

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

5 WRIT PETITION NO.10623 OF 2018

BRIJMOHAN PARMANAND BAKSHI AND OTHERS
VERSUS
JAFIRUNNISA MEHBUB SHAIKH AND OTHERS

...
Advocate for Petitioners : Mr. N. V. Gaware

CORAM : M. S. KARNIK, J.

DATE : 13th AUGUST 2019

PER COURT

Heard learned counsel for the petitioners.

2. The petitioners are challenging the order passed by the trial Court rejecting an application made by subsequent purchasers, who are added as defendant Nos.37 to 55, praying for rejection of the plaint under Order VII Rule 11 of C.P.C. Learned counsel for the petitioners submits that the present respondent No.1 / original plaintiff filed suit for declaration that the sale deeds executed in favour of the respondents / original defendants are not binding on her. He would submit that without challenging the sale deeds, mere prayer for declaration is not sufficient. He would submit that the

averments made in the plaint would clearly indicate that though the specific case of fraud is not mentioned in the pleading, averments stating that the sale deeds are executed behind the plaintiffs back and without her knowledge tantamounts to a plea that sale deeds are executed by playing fraud. In such a case, appropriate relief claiming cancellation of sale deeds having not been prayed, the plaint is liable to be rejected. He submits that consequently half of advalorem Court fees as per the provisions of Section 6(iv)(ha) & (j) of the Bombay Court Fees Act also should have been paid. On this ground also the plaint is liable to be rejected. He would submit the trial Court was not justified in rejecting the application.

3. Respondent No.1 /original plaintiff filed a suit for declaration that the sale deeds executed by other heirs of deceased respondents / defendants are not binding on her. Respondent No.1/original plaintiff claims to have a share in the suit property. Though she has share in the suit property, the other legal heirs, behind her back, sold the suit property in

favour of the petitioners / original defendants. She, therefore, prayed that the sale deeds are not binding to the extent of her share and prayed for her 1/15th share in the suit property.

4. It is pertinent to note that respondent No.1 / original plaintiff is not a party to the sale deeds. It is her specific case that though she is a legal heir, the other legal heirs, contrary to her interest, proceeded to dispose of the suit property, which included her share.

5. I have gone through the order passed by the trial Court. Respondent No.1 / original plaintiff is not party to any of the sale deeds. The property has been sold by the other legal heirs of deceased Sayyed Abdul Wahab to the petitioners. Respondent No.1/plaintiff claims to have 1/15th share in the suit property. According to her, suit property was not partitioned, and therefore, prayed for partition and separate possession of her 1/15th share in the suit property. She has prayed that her 1/15th share should be partitioned by metes

and bounds. She further prayed for declaration that the sale deeds executed in favour of original defendant Nos. 28 to 55 are not binding on the share of respondent No.1/plaintiff. In this view of the matter as the suit is for a declaration that the sale deeds are not binding on the plaintiff, there is no question of her paying half of the advalorem fee as contended by the learned counsel for the petitioners.

6. Moreover as she is not a party to the sale deeds, plaintiff claimed the relief that the sale deeds are not binding on her. Therefore, the plaint is not liable to be rejected only on the ground that she has not prayed for a declaration that the sale deeds are null and void. I do not find any reason to interfere with the order of the trial Court. The Writ Petition stands dismissed with no order as to costs.

(M. S. KARNIK, J.)

vsm/