

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CIVIL REVISION APPLICATION NO. 172 OF 2018

Shri. Jaywant Manikrao Kokate and another

vs.

Shri. Sahebrao Ramchandra Kuhike and others

Office Notes, Office Memorandum of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri. S. P. Kshirsagar, counsel for applicants.
Shri. R. D. Karode, counsel for respondents No.1.
Shri. Y. D. Shukla, counsel for respondents No.2 to 7.

CORAM : MANISH PITALE J.

DATED : 12/02/2020

By this revision application, the applicants (original defendants No.6 & 7) have challenged order dated 19/09/2018, passed by the Court of Civil Judge Junior Division, Katol, whereby an application (Exh.15) filed on behalf of the revision applicants was rejected. By the said application, it was contended on behalf of the applicants that the suit filed by respondent Nos.1 and 2 was under valued and that correct and appropriate Court fee was required to be paid upon proper valuation of claim made by respondents No.1 and 2 in the suit and further direction was sought for deposit of such correct and proper Court fees, failing which the plaint deserved to be rejected under Order 7 Rule 11(b) of the Civil Procedure Code, 1908 (CPC).

2. The respondent Nos.1 and 2 filed a suit for declaration, partition and separate possession, as also permanent injunction against applicants (original defendants No.6 and 7). The applicants herein are the purchasers of the suit property from respondent No.3 (original defendant No.1).

3. In this suit, the aforesaid application at Exh.15 was filed by the applicants herein for the aforesaid prayers. The said application was resisted on behalf of the original plaintiff. By the impugned order, the Court below found that the valuation of the suit was correct in terms of the prayer made in the plaint and that sufficient Court fee had been paid, as a consequence of which the application filed by revision applicants deserved to be rejected.

4. The learned counsel appearing for the revision applicants submitted that a perusal of the prayers made in the suit filed by respondent Nos.1 and 2 would show that declaratory relief was sought as regards one seventh (1/7) share in the suit property and a declaration was also sought in respect of sale deed dated 16/11/2017, claiming it to be null and void and not binding on the respondent Nos.1 & 2, thereby demonstrating that the suit in the present case was improperly valued and improper Court fee had been paid. According to the learned counsel for the revision applicants, the respondent Nos.1 and 2 were liable to pay Court fee in accordance with value of the share in the

suit claimed by them, as also on valuation of the property that was subject matter of the sale deed. On this basis, it was submitted that the impugned order deserved to be set aside and direction was required to be given to respondent Nos.1 and 2 to pay proper Court fees, failing with the suit deserved to be rejected under Order 7 Rule 11(b) of the Act.

5. On the other hand, the learned counsel appearing for respondent No.1 (original plaintiff No.1) invited attention of this Court to judgment of the Hon'ble Supreme Court in the case of **Suhrid Singh @Sardool Singh vs. Randhir Singh and others** reported in **AIR 2010 SC 2807**, wherein it was clarified that when a person not party to the sale deed sought declaration that it was null and void and not binding on him, he was not required to pay advalorem Court fee on the consideration stated in the sale deed. On this basis, it was submitted that there was no substance in the contentions raised on behalf of the revision applicants.

6. The learned counsel appearing for respondent Nos.2 to 6 did not oppose the contention raised on behalf of the revision applicants in the present case.

7. Heard learned counsel for the rival parties and perused the material on record. In order to appreciate the contentions raised on behalf of the revision applicants it would be appropriate to reproduce

the prayers made in the suit filed by respondent Nos.1 and 2. The prayer clauses in the suit read as follows :-

“PRAYER :- It is therefore most humbly prayed that this Hon’ble Court may kindly be pleased :-

a) To declare that, the plaintiffs No.1 & 2 have 1/7 share in the suit field i.e. survey No.207/1 situated at Mouza – Masod, Tah. Katol, Dist. Nagpur.

b) To pass the decree of partition metes and bound against the defendant and had over the separate possession of the suit field to the extent of plaintiffs share.

c) To declare that the sale deed executed between defendant No.1, 6 and 7 dated 16/11/2017 as null and void and not binding on the plaintiffs

d) To restrain the defendant No.1 to 7 their servants, agent, relative or any other person on their behalf from disturbing the possession of the plaintiff till execution of final decree by way of permanent injunction.

e) Cost of the suit be Saddled on defendants,

f) Grant any other relief, which seems fit in the facts and circumstances of the case in the interest of justice.”

