

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

WRIT PETITION NO.5426 OF 2012

1 Mr. Prakash Nandkishor Bhalke
Age 34 years, Occ: Business,
Residing at Darshan Nagar,
Tanaji Nagar, Chinchwad,
Pune 411 033

2 Mr. Punit Chandrakant Choradiya
Age 22 years, Occ: Business,
Residing at 1/12, Suparshwanath
“E” Co-op. Housing Society,
692/693, Market Yard Road,
Pune 411 037

3 Mr. Chandrakant Kanhyyalal
Choradiya, Age 52 years,
Occ: Business residing at 1224, Bhavani
Peth, Pune 411 002

...Petitioners

Versus

1 The Joint District Registrar
Photozinco Premises, Camp,
Pune 411 001

2 Mr. Pandharinath Sopan Takle
Age 56 years, Occupation: Services
Residing at Khed, Taluka: Khed,
District Pune

3 Mrs. Leelawati Babasaheb Dabhade
Age 54 years, Occupation: Housewife
Residing at 215, Aundh, Pune 411 007

4 Mrs. Pushpa Ramnath Kadam
Age 52 years, Occupation: Housewife
Residing at Abdul Gani Patra Chawl
No.9, Room No.95, Sayani Road,
Prabhadevi Parel, Depot Mumbai 400 025

5 Mr. Sagar Pandharinath Takle
Age 24 years, Occupation: Education
Residing at Rajgurunagar, Taluka: Khed
District Pune

6 Mr. Jairam Pandurang Bhoir
Age 34 years, Occupation: Business,
Residing at Keshavnagar, Chinchwad
Pune 411 033

7 Mr. Dagadu Ranganath Ranavade
Age 62 years, Occupation
Residing at Maling Chowk, Aundhgaon
Pune 411 007

8 Mr. Vishnu Rangnath Ranavade
Age 59 years, Occupation
Residing at Maling Chowk, Aundhgaon
Pune 411 007

9 Mrs. Sulochana Tukaram Mate
Age 54 years, Occupation: Housewife
Residing at Aundh, Pune 411 007.

10 Mrs. Ratnaprabha Chandrakant Jadhav
Age 52 years, Occupation: Housewife,

Residing at Chincholi Taluka Haveli Pune

11 Mr. Shahaji Sopan Bhie
Age 48 years, Occupation: Service,
Residing at Ramnagar Rahatani
Kalewadi, Pune

12 Mr. Dinesh Dagadu Ranavade
Age 34 years, Occupation: Service.

13 Mr. Nilesh Dagadu Ranavade
Age 32, Occupation: Business

14 Mr. Amol Dagadu Ranavade
Age 30 years, Occupation: Service

15 Mr. Sachin Vishnu Ranavade
Age 33 years, Occupation: Business

16 Mr. Sunil Vishnu Ranavade
Age 31 years, Occupation: Business

17 Mr. Amar Vishnu Ranavade
Age 29 years, Occupation: Business
Nos.12 to 17 all residing at Malling
Chowk, Aundhgaon, Pune 411 007

18 Mr. Vishal Shahaji Bhise
Age 25 years, Occupation: Business
Residing at Ramnagar Rahatani,
Kalewadi, Pune 411 017.

..... Respondents

...

Mr. S.S.Patwardhan for the Petitioner.

Mr. Pravin Gole with Mr. Pradeep M. Patil for the Respondent
Nos.2 to 5.

CORAM : SANDEEP K. SHINDE J.
RESERVED ON : JUNE 14, 2019
PRONOUNCED ON: JULY 5, 2019

ORAL JUDGMENT :

Rule. Rule made returnable forthwith. With consent of the parties, the matter is taken up for final hearing forthwith.

2 Petitioners hereinafter called plaintiffs instituted suit in the Court of Civil Judge, Junior Division, Pune under Section 77 of the Registration Act, 1908 and sought following reliefs:

(1) Defendant Nos.1 to 5 be directed to register the sale deed dated 1st February, 2011;

(2) A fit and competent person be appointed as Court Commissioner to admit execution on behalf of defendant nos.2 to 5 and the document, i.e., sale deed dated 1st February, 2011 be registered.

. Thus, suit was for seeking direction to the respondent nos.1 to 5 to register the sale deed dated 1st February, 2011.

3 Petitioners valued suit in terms of Section 6(iv)(j) of the Bombay Court-fees Act, 1958; it reads as under:

“6(iv)(j) for other declarations

In suits where declaration is sought, with or without injunction 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 [ad valorem fee payable, as if the amount or value of the subject-matter was [one thousand rupees;]]”

4 The learned Judge, however, held that suit is subject to valuation, in terms of Section 6(xi) of the Bombay Court-fees Act, 1958 vide order dated 27th March, 2012. This order is challenged in this Petition filed under Article 227 of the Constitution of India.

5 Mr. Patwardhan, the learned counsel for the Petitioners, submits that the subject suit is to enforce compliance with the statute and subject matter of the suit, being right to compel statutory obligation and the plaintiffs are asking assistance of the Court to compel the respondents to perform their statutory obligation. He submits, such right to compel to perform the obligations provided by the statute being, incapable of monetary valuation, and there being no provision under the Court-fees Act for such a suit, provisions of Section 6(iv)(j) of the Court-fees Act are attracted and they are applicable to the suit.

