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Smt.Neeta Pramod Kamble & Ors.	]	..	Petitioners
vs.			
Shri Baburao Omanna Bhosale & Ors.	]	..	Respondents

CORAM : N.R.BORKAR, J.
DATED : 7TH SEPTEMBER 2021.

- 1] Rule. Heard finally with the consent of learned counsel for the parties.
- 2] This petition takes an exception to the order dated 11th January, 2019, passed by the Joint Civil Judge, Junior Division, Pethvadgaon, below Exhibit 24 in Regular Civil Suit No.177 of 2018.
- 3] The Petitioners herein have filed suit for declaration, partition and separate possession.
- 4] A declaration is sought that the sale-deed executed by the respondent Nos.1 and 2 in favour of the respondent Nos.5 and 6 is not binding on the share of the Petitioners.

5] Respondent No.7-Bank filed an application at Exhibit 24 under Order 7 Rule 11(d) of the Civil Procedure Code and sought rejection of the Plaint on the ground that the Suit is not properly valued. It is stated that the Petitioners be directed to value the suit property and pay the Court fee on the said valuation or else Plaint be rejected.

6] The trial Court after hearing the parties allowed the application by the order impugned. According to the trial Court, as the Petitioners have sought the declaration that the sale deed is void-ab-initio and the same is not binding on them, Section 6(iv)(ha) of Bombay Court Fees Act (For short "the Court Fees Act) would apply and not Section 6(iv)(j). The trial court, accordingly directed the Petitioners to value the Suit and pay the court fee as per Section 6(iv)(ha).

7] I have heard the learned counsel for the Petitioners and learned counsel for the respondents. Learned counsel for the Petitioners submits that admittedly, the Petitioners are not the executants of the sale deed dated 29th September, 2016. It is submitted that the prayer of the Petitioners in respect of the sale deed is that, it is not binding on the share of the petitioners. It is submitted that the trial Court was, therefore, not justified in holding that Section 6(iv)(ha) would apply and not Section 6(iv)(j).

8] In support of the submission, learned counsel for the Petitioner has relied upon following judgments :

- i] 2010(12) SCC 112
Suhrid singh @ Sardul Singh vs. Randhir Singh & Ors.
- ii] Judgment of this Court reported in 2017(5) Mh.L.J. 388
Common Piru Caudhari v/s. Berubai Chendu Redhiwale & Ors.

- iii] Unreported Judgment of this Court in Writ Petition No.2057 of 2013 dated 29.08.2013 in the case of Shyamrao s/o Pandurang Sambare vs. Civil Judge, Senior Division, Nagpur & Ors.
- iv] Civil Revision Application No.339 of 2016 in the case of Ravindra Narayan Rajarshi & Ors. vs. Smt. Rohini Ganpatrao Heblkar & Anr. alongwith connected matters.

9] On the other hand, learned counsel for respondents submits that the Petitioners in addition to declaration that the sale deed is not binding on them, have sought the declaration that the sale deed is void-ab-initio. It is submitted that considering the nature of declaration sought by the Petitioners, the trial Court was justified in holding that Section 6(iv)(ha) would apply and not 6(iv)(j). In support of the submission, learned counsel for respondents has relied upon following judgments :

- i] 2015(2) Mh.L.J. 472
Prism Reality, Pune vs. Govind Yashwant Khalade & Ors.
- ii] 2011(1) Mh.L.J. 898
Chandrika Chunilal Shah vs. Orbit Finances Pvt. Ltd. & Ors.

10] Section 6(iv)(ha) which is relevant for the purpose of deciding the issue in the present matter, reads thus:

“Section 6(ha) for avoidance of sale, contract for sale, etc : In suits for declaration that any sale, or contract for sale or termination of contract for sale, of any movable or immovable property is void [one-half] of *ad valorem* fee leviable on the value of the property;

11] This Court while examining the similar issue in the case of Common ***Piru Caudhari vs. Berubai Chendu Redhiwale & Others*** has observed,

“Obviously, clause (ha) of Section 6 (iv) of the Act applies only when the suit seeks declaration that any sale or contract for sale or termination of contract for sale of any moveable or immoveable property is void and as such, it would have no application to declarations sought in this case which do not seek any sale or contract for sale or termination of contract for sale of any immovable or movable property to be void. One must understand that there is a sea difference between a declaration that any sale or contract for sale is null and void and the declaration that the sale or contract for sale has no binding effect. In the former case, the very existence of the sale transaction or contract for sale is sought to be razed whereas in the latter case, such existence is not sought to be denied but its effect is only sought to be not applicable to the person seeking declaration. This would mean that when the declaration that a sale or contract for sale insofar its effect is concerned, does not affect in any manner the claimant or is not binding upon the claimant, its existence is not sought to be denied and it may still be binding upon all others but the claimant. It would then follow that the declarations as sought by the applicant in this case were such as were not covered by clause (ha) of Section 6 (iv) of the Act and that would be covered by some different clause.

12] Similar view was taken by this court in the case of ***Shamrao s/o Pandurang Sambare vs. Civil Judge, Senior Division, Nagpur & Ors.***

This Court held :

“4. It is not in dispute that the petitioner/plaintiff is not party to the sale-deed dated 07-1-2002 executed by the defendant No.1 in favour of the defendant No.2. The claim of the plaintiff is that the property is an ancestral property in which the plaintiff has share to the extent of 0.46 Hectares of land. It is alleged that the sale-deed executed by the defendant No.1 in favour of the defendant No.2 is, therefore, without his knowledge and authority and hence, it is not binding upon him and also the sale-deed dated 20-1-2005 said to have been executed by the defendant No.2 in favour of the defendant Nos.3 and 4.

5. In view of this position the trial Court has apparently committed an error in holding that the suit was required to be classified under Section 6(iv)(ha) of the Bombay Court Fees Act.”

13] According to the learned counsel for respondents, the Judgments in the case of Common Piru Chaudhari (*supra*) and Shamrao (*supra*) would not apply to the facts of the present case as in the said cases the declaration that the sale deed is void-ab-initio was not sought.

14] Considering the facts and circumstances of the case in my view, the prayer of the Petitioners in sum and substance is that the sale deed dated 29th September, 2016 is not binding on their share. The order impugned, therefore, is unsustainable.

15] The Judgments relied upon on behalf of the respondents in the case of Prism Reality, Pune and in the case of Chandrika Shah would not apply to the facts of the present case as in both the cases prayers were for avoidance of a sale. In the result, following order is passed :

ORDER

- i] Writ Petition is allowed.
- ii] The impugned order is set aside.
- iii] Application at Exhibit 24 is rejected.

[N.R.BORKAR,J]