

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO.4233/2016

Shri Subhash s/o Keshavraoji Bambal and another.

Vs.

Shri Keshav s/o Rajramji Bambal and others.

Office notes Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders.

Shri A.B.Shende, Advocate for petitioners.

Shri S.M.Nafade Advocate for respondent nos. 2 and 3.

CORAM : A.S.CHANDURKAR, J.

DATED : July 10, 2019

The challenge raised in the writ petition is to the order passed by the trial Court below Exhibit 10 dated 17.03.2016 directing the plaintiffs to correct the valuation of the suit and pay necessary court fees as per the provisions of Section 6 (iv)(ha) of the Maharashtra Court Fees Act, 1959 (for short,'the said Act').

The petitioners are the original plaintiffs who had filed suit for a declaration that the sale deed dated 02.03.2015 executed by the defendant no.1 in favour of the defendant no.3 was invalid/null and void and that it was not binding on the plaintiffs. A further declaration was sought that the plaintiffs were having one fourth share in the suit property. Relief of permanent injunction so as to restrain the defendants from creating third party rights in the suit property was also sought. The said defendants moved an application seeking rejection of the plaint on

the ground that it was not properly valued. The trial Court by the impugned order has held that the suit ought to have been valued in the light of the provisions of Section 6 (iv) (ha) of the said Act and for that purpose time was granted to the plaintiffs to correct the valuation. Being aggrieved, the present writ petition has been filed.

Shri A.S.Shende, learned counsel for the petitioners by relying upon the decision in ***Suhrid Singh @ Sardool Singh Vs Randhir Singh & ors., AIR 2010 SC 2807*** submitted that as the plaintiffs were not signatories of the sale deed in question, it having been executed by the defendant no.1 in favour of the defendant no.3, they were not liable to pay court fees as directed by the trial Court. It was submitted that the court fees had been paid to the extent of one fourth share which the plaintiffs were claiming and hence the order passed by the trial Court was contrary to aforesaid decision.

Shri S.M.Nafade, learned counsel for the respondent nos. 2 and 3 supported the impugned order. He placed reliance on the decision in ***Asha Sopan Maithane 2010(7) Mh.L.J.380*** and submitted that as the provisions of Section 6(iv) (ha) of the said Act were clear, the trial Court was justified in directing the plaintiffs to correct the valuation. According to him, the provisions of the Court Fees Act, 1870 that were considered by the Hon'ble Supreme Court in the decision relied upon by the learned counsel for the petitioners were not pari materia the provisions of Section 6 (iv) (ha) of the said Act. Hence no interference was called for.

On hearing learned counsel for the parties and on perusing the relevant provisions, it can be seen that the provisions of Section 7(iv) (c) of the Court Fees Act, 1870 are not similar to the provisions of Section 6 (iv)(ha) of the said Act. As per provisions of Section 6 (iv)(ha) in a suit for declaration that any sale was void, one half of the *ad valorem* fee was liable to be paid on the value of the property. Under Section 7(iv)(c) of the Court Fees Act in a suit seeking declaratory decree the court fees are required to be paid according to the amount at which the relief sought is valued in the plaint. The provisions of Section 6(iv) (ha) of the said Act has been considered in *Asha Sopan Maithane* (supra). In para 14 thereof the decision of the Hon'ble Supreme Court relied upon by the learned counsel for the petitioners has been distinguished and after noticing the difference in the two provisions, it has been held that valuation was required to be made as per provisions of Section 6(iv)(ha) of the said Act.

In that view of the matter, the trial Court was justified in directing the plaintiffs to correct the valuation. No fault can be found with the order passed by the trial Court. The writ petition is therefore dismissed with no orders as to costs.

JUDGE