

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**WRIT PETITION NO.4173 OF 2021
WITH CIVIL APPLICATION NO.10733 OF 2021
WITH CIVIL APPLICATION NO.11458 OF 2021
WITH CIVIL APPLICATION NO.4174 OF 2022
IN WRIT PETITION NO.4173 OF 2021**

Sunil s/o Bhaskarrao Gondkar
Aged : 47 yrs. Occu. Agri.
R/o. Shirdi, Tal. Rahata,
Dist. Ahmednagar

... Petitioner

Versus

1. Sadashiv s/o Manku Salien
Aged : 66 years. Occu. Agri.
R/o. Shirdi, Tal. Rahata,
Dist. Ahmednagar. Respondent No.1 is
deleted as per Court's
order dated 13/01/2022
2. Savitri w/o Sadashiv Salien
Aged : 58 years. Occu. Agri.
R/o. Shirdi, Tal. Rahata,
Dist. Ahmednagar.
3. Sandip Sadashiv Salien
Aged : 43 years. Occu. Agri.
R/o. Shirdi, Tal. Rahata,
Dist. Ahmednagar.
4. Swapna D/o. Sadashiv Salien
Aged : 42 years. Occu. Agri.
R/o. Shirdi, Tal. Rahata,
Dist. Ahmednagar.
5. Bhaskarrao s/o Sakharam Gondkar
Aged : 74 years. Occu. Pensioner
R/o. Shirdi, Tal. Rahata,
Dist. Ahmednagar.
6. Sow. Sumanbai Bhaskarrao Gondkar
Aged : 67 years. Occu. Agri.
R/o. Shirdi, Tal. Rahata,
Dist. Ahmednagar.
7. Sow. Ashalata @ Kaveri w/o Tukaram
Tambe, Aged: 52 yrs. Occ. Household

R/o. Sai Shradha Housing Society
Ghulewadi, Tal. Sangamner
Dist. Ahmednagar.

8. Sharad s/o Bhaskarrao Gondkar
Aged : 50 yrs. Occu. Agri.
R/o. Shirdi, Tal. Rahata
Dist. Ahmednagar.
9. M/s. Silver Oak Builders & Developers
Through its Partners :
- 9/1 Amol s/o. Ganpatarao Shelke,
Aged : 40 years. Occu. Business
R/o. Shirdi, Tal. Rahata,
Dist. Ahmednagar.
- 9/2 Nikhil s/o Prakash Nikam
Age : 45 yrs. Occu. Business
R/o. Shrirampur, Tal. Shrirampur
Dist. Ahmednagar.
10. The Municipal Council,
Shirdi, Tal. Rahata
Dist. Ahmednagar
Through its Chief Officer

Respondent Nos. 9/1,
9/2 and 10 are
deleted as per Court's
order dated
15/07/2022

... Respondents

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Advocate for Petitioner : Mr. S. S. Choudhary
Advocate for Respondent No.1 : Mr. V. D. Sapkal, Sr. Advocate i/b
Mr. A. C. Darandale
Advocate for Respondent No.10 : Mr. A. S. Sonkawade h/f
Mr. A. V. Hon
Advocate for Respondent Nos. 5 to 8 : Mr. Ashok Tapse
Advocate for Respondent Nos. 9/1 & 9/2 : Mr. Rahul Tambe

...

CORAM : NITIN B. SURYAWANSHI, J.

RESERVED ON : 15th JULY, 2022

PRONOUNCED ON : 15th SEPTEMBER, 2022

ORDER :

1. This petition, filed under Articles 226 and 227 of the Constitution of India, challenges order dated 07/02/2020, passed by learned Joint Civil Judge, Junior Division, Rahata, below

Exhibit-15 in Regular Civil Suit No.438/2019, thereby allowing application filed by respondent Nos. 1 to 4.

2. Respondent No.5 herein executed sale deed in favour of respondent Nos. 1 to 4, on 28/09/1995, in respect of land Survey No.165/5 (Gut No.165/7), admeasuring 27R, situated at Shirdi, District Ahmednagar. Respondent No.5 is father and respondent No.6 is mother of petitioner, respondent Nos. 7 and 8 and deceased Anil. Deceased Anil, brother of petitioner and respondent Nos. 7 and 8, expired on 05/06/2005, leaving behind him his widow Smt. Vaishali and son Ashish.

3. Vaishali and Ashish filed Special Civil Suit No.06/2008 for partition and separate possession of the ancestral property claiming their share in property bearing Survey No.164/1+2+3+5, admeasuring 1H 17R, Survey No.165/1+2, admeasuring 92R, Survey No.165/10, admeasuring 14.25R, Survey No.27/9, admeasuring 1R and two Tractors of Hindustan Company and tanker with trolley, by arraying respondent Nos. 5, 6 and 8 and the petitioner as defendants.

4. Land Gut No.165/5, to the extent of 227.50 Sq. Mtrs. was acquired for widening of road and award was passed on 31/12/2008. Respondent Nos. 1 to 4 sought enhancement of

compensation by filing L.A.R. No.12/2009 in Court of learned Civil Judge, Senior Division, Rahata. The Court enhanced compensation by judgment and award dated 27/01/2020.

5. Respondent Nos. 5, 6 and 8 and the petitioner, by filing written say and counter claim, opposed Special Civil Suit No.06/2008. Vaishali and Ashish on one hand and respondent Nos. 5, 6 and 8 and the petitioner, on the other hand, compromised said suit and compromise decree was passed by trial Court on 15/02/2014. According to petitioner, property bearing Survey No.165/5 (Gut No.165/7), admeasuring 27R, was not included in Special Civil Suit No.06/2008 and compromise decree passed therein.

6. Regular Civil Suit No.438/2019 is filed by petitioner for declaration, permanent injunction, partition and separate possession, in respect of land bearing Survey No.165/5 (Gut No.165/7), admeasuring 27R, claiming that the said property is ancestral property of petitioner and respondents and respondent No.5, without legal necessity has sold that property to respondent Nos. 1 to 4 on 28/09/1995. The said property remained idle and there was no compound. Plaintiff/petitioner came to know about said sale deeds recently and therefore, he claimed declaration that sale deeds dated 28/09/1995 are not binding on share of plaintiff in

said property and defendant Nos. 1 to 4 should not carry out any construction on said property.

7. Respondent/defendant Nos. 1 to 4 filed application Exhibit-15 in Regular Civil Suit No.438/2019, claiming that the suit is wrongly valued and less court fees stamp is paid by petitioner/plaintiff. In sale deed dated 28/09/1995, consideration amount is of Rs.7,57,500/-. There will be change in pecuniary jurisdiction, hence, plaintiff be directed to pay stamp fee on Rs.7,57,500/-. Petitioner/plaintiff opposed said application by filing say contending that two sale deeds were executed by defendant Nos. 5 and 6, on 28/09/1995. Plaintiff was not party to the sale deed and therefore, suit is valued at Rs.1,000/- and court fees of Rs.200/- is deposited. Therefore, there is no substance in contention of defendants that trial Court has no jurisdiction.

After hearing the parties, trial Court has partly allowed the application and directed petitioner/plaintiff to correct valