

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

WRIT PETITION NO.726 OF 2020

Shri Chetan s/o Purushottam Borkute,
Aged about 43 years,
Occupation-Agriculturist,
R/o. Plot No.2, Ravindra Smruti,
Doctors Colony, Chhatrapatinagar,
Nagpur.

.... Petitioner
(Original Plaintiff)

.. Versus ..

- 1] Smt. Nilima w/o Satish Wankhede,
Aged about 48 years,
Occupation-Household.
- 2] Smt. Savita wd/o Dattatraya Borkute,
Aged about 74 years,
Occupation-Nil.
- 3] Shri Satish s/o Ajabrao Wankhede,
Aged about 52 years,
Occupation-Business,

All R/o. Plot No.2, Ravindra Smruti,
Doctors Colony, Chhatrapatinagar,
Nagpur.
- 4] M/s. Concrete Developers,
A Partnership Firm,
Partner : Sanjay Nagorao Paidlewar,
Aged about 50 years, Occ. Builder.

- 5] Shri Nitish Rameshchandra Chordia,
 Aged major, Occu : Builder,
 Partner : M/s. Concrete Developers,
 Both R-4 & 5, having office at Plot No.19,
 Gauri Heights, Opp. Kachipura Garden,
 Ramdaspath, Nagpur-10. ... Respondents
 (Original Defendants)

.....
 Shri S.A. Kalbande, Advocate for the petitioner,
 Shri M.P. Naidu, Advocate for respondent nos.1 to 3,
 None for respondent nos.4 and 5 though served.

CORAM : N.B. SURYAWANSHI, J.
RESERVED ON : 26.07.2021.
PRONOUNCED ON : 11.08.2021.

JUDGMENT

1. **Rule.** Rule made returnable forthwith. Heard the petition finally with the consent of the parties.

2. This petition challenges order dated 9.1.2020 passed by the learned 3rd Joint Civil Judge, Junior Division, Nagpur in Regular Civil Suit No.1065/2019 thereby directing the petitioner to pay the Court Fees.

3. The petitioner-original plaintiff filed Regular Civil Suit No.1065/2019 seeking following reliefs :

(1) To declare that the plaintiff is an adopted son and legal heir of the deceased Dr. Dattatraya G. Borkute and defendant no.2 and he has not made any transaction with the deceased.

(2) To declare that the Will Deed allegedly executed by Dr. Dattatraya Borkute dated 22.3.2018 is invalid document as same is not executed by free and disposable mind by the executor.

(3) To issue permanent injunction against the defendants restraining them from transferring or to create any third party right or interest or hand over possession to third persons of the properties given in the schedule of the plaint without just partition and separate possession thereof by themselves or through their servants, agent, assignees etc.

4. The respondents-original defendants filed application Exh.10 contending that the petitioner has claimed relief in respect of several valuable properties mentioned by him in the schedule of property filed along with the plaint. The said properties are being capable of valued in terms of money, therefore, claim in the suit is susceptible to monetary valuation. If the valuation is properly done, it will exceed the pecuniary jurisdiction of the trial Court, as the same will be in the several

crores of rupees. The petitioner therefore will have to pay maximum court fees of Rs.3,00,000/-. The petitioner has deliberately undervalued the suit, therefore, a prayer was made that it be held that the valuation of the suit claim exceeds the pecuniary jurisdiction of the trial Court and that the plaint be returned to the plaintiff-petitioner for its presentation to the proper court.

5. The trial Court, after hearing the parties, passed a common order below Exh.10 and Exh.19 and directed the petitioner-plaintiff to correct the valuation of the suit, as per Section 6 (iv)(ha) of the Maharashtra Court Fees Act, 1959 (for short 'Act of 1959') and directed him to pay the proper court fees on or before 10.2.2020. The petitioner is aggrieved by this order.

6. Heard the learned Advocate for the petitioner-original plaintiff and the learned Advocate for the respondents-original defendants no.1 to 3. None appears for respondent nos.4 and 5, though they are duly served.

