

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

WRIT PETITION NO. 1721 OF 2021

Abhijeet Bhiku Gaikwad and anr.

....Petitioners

v/s.

Chandrakant Jaysing Kulkarni and ors.

.... Respondents

Mr. Dilip Bodake for the Petitioners.

Mr. Mahindra Deshmukh for the Respondents.

CORAM: SMT. ANUJA PRABHUDESSAI, J.

DATED : 02nd JULY, 2021.

P. C. :-

. Rule. Rule made returnable forthwith. With consent, Petition is heard finally.

2. The Petitioners herein have challenged the order dated 01/02/2020 whereby the learned Civil Judge, Junior Division, Kadegaon has dismissed the Application at Exhibit – 182 in Regular Civil Suit No.257 of 2013 and thus rejected the prayer of the defendant to frame an additional issue on valuation of the suit and payment of court fee.

3. The Respondent-plaintiff had filed a suit for declaration that he has acquired ownership rights by virtue of provisions of Tenancy Act.

The Respondent-plaintiff has also sought a declaration that the Sale Deeds both dated 03/10/2013 executed between defendant nos.1 to 3 in favour of defendant nos.4 and 5 are null and void. The Respondent-plaintiff valued the suit at Rs.2,000/-.

4. The Respondent filed a written statement dated 30/03/2016 *inter alia* contending that the suit has not been properly valued. Since no issue was framed regarding valuation of the suit, the Petitioner by Application dated 17/01/2020 prayed for framing of the additional issue as regards valuation of the suit. The said Application has been dismissed by the learned Judge mainly on the ground that the Petitioner has not sought cancellation of the Sale deed to which he is a party. The Trial Court therefore held that the issue regarding valuation of the suit does not arise and hence rejected the Application.

5. Mr. Dilip Bodake, learned counsel for the Petitioners has relied upon the decision of this Court in *M/s. Prism Reality v/s. Mr. Govind Yashwant Khalade and ors. in Writ Petition (St.) No.24111 of 2014, 2015(5) ALL MR 620 ; Dr. Arjun Sitaram Nitnwar v/s. The Tahsildar, District-Thane and ors. Writ Petition No.9969 of 2013, 2015(5) ALL MR 624* and *Shri. Abdulsattar Gulabbhai Bagwan v/s. Shri. Vaibhav Lxmangiri Gosawi and ors. Writ Petition No.401 of 2011, 2012(2) ALL*

MR 310 and Mansukhlal Depar Khimashiq v/s. Mr. Ramshankar Kalikaparasad Mali and ors. in Civil Revision Application No.495 of 2013.

6. In these cases, the plaintiff had not challenged the validity of the sale wherein the sale deed was executed by him or in his favour but had challenged the sale deed executed inter se between the defendants. This Court has held that Section 6(iv)(ha) applies to suits which have been filed to avoid sale, contract for sale, etc.

7. Per contra, Mr. Deshmukh, learned counsel for the Respondent-plaintiff has relied upon the decision of the Apex Court in ***J. Vasanthi & ors. v/s. N. Ramani Kanthammal (D) Rep. By Lrs. & Ors. in Civil Appeal No.3396 of 2017*** to contend that when the non-executant seeks annulment of the deed and seeks declaration that the deed is non-est or not binding on him, he has to merely pay a fixed court fee and not ad valorem court fee on the consideration stated in the sale deed.

8. Suffice it to say that this is not the stage to record a finding on the issue, which is not even framed. The defendant had denied the averments in paragraph 6 of the plaint relating to valuation of the court

fee and has specifically affirmed that the relief claimed in the suit has not been properly valued and that the court fee paid is not sufficient. Since the parties are at issue on question of valuation of the suit, the Court is required to frame an issue and decide the question of valuation in the light of the allegation made in the plaint.

9. It may also be noted that delay in filing the application is no ground to dismiss the application as Rule 5 of Order XIV gives discretion to the Court to amend the issues or frame additional issues at any time before passing a decree. The issue raised is on question of law. Mr. Dilip Bodake, learned counsel for the Petitioner states that the Petitioner-defendant will not adduce any evidence in the matter.

10. Under the circumstances, the Petition is allowed. The impugned order is set-aside. The Trial Court is directed to frame the issue as regards the valuation of the suit and to decide the same in the light of the allegation made in the plaint.

11. Writ Petition stands disposed of in above terms. Rule made absolute.

(SMT. ANUJA PRABHUDESSAI, J.)