8. Insofar as prayer clause (c) is concerned, declaration is sought by respondent Nos.1 and 2 who are

admittedly not party to the sale deed dated 16/11/2017, to the effect that the said sale deed is null and void and not binding on them. In this context, the law laid down by Hon'ble supreme Court in the case of **Suhrid Singh @Sardool Singh vs. Randhir Singh and others** (supra), is clear. The Hon'ble Supreme Court has held as follows :-

“6. Where the executant of a deed wants it to be annulled, he has to seek cancellation of the deed. But if a non-executant seeks annulment of a deed, he has to seek a declaration that the deed is invalid, or non-est, or illegal or that it is not binding on him. The difference between a prayer for cancellation and declaration in regard to a deed of transfer/conveyance, can be brought out by the following illustration relating to 'A' and 'B' - two brothers. 'A' executes a sale deed in favour of 'C'. Subsequently 'A' wants to avoid the sale. 'A' has to sue for cancellation of the deed. On the other hand, if 'B', who is not the executant of the deed, wants to avoid it, he has to sue for a declaration that the deed executed by 'A' is invalid/void and non- est/ illegal and he is not bound by it. In essence both may be suing to have the deed set aside or declared as non-binding. But the form is different and court fee is also different. If 'A', the executant of the deed, seeks cancellation of the deed, he has to pay ad-valorem court fee on the consideration stated in the sale deed. If 'B', who is a non-executant, is in possession and sues for a declaration that the deed is null or void and

does not bind him or his share, he has to merely pay a fixed court fee of Rs. 19.50 under [Article 17\(iii\)](#) of Second Schedule of the Act. But if 'B', a non-executant, is not in possession, and he seeks not only a declaration that the sale deed is invalid, but also the consequential relief of possession, he has to pay an ad-valorem court fee as provided under [Section 7\(iv\)\(c\)](#) of the Act. [Section 7\(iv\)\(c\)](#) provides that in suits for a declaratory decree with consequential relief, the court fee shall be computed according to the amount at which the relief sought is valued in the plaint. The proviso thereto makes it clear that where the suit for declaratory decree with consequential relief is with reference to any property, such valuation shall not be less than the value of the property calculated in the manner provided for by clause (v) of [Section 7](#).

7. In this case, there is no prayer for cancellation of the sale deeds. The prayer is for a declaration that the deeds do not bind the "coparcenery" and for joint possession. The plaintiff in the suit was not the executant of the sale deeds. Therefore, the court fee was computable under [section 7\(iv\)\(c\)](#) of the Act. The trial court and the High Court were therefore not justified in holding that the effect of the prayer was to seek cancellation of the sale deeds or that therefore court fee had to be paid on the sale consideration mentioned in the sale deeds."

9. Applying the said position of law to the facts of the present case, it becomes clear that the contention

raised on behalf of the revision applicants that the respondents No.1 & 2 were liable to pay advolarem Court fee on the consideration stated in the sale deed, is without any substance and accordingly it is rejected.

10. But, insofar as prayer clauses (a) and (b) are concerned, the respondent Nos.1 and 2 are seeking a declaration that they have 1/7th share in the suit field, further seeking a decree of partition by metes and bounds and a direction to the defendants to handover separate possession of the suit field to the extent of the aforesaid share of respondent Nos.1 and 2 in the suit field. In order to examine as to what would be the appropriate Court fee to be paid for such prayers, Section 6(vii) of the Maharashtra Court Fees Act, 1959 becomes relevant. It reads as follows :-

“6. Computation of fees payable in certain suits.-

The amount of fee payable under this Act in the suits next hereinafter mentioned shall be computed as follows :

(i) to (vi)

(vii) for share in joint property. – In suits for partition and separate possession of a share of joint family property or of joint property, or to enforce a right to a share in any property on the ground that it is joint family property or joint property whether or not the plaintiff is in actual or constructive possession of the property of which he claims to be a co-parcener or co-owner according to the value of the share in respect of which the suit is instituted;”

11. A perusal of the aforesaid provision shows that when a declaration is sought as regards share in joint property, the suit is to be valued according to the value of the share in respect of which the suit is instituted. Thus, in the present case, as regards prayer clauses (a) and (b) quoted above, the respondent Nos.1 & 2 were expected to accordingly value the suit to the extent of share sought by them in the suit field and to pay appropriate Court fee upon the same. Admittedly, such an exercise was not carried out by the respondent Nos.1 and 2, thereby showing that revision applicants are justified in claiming that the suit has been under valued insofar as prayer clauses (a) and (b) are concerned and that the respondent Nos.1 and 2 need to proceed on the basis of correct valuation of the suit insofar as the said prayers are concerned and to deposit appropriate Court fees.

12. The Court below has not adverted to the aforesaid aspect of the matter and the application filed by the revision applicants has been wrongly rejected in its entirety.

13. In view of the above, the revision application is partly allowed, the respondent Nos.1 & 2 are directed to proceed upon proper valuation of the suit as per Section 6(vii) of the aforesaid Act and then to deposit proper and correct Court fee in the context of prayer clauses (a) and (b) of the aforesaid suit, before the Court below within a period of **eight weeks** from

today. In the event, the respondent Nos.1 & 2 fail to deposit the proper and correct Court fee as indicated above within the stipulated period of time, the plaint shall stand rejected under Order 7 Rule 11 (b) of the CPC

14. Civil Revision application is disposed of in above terms.

JUDGE

KOLHE/P.A.