

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

INTERIM APPLICATION NO. 2086 OF 2021

IN

SUIT (L) NO. 1313 OF 2019

Chetan Dinkarraai Desai ... Applicant

vs.

Green Garden Co-operative ... Respondents
Housing Society Ltd and Ors.

Mr. Yatin Shah a/w. Mr. Shivam Bhagwati and Mr. Shahzad Khajotia and Ms.
Kajal Gupta for the Applicant / Org. Plaintiff.
Mr. Himanshu B. Takke, AGP for the State of Maharashtra.

CORAM : A. K. MENON, J.

DATED : 1st DECEMBER, 2021

P.C. :

1. This is application seeking to challenge an order passed by the Taxing Master on 23rd March, 2021 rejecting the applicants submissions on the matter of Court fees. The Prothonotary and Senior Master has vide order dated 13th January, 2020 referred the matter for adjudication of the Court fees to the taxing master who has since heard parties and passed the impugned order.

2. In support of the interim application Mr. Shah has pointed out that a sum of Rs. 3,00,000/- being maximum court fees payable has been paid. However, the taxing master has formed an opinion since two plots of land have been identified separately in the plaint and the plaintiff is seeking possession of both plots, separate court fees will have to be paid on the two plots of land. He submits that the challenge in the suit is to conveyance.

3. Inviting my attention to the prayer in the suit and the relevant averment Mr. Shah has pointed out that a deed of conveyance dated 10th September, 1986 to which the defendant no. 2 is party and defendant no. 3 is purchaser is subject matter of challenge. The declaration sought in the plaint is to the effect that the deed of conveyance is liable to be canceled and not binding upon the plaintiff. In effect the suit seeks delivering up of the said conveyance for cancellation and seeks injunctions in relation to the use and occupation of the property interalia by restraining defendant nos. 2 and 3 from transferring property.

4. In the fact at hand the nature of the suit in my view is one that seeks to challenge a solitary document namely the deed of conveyance copy of which appears at Exhibit H to the plaint. It appears that the conveyance though effected by one document consists of plot of land which apparently comprises of two plots. This is immediately apparent from the schedule in the conveyance which described the land as admeasuring 498 sq. yds. equivalent to 415.2.sq.mts or thereabouts and bearing C.T.S. 385, 385/1 to 3,

Survey No. 43, Hissa No. 6 of Village Borla, Govandi in Greater Bombay with its boundaries. The description of two plots is not evident from the document itself. It is averment in the plaint in paragraph 44 that the two plots are valued at Rs. 3 crores each and therefore the suit is valued at Rs. 6 crores seems to be objectionable averment which has led to the office objections and to the Taxing Master deciding that the Court fees will have to be paid on the second plot separately. However the relief claimed in the suit is clearly based on the challenge to the deed of conveyance that is a solitary document and without a challenge to the conveyance the plaintiff cannot get relief.

5. If one was to consider the converse the question would be whether two suits can be filed in respect of the same conveyance the answer would have to be clearly in the negative. In my view the relief having been sought in respect of a single document and maximum court fees having been paid on the value of the land comprising 498 sq. yards albeit original consisting of two plots makes no difference. I am of the view that on payment of court fees, the office objection cannot be sustained.

6. Mr. Takke on behalf of the respondent State supported the view of the Taxing Master and submitted that there is an ancillary prayer which also requires to be viewed. However in my view that is only dependent upon the main relief in the suit and a consequential one at that time. Being consequential relief and maximum court fees having been paid under Article

1 Schedule 1 there is no question of any further court fees being paid. In view thereof I pass the following order :

- (i) Interim Application is made absolute in terms of prayer clause (a).
- (ii) Subject to all other objections being complied suit shall be numbered.
- (iii) Interim Application disposed in the above terms.

(A. K. MENON, J.)