

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.4084/2016

Sunita Yashwant Chaikwad & Anr. ... Petitioners
V/s.
Bakati Chintamani Deshpande & Ors. ... Respondents

Mr. Dilip Bodake for the Petitioners
Mr. Anand S. Kulkarni for Respondent Nos.1, 2 and 4.

CORAM: K.K. TATED, J.
DATED : JANUARY 18, 2019

P.C. :

1 Heard. By this petition under Article 227 of the Constitution of India, the Petitioner - Defendant Nos.6 and 7 challenges the order dated 16.11.2015 passed by the Civil Judge, Junior Division, Medha, dist. Satara below Exhibit- 93 in Regular Civil Suit No. 63/2011 dismissing Application made by Petitioner - Defendant Nos.6 and 7 under order VII Rule 11(a) and (d) of the Code of Civil Procedure, 1908 for rejection of the plaint.

2 In the present proceedings, the Respondent - Plaintiff filed Regular Civil Suit No. 42/2011 for partition and separate possession of HUF property wherein the Plaintiff had made prayer for declaration that the sale deed dated 24.06.2011 executed by Defendant No.1 in favour of Defendant Nos.6 and 7 in respect of the property bearing Gut No.516/1A is not binding on him.

3 In the said suit, Defendant Nos.6 and 7 made Application under Order 7 Rule 11 (a) and (d) of the Code of Civil Procedure, 1908 which stood dismissed by the Trial Court on the ground

that the Plaintiff has not claimed any declaration to cancel the said Sale Deed executed by Defendant No.1 in favour of Defendant Nos.6 and 7. Hence, the Writ Petition.

4 The learned counsel for the Petitioner submits that the Trial Court erred in coming to the conclusion that the Application made by the Petitioner under Order 7 rule 11 (a) and 11 (d) is not maintainable, because the Plaintiff has not claimed any declaration of cancellation of sale deed. He submits that the Trial Court ought to have held that as per section 6 (iv)(ha) of the Maharashtra Court Fees Act, 1959 (Court Fees Act) the Plaintiff has to pay full court fees if declaration is claimed. He submits that even this court, in the matter of ***M/s. Prism Reality Vs. Mr. Govind Yashwant Khalade & Ors. 2015(5) ALL MR 620*** held that if a declaration is claimed by the Plaintiff in respect of any transaction of the immovable property, in that case, the Plaintiff has to pay court fees as per section 6(iv)(ha) of the Court Fees Act. He relies on para 9 of the said judgment, which reads thus:

“9. In so far as Section 6(iv)(j) is concerned, the same applies to suits which have been filed for declaration other than those sought in the earlier sections with or without injunctions or other consequential relief and the subject-matter in dispute is not susceptible of monetary evaluation and which are not otherwise provided for by this Act. In so far as Section 6(iv)(ha) is concerned, the same applies to suits for declaration that any sale, contract for sale or termination of contract for sale, of any moveable or immoveable property is void. The said provision therefore, encompasses within itself suits that have been filed for avoidance of sale, contract for sale, etc.. In the light of the reliefs which have been sought in the instant suit vide prayer clauses (a) and (b), the suit as filed is undoubtedly

for declaration in respect of the Development Agreement and the Sale Deed and by seeking the reliefs sought, what the Plaintiffs in fact are seeking to do is the avoidance of the said sale or contract. Hence, in so far as the said reliefs are sought, the provisions of Section 6(iv)(ha) can be said to be applicable. The fact that according to the Plaintiffs the said documents are sham and bogus cannot be considered for computing or determining the valuation of the suit and the payment of the Court Fees in respect thereof.

The Sale Deed which has been executed by the Defendants No.2 and 3 in favour of the Defendants No.4 and 5 is undisputedly a registered document and clause (4) thereof the consideration has been mentioned and also the fact that the vendors have accepted that payment of the said BGP. 8 of 11 WPST-24111-14.doc 20.01.2015 consideration has been made to them so also is the Development Agreement. Hence, merely because the Plaintiffs questioned the Sale Deed as being sham and bogus, the Plaintiffs cannot be exempted from the rigours of Section 6(iv)(ha) of the Court Fees Act in the matter of valuation of the suit and payment of the Court Fees.”

5 The learned counsel for the Petitioner submits that the Plaintiff in Regular Civil Suit No. 42/2011 vide prayer clause (b) claimed peremptory right in respect of the suit property as described in para 1A of the plaint. He submits that if there is claim for peremptory right to purchase the property, in that case the Plaintiff has to pay court fees on the basis of valuation of the said property. He submits that if the proper valuation is made by the Plaintiff, then the learned Civil Judge, Junior Division has no jurisdiction to entertain the suit. Hence, the Writ Petition deserves to be allowed by setting aside impugned order dated 16.11.2015. He submits that if the Writ Petition is not allowed, irreparable loss will be caused.

6 It is to be noted that in the present proceedings, the Petitioner is a third party who purchased the undivided share of HUF property. Bare reading of prayer clauses shows that the suit was filed by the Plaintiff for partition and separate possession of HUF and for declaration that the sale deed executed by Defendant No.1 in favour of Defendant Nos.6 and 7 for consideration of Rs.6 lacs in respect of Gut No.519/1A is not binding on the Plaintiff. Admittedly, the Plaintiff is not a party to the agreement dated 24.06.2011 between Defendant Nos.1 and Defendant Nos.6 and 7. Bare reading of para 1 of the plaint shows that all these properties are agricultural land.

7 Considering these facts, I am of the opinion that the valuation of made by the Plaintiff while filing the suit was according to law. In any case, at the time of deciding the said suit finally, if court comes to the conclusion that Plaintiff has not affixed proper court fees then the court can direct the Plaintiff to pay proper court fees. Hence, the judgment cited by the Petitioner in the matter of *M/s. Prism Reality (supra)* is not applicable in the facts and circumstances of the present case. In that case, the suit was for declaration, whereas in the case in hand, the suit was for partition and separate possession of the HUF property.

8 In view of these facts, I do not find any substance in the Writ Petition. Same stands rejected.

9. No order as to costs.

(K. K. TATED, J.)