6 Mr. Patwardhan has taken me through the plaint, which discloses that the sale deed dated 1st February, 2011 was presented for registration on 1st February, 2011 before the Sub-Registrar, Haveli No.2, Pune. It was duly executed by twenty parties in all, out of which plaintiffs (3 parties) were the purchasers, nine parties were vendors and eight parties were the consenting parties. Out of aforesaid twenty parties, 16 parties appeared before the Sub-Registrar, Haveli No.2 and admitted execution of the sale deed. However, four parties, i.e., defendant nos.2 to 5 did not personally appear before the concerned Sub-Registrar despite letter dated 16th May, 2011 addressed to them by the Sub-Registrar. Plaintiffs, in these circumstances, issued a notice dated 22nd July, 2011 to the Sub-Registrar requesting him to pass reasoned order for refusing registration under Section 71 of the Registration Act, 1908 or order registration of the said document after conducting an enquiry contemplated under Section 74 of the Registration Act. Registrar vide order dated 3rd October, 2011 refused registration in respect of said four executants, who are defendant nos.2 to 5 and registered

the document at Sr.No.1082 on 3rd October, 2011 in respect of remaining executants. Thus, Sub-Registrar has refused registration on the ground of denial of execution.

7 Aggrieved by the order, plaintiffs filed an application under Section 73 of the Registration Act before the Registrar to conduct an enquiry as provided under Section 74 of the Registration Act, 1908 and order to register the document i.e. the sale deed dated 1st February, 2011. Registrar by his order dated 20th January, 2012 refused to order the registration and, therefore, plaintiffs instituted suit within thirty days from the date of refusal of registration under Section 77 of the Registration Act, 1908.

8 I have perused the plaint and in particular paragraph 8, which reads as under:

“8. The Plaintiffs further say that in the present suit the Plaintiffs are not seeking any relief other than registration of the impugned sale deed dated 01/02/2011. However, in case the Defendant nos.2 to 5 at any stage appear and deny the execution of the document or plead any other defence, the Plaintiffs crave leave of this Hon'ble Court to amend the suit seeking additional relief and convert the suit into a suit for specific performance. Leave of this Hon'ble Court is thus sought at this stage itself to convert the present suit into a suit for specific performance. Leave of this Hon'ble Court is sought at this stage itself as

provided under Order 2 Rule of CPC to avoid any prejudice to the Plaintiffs at a later stage.”

9 Thus, after going through the provisions of Part XII of the Registration Act and upon perusal of the pleadings in the plaint since the defendant nos.2 to 5 did not remain present for admitting execution of the documents and since the Registrar declined to direct registration of document, the suit is one under Section 77 of the Registration Act, 1908 and not for enforcement of contract, as held.

10 The question that arises for consideration is that once the suit is for enforcement of statutory obligation, would it be subject to the provisions under Section 6(j) of the Court-fees Act. Mr. Patwardhan, the learned counsel for the petitioner, has relied upon the judgment of this Court in the case of **Vrindawan (Borivali) Co-operative Housing Society Limited v. Karmarkar Bros. and Ors. 1982 Maharashtra Law Journal 607**. In this case, the order returning plaint to the plaintiff for presentation to the proper Court on the ground that the suit was valued beyond the jurisdiction of the Court was under challenge. The appellant/plaintiff (Society) had filed suit for mandatory injunction and sought declaration that they

are entitled to deed of conveyance having paid entire consideration under the agreement to sale. This Court upon taking survey of the provisions of the Maharashtra Ownership Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer) Act, 1963 and the provisions of the Bombay Court-fees Act has held that the plaintiffs were seeking a relief in regard to enforcement of statutory obligations and, therefore, not susceptible of monetary valuation and thus, held that it was correctly valued under Section 6 (j) of the Bombay Court-fees Act. In paragraphs 17 and 18, the learned Judge of this Court held as under:

“17. The arguments of the counsel for the respondent and the learned Government Pleader who adopted the same arguments that under section 6(xi) of the Bombay Court Fees Act the suit should be valued according to amount of consideration for conveyance, does not seem to be justified. Because, under section 6 (xi) of the Bombay Court Fees Act the contract of sale ordinarily would mean a contract entered into by parties voluntarily and according to their will and pleasure without any reference to any statute. It is a contract settled by the parties inasmuch as such a contract is fully dependent on the volition of the parties. The words used in the provisions of section 6 providing the contract of sale will apply only to such a contract and the present suit is also not a suit in the sense that specific performance of only a contract is sought. The provisions of section 6(xi) of the Bombay Courts fees Act clearly show that the contract of sale as known to it,

has nothing to do with statutory obligations. Therefore, the suit governed by Section 6 (xi) of the Bombay Court Fees Act is a different suit than the present one which is filed by the plaintiff. The obligations flowing from the contract of sale mentioned in section 6(xi) of the Bombay Court Fees Act are the obligations, in my opinion, restricted to a contract wherein there is no question of any compliance with any statute. Mere statutory right is not a subject-matter of such contract. Therefore the provisions of section 6 (xi) are not attracted for the payment of Court-fees in the present suit.

