

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

WRIT PETITION NO.6767 OF 2017

Mohan Shankar Kachare and ors.

-vs-

Jaykumar Shaligram Chandak and ors.

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

Court's or Judge's Orders.

Shri P. S. Kshirsagar, Advocate for petitioners.

Shri A. D. Bhate, Advocate for respondent Nos.13 to 17.

CORAM : A. S. CHANDURKAR, J.

DATE : November 13, 2019

Rule. Heard finally considering the short issue involved.

The order passed by the trial Court below Exhibits-65 and 70 dated 27/06/2017 is under challenge. By that order the application moved by the concerned defendant for rejection of the plaint on the ground that the plaint was not properly valued has been rejected. However, the plaintiff has been directed to pay deficit court fees by valuing the plaint under Section 6(iv)(ha) of the Maharashtra Court Fees Act, 1959 (for short, the said Act). In the suit as filed by the original plaintiff the plaint was amended and the relief of declaration that all transactions entered into by the defendants after 07/01/2013 be declared as not binding on the plaintiff as well as the legal heirs of Shankar Kachare. According to the said defendants the

plaint was liable to be valued for the purposes of payment of court fees under Section 6(iv)(ha) of the said Act. The trial Court has accepted that contention and has disposed of the application in aforesaid terms.

2. Heard Shri P. S. Kshirsagar, learned counsel for the petitioner and Shri A. D. Bhate, learned counsel for respondent Nos.13 to 17. Considering the amended prayer clause by which a declaration has been sought that the transactions entered into by the defendants were not binding on the plaintiff coupled with the fact that there was no relief of possession sought, it is found that the adjudication is covered by the decision in *Niraj s/o Narendra Walle vs. Vijaya w/o Narendra Walle and ors.* 2017(4) *Mh.L.J.* 402 wherein it is held that in absence of relief of possession being sought, the plaintiff would not be liable to pay *ad valorem* court fees under Section 6(iv)(ha) of the said Act. I therefore find that in the light of this decision the trial Court was not justified in directing the plaintiff to pay court fees as per provisions of Section 6(iv)(ha) of the said Act.

3. In that view of the matter the common order passed below Exhibits-65 and 70 dated 27/06/2017 is set aside. The

trial Court shall proceed with adjudication of the suit on its own merits.

Rule is made absolute in aforesaid terms. The Writ Petition is disposed of with no order as to costs.

JUDGE