

dik

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

WRIT PETITION NO. 450 OF 2014

Mr Jiyauddin Abdul Latif Bharmar ...Petitioner.
vs
Mr Ibrahim Allisaheb Chavekar ...Respondent.

.....

Mr Sandesh D. Patil a/w Kiran B. Bhagat for the Petitioner.
Mr S.H.Joshi a/w Mr Jayesh M. Joshi for the Respondent.

.....

**CORAM : B.P.COLABAWALLA, J.
DECEMBER 12, 2018.**

P.C. :

This Writ Petition has been filed by the original Plaintiff *inter alia* challenging part of the order dated 15th October, 2013 passed below Exh. 23 in Regular Civil Suit No. 1941 of 2012. Exh.23 was an application filed by the Plaintiff under Order VI Rule 17 and Order 1 Rule 10 of the Code of Civil Procedure, 1908 (for short "CPC"). By this amendment application the Plaintiff wanted to bring certain subsequent developments, pertaining to the suit property, on record. The suit as originally filed was for specific performance of the contract. According to the Plaintiff, after filing of the suit, a sale-deed pertaining to the same suit property was executed by Defendant No.1 in favour of subsequent purchasers who are sought to be brought on

record by virtue of this amendment. This amendment was allowed and the Plaintiff was to carry out the necessary amendment within 14 days from the date of the order. However, the Trial Court in paragraph 3 of the operative part of the order directed that the Plaintiff was to make proper valuation of the suit as per Section 6(iv) (ha) of the Bombay Court Fees Act, 1959 and to pay court fee stamp on the same. It is this direction that the Plaintiff is aggrieved by and that is why the present Writ Petition has been filed.

2 When this matter initially came up before this Court on 6th September, 2016 it was pointed out to this Court that the issue involved in the present Writ Petition is squarely covered by a decision of this Court in the case of **Dilip Bastimal Jain Vs Baban Bhanudas Kamble & Ors [2001(4) Bom. C.R. 374]**. At that stage this Court directed the Petitioner to join all the added Defendants as party-Respondents to this Petition and also directed they be given notice. It further directed that the notice shall indicate that this Writ Petition will be taken for final disposal in respect of the challenge to Clause (3) of the operative part of the impugned order regarding valuation. Pursuant to this direction, the newly added Defendants have been joined as Respondents to the Writ Petition. They have also been duly served and have been informed that this Petition shall be taken up for

final disposal.

3 Respondent No.1 who was original Defendant No.1 in the suit has appeared today through an advocate and has submitted that by virtue of the amendment the Plaintiff was seeking a declaration in relation to the sale-deeds that were executed in favour of the newly added Defendants. This being the case, the Trial Court was fully justified in directing the Plaintiff to value the suit as per Section 6(iv) (ha) of the Bombay Court Fees Act and pay the requisite court fees. He, therefore, submitted that there was nothing wrong in the order passed by the Trial Court.

4 I am unable to agree with the submission made on behalf of the Respondents. The issue in the present suit is squarely covered by a decision of this Court in the case of **Dilip Jain** (supra). The facts of this case clearly show that the Plaintiff had filed a suit against the vendor and also arrayed subsequent transferees as co-Defendants and claimed specific performance of the contract of the agreement-of-sale and prayed for cancellation of sale-deeds obtained by the subsequent transferees. In these facts, in paragraph 14 and 15 this Court held as under -

“14. The learned counsel appearing for the petitioner tried to urge that it was essential for the plaintiff to claim a declaration of invalidity in favour of

the subsequent transferees. Said argument has no substance. At this juncture, it is necessary to notice Clause (b) of Sub-section (1) of Section 19 of the Specific Relief Act which starts with the following words :

"19(1). Except as otherwise provided by this Chapter, specific performance of a contract may be enforced against-
(b) any other person claiming under him by a title....."

The Section speaks of the enforcement only. It does not speak in terms of a decree being claimed against such persons. As I have already pointed out herein above, that it is an established law that for enforcing the decree, all that is necessary is to implead such person as a party and the decree is required to direct such person to be a party to conveyance to be executed by the original vendor in favour of the vendee. It will have, therefore, to be held that there was no necessity of claiming any declaratory relief as against the defendant No. 6 (present petitioner) and defendant Nos. 13 and 14. Consequently, there was no question of payment of court-fees in respect of said relief. The said relief claimed was superficial and unnecessary in the facts and circumstances of the present case.

15. Now, it is necessary to examine the correctness of the suit claim valued by the plaintiff. If the scheme laid down for the computation of fees payable in suits covered by several sub-sections of Section 6 is considered. It would be clear that, In respect of suits falling under Sub-section (xi)(a) a departure has been made and liberty has been given to the plaintiff to value his suit claim for the purposes of court-fees according to the amount of the consideration. I am, therefore, of the opinion that the suit claim has been rightly valued under Section 6(xi) treating it as falling under Article 7 of Schedule I of the Court-fees Act. The substantive relief claimed in the suit Is not a relief of declaration or the alternate relief relating to the damages, but is of specific performance of contract based on agreement of sale as such the suit claim was properly valued. It was not necessary to value it under Section 6(i) or (iv) (a) or (iv) (b) of the Act."

5 I find that the ratio of this decision is squarely applicable to the facts of the present case.

6 This being the position, clause 3 of the operative part of

the order cannot be sustained and is hereby set aside. The Writ Petition is disposed of in the aforesaid terms. There shall be no order as to costs.

(B.P.COLABAWALLA, J.)