the order of interim injunction and while deciding the said Appeal, the finding was given by this Court.

14. However, perusal of the said Judgment shows that, though it was an Appeal against the order of interim injunction passed below “Exhibit-5”, the issue raised was about the pecuniary jurisdiction of the District Court to entertain an Appeal under Section 28-A of the Maharashtra Civil Courts Act and while deciding that objection, this Court has considered what would be the proper valuation of the suit claim, when the Suit is filed for partition and for cancellation of the 'Sale-Deeds'. While deciding the said issue, this Court has also considered the provisions of Order 7 Rule 11(b) and (c) of the CPC and Section 11 of the Suit Valuation Act and thereafter, considering those provisions in paragraph No.7 of the Judgment, this Court has arrived at the finding that, when the Suit is for partition and separate possession, when the valuation of the suit property is already made under Section 6(vii) of the Maharashtra Court Fees Act, it is not necessary to pay the Court Fee on the market-value of the 'Sale-Deeds'. Therefore, the issue raised in the said Judgment was also exactly the same, which was for consideration of this Court in the case of *M/s. Diamond Developers (Supra)* and also in the present case.

15. In the instant case, therefore, as already the Petitioners had made the valuation of the suit lands on 200 times of the Revenue Assessment of the suit lands, the said valuation being proper, the impugned order passed by the Trial Court cannot be sustained.

16. Hence, the Writ Petition is allowed. The impugned order passed by the Trial Court is set aside. Accordingly, the application below “Exhibit-53” filed by the Respondents stands dismissed.

17. Rule is made absolute in the above terms.

[DR. SHALINI PHANSALKAR-JOSHI, J.]