18. *The present suit filed by the plaintiff is not a suit simplicitor for specific performance. It is a suit to enforce the compliance with a statute. The provisions of section 12 providing a penalty for non-compliance with the statute also are relevant. Section 12 of the said Act provides that the flat owners who contravene sub-section (1) of section 12 are liable to criminal actions. Section 13 also provides that a promoter who fails to comply with the provisions of this Act is liable to criminal actions. The reason for referring this penal provision is that the intention of the Legislature seems to be that the parties governed by this Act must comply with the provisions and non-compliance with the provisions has been made an offence. From this it can be reasonably inferred that the agreement which is the basis as provided by section 4 for conveyance to be executed cannot be said to be similar to one which can be the subject-matter of an ordinary contract of sale. Because, if an ordinary contract of sale is violated there will be only a remedy of damages or for specific performance and no such penal consequence could follow.”*

11 In the case in hand, the learned Trial Judge has held that the suit is subject to Court-fees payable under Section 6(xi) of the

Maharashtra Court-fees Act; which reads as under:

“6 (xi) for specific performance.

In suits for specific performance -

(a) of a contract of sale - according to the amount of the consideration,

(b) of a contract of mortgage - according to the amount agreed to be secured,

(c) of a contract of lease - according to the aggregate amount of the fine or premium (if any) and of the rent agreed to be paid during the first year of the term,

(d) of an award - according to the amount or value of the property in dispute;”

In the suit, plaintiffs sought following reliefs

“a) Defendant Nos.1 to 5 is directed to register the sale deed dated 01/02/2011;

b) A fit and competent person be appointed as Court Commissioner to admit execution on behalf of Defendant No.2 to 5 and the document i.e. sale deed dated 01/02/2011 be registered in respect of Defendant Nos.2 to 5 as well;

c) Any other just and equitable order may kindly be passed in the interest of the justice.”

12 Thus, upon reading of the plaint, it was not a suit for specific performance of, the contract of sale or contract of mortgage

or contract of lease or of an award, but for enforcement of statutory obligation. In fact provisions of Section 6(xi) of the Maharashtra Court-fees Act, clearly show that the 'contract of sale' has nothing to do with the statutory obligations. Under Clause (xi), categories of the suits of which performance is contemplated, has no reference to any statute; Whereas in the case on hand, plaintiff is seeking performance of statutory obligations of the defendants under the Registration Act, which is quite different from the suits contemplated under Clause (xi) of Section 6 of the Maharashtra Court-fees Act.

13 In this case, plaintiff is seeking appropriate directions to the authorities to register the sale deed dated 1st February, 2011 and thus, it was not a comprehensive suit, being not coupled with any other reliefs. In the given set of facts, the subject matter of the dispute being not susceptible of monetary valuation, it is subject to valuation under clause (j) of Section 6 of the Maharashtra Court-fees Act.

14 The learned Trial Court held that suit seeking registration under Section 77 of the Registration Act is required to be filed under

Section 10 of the Specific Relief Act, 1963 and relied upon the judgment of the Supreme Court in the case of **S. Rajendra v. Prakash AIR 1999 S.C.2958**. In fact, this judgment has been delivered in the case of **Kalavakurti Venkata Subbaiah v. Bala Gurappagari Guruvi Reddy AIR 1999 Supreme Court 2958**.

. Be that as it may in **Kalavakruti (Supra)**, it is held that provisions of Section 77 of the Registration Act would apply only if a matter is pertaining to registration of a document and not for a comprehensive suit as in the present case where the relief prayed for is directing the defendant to register the sale deed in favour of the plaintiff in respect of the plaint schedule property and if he so fails to get a registration in favour of the plaintiff for permanent injunction or in the alternative for delivery of possession of the plaint schedule mentioned property.

. Therefore, in the cited case, it was a comprehensive suit wherein not only direction to the defendant to register document was sought but such other reliefs including delivery of possession of the suit property. It is under these circumstances, the Hon'ble

Supreme Court has held that it would be suit under Section 10 of the Specific Relief Act, 1963. However, in the case at hand, relief sought by the plaintiffs are in nature of directions to the authorities to register the sale-deed which they had refused when the document was presented for registration. Obviously, it was not a suit under Section 10 of the Specific Relief Act, 1963 and, therefore, not subject to valuation, under Clause (xi) of Section 6 of the Maharashtra Court-fees Act. In this suit plaintiff is only seeking performance of the statutory obligations and, therefore, it is not susceptible of monetary valuation. The ratio laid down in the **Vrindawan (Borivali) Co-operative Housing Society Limited (Supra)** is squarely applicable to the facts of the case. Thus, for the reasons stated, the order impugned is quashed and set aside. Petition is allowed in terms of prayer clauses (a), (b) and (c).

15 Rule is made absolute in aforesaid terms.

16 Petition is disposed of.

(SANDEEP K. SHINDE, J.)