7. The learned Advocate for the petitioner submitted that the main prayer of the petitioner is for declaration that he is an adopted son and legal heir of the deceased Dr. Dattatraya G. Borkute. A further declaration is sought by him that will deed executed by deceased dated 22.3.2018 is an invalid document and permanent injunction is sought restraining the defendants-respondents to create third party interest in the suit properties given in the schedule of the plaint. Further submission is that in a suit for declaration with consequential relief, the petitioner is free to make his own estimation of the reliefs sought in the plaint and such valuation both for the purposes of court fee and jurisdiction has to be ordinarily accepted. Taking into consideration the prayer, the case of the petitioner-original plaintiff falls under Section 6 (iv)(j) of the Act of 1959. The Court Fees Act, since is a taxing statute has to be strictly construed. The trial Court has failed to appreciate that the substantial prayer of the petitioner is for declaration and, therefore, the suit is properly valued, as the claim of the petitioner comes under Section 6 (iv)(j) of the Act of 1959. According to the petitioner, the trial Court has erred in passing

the impugned order which is unsustainable and hence is liable to be quashed and set aside.

8. In support of his argument, the learned Advocate for the petitioner has relied upon the following decisions :

- (i) State of Maharashtra .vs. Mishrilal Tarachand Lodha and others, AIR 1964 SC 457.
- (ii) Lakshmi Ammai .vs. K.M. Madhavakrishnan and others, (1978) 4 SCC 15.
- (iii) Gujarat State Financial Corporation .vs. Natson Manufacturing Company Private Limited, (1979) 1 SCC 193.
- (iv) Tara Devi .vs. Sri Thakur Radha Krishna Maharaj, through Sebaitis Chandeshwar Prasad and Meshwar Prasad and another, (1987) 4 SCC 69,
- (v) The decision of learned Single Judge of Nagpur Bench in Civil Revision Application No.54/2016, decided on 28.2.2017 (Smt. Archana d/o Bhimrao Randaye .vs. Dr. Sau. Kavita w/o Dilip Changole)

9. *Per contra*, the learned Advocate for the respondents-original defendants, by pointing out the first prayer, particularly the wordings “and he has not made any transaction with the deceased”, submitted that the petitioner cannot escape his liability to pay the court fees, as all the properties in respect of which declaration is sought by the petitioner, are worth crores of rupees. The relief to that effect claimed by the petitioner covers all the properties of deceased Dr. Borkute and hence, the trial Court was justified in passing the impugned order.

10. By pointing out the descriptions of the properties mentioned in the plaint, it is submitted that since these properties are susceptible to the valuation, the case of the petitioner falls under Section 6 (iv)(ha) of the Act of 1959 and the trial Court was justified in passing the impugned order, therefore, the petition is devoid of any substance and the same may be dismissed.

11. The relevant provisions to decide the controversy needs to be considered which are as follows :

Section 6 (ha) (j) of the Maharashtra Court Fees Act, 1959.

Section 6 – Computation of fees payable in certain suits :

(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 moveable or immoveable property is void. (one half of ad valorem fee leviable on the value of the property).

(j) for other declarations :

In suits where declaration is sought, with or without injunction or other consequential relief and the subject-matter in dispute is not susceptible of monetary evaluation and which are not otherwise provided for by this Act (ad valorem fee payable, as if the amount or value of the subject matter was one thousand rupees)

12. Ostensibly the prayers of the petitioner in the plaint seem to be of declaratory nature, however, the relief claimed by the petitioner in prayer Clause (1) is to the following effect :

“to declare that the plaintiff is an adopted son and legal heir of the deceased Dr. Dattatraya G. Borkute and defendant no.2 and he has not made any transaction with the deceased”.

13. The above underlined words of the first prayer makes it clear that it is not a consequential relief prayed by the

petitioner, but it is a substantial relief in respect of landed property which is capable of valuation. From the underlined part of the relief claimed by the petitioner, the petitioner seeks cancellation of documents executed by him and deceased Dr. Borkute. The documents challenged by the petitioner are as follows :

i] The gift-deed dated 02-06-2008 executed by the plaintiff in respect of block at second floor in Datta Bhavan standing on plot NO.178-B, City Survey No.2775, Sheet No.82/662 at Mouza Ajani, Chatrapati Nagar, Nagpur.

ii] The exchange-deed No.1911/2008 dated 30-04-2008 between the plaintiff and Dattatraya Borkute in respect of plot Nos.30 and 31, P.H. No.44, ward No.15, Kh. No.58/1-G and 58/4, Sheet No.674/8-II, Survey No.500/1 located at Mouza Somalwada, Nagpur and Gat No.240/D, area 1.05 H.R. located in Mouza Walni, Tah. Nagpur.

iii] General power of attorney executed by the plaintiff in favour of Dattaraya Borkute dated 30-04-2008 in respect of Kh.No.58/1-GH and 58/5, Sheet NO.674, Survey No.500 (500/3) situated at Narendra Nagar, Nagpur.

iv] Agreement for development of land Kh.No.58/1-GH and 58/5, P.H. No.44 located Mouda Somalwada, Nagpur entered between the plaintiff and Dattatraya Borkute dated 30-04-2008.

v] Sale-deed in the form of exchange-deed dated 05-04-2017 in respect of land bearing CTS No.500/3 ad-measuring 1140 sq. mtr., Kh. No.58/1 (GH), 58/5 (part) situated at Borkute Layout Narendra Nagar of Mouza Somalwada executed by the plaintiff through power of attorney holder Dattatraya Borkute.

14] It is thus clear that along with relief of declaration the petitioner is seeking cancellation of the documents executed by him. The petitioner therefore was required to value the suit as per Section 6 (iv)(ha) of the Act of 1959. Since in the suit, the petitioner is claiming a declaration that he did not execute documents referred in above para, it is clear that the petitioner's case falls under Section 6 (iv)(ha) of the said Act of 1959 and the petitioner ought to have paid the court fees by properly valuing the suit.

15. In **State of Maharashtra .vs. Mishrilal Tarachand Lodha and others** (supra), the Apex Court held that "the Court

Fees Act is a taxing statute and its provisions therefore have to be construed strictly, in favour of the subject-litigant. The other provisions are for the purpose of allowing the party feeling aggrieved against the decision of the High Court to take up his case to the next higher Court, the Privy Council and therefore the relevant provisions in that regard had to be given a liberal construction.” This does not help the petitioner as the relief of declaration claimed by the petitioner that transaction of the properties is not binding on him and those properties are susceptible to the valuation.

16. In **Lakshmi Ammai .vs. K.M. Madhavakrishnan and others** (supra), reiterate the principle that “while interpreting the statute relating the court fees, benefit of doubt to be given to litigant. There cannot be any dispute on the said proposition.

17. In **Tara Devi** (supra), the Apex Court held that valuation of suit made by plaintiff according to his own estimation of the relief claimed by him has to be accepted by court unless it is arbitrary, unreasonable and deliberately underestimated.

The Apex Court further held that it is only in cases where it appears to the court on a consideration of the facts and circumstances of the case that the valuation is arbitrary, unreasonable and the plaint has been demonstratively undervalued, the court can examine the valuation and can revise the same.

Since in the instant case, it is found that the plaintiff has deliberately underestimated the valuation, the said ruling does not help the petitioner.

18. The decision in **Civil Revision Application No.54/2016** (supra) is rendered in different facts and the ratio in that is not applicable in the facts of this case.

19. Considering the pleadings and the prayers of the petitioner, it is clear that he has deliberately underestimated the valuation. The trial Court has correctly appreciated the facts and the relevant provisions of law. The trial Court has assigned proper reasoning in support of its findings recorded against the petitioner. The conclusions of the trial Court are based on proper appreciation of the facts, pleadings, provisions of law

and the authoritative pronouncement of this Court as well as of the Apex Court.

20. As a result of the above discussion, the impugned order passed by the Trial Court deserves to be confirmed. The petition being devoid of any merit is **dismissed**. Rule is discharged. There shall be no order as to costs.

(N.B. Suryawanshi, J.)

21. At this stage, the learned Advocate for the petitioner prays that the stay granted in his favour on 5.2.2020 may be continued. In view of the reasons recorded while dismissing the petition, I do not find it appropriate to continue the stay. The prayer is rejected.

(N.B. Suryawanshi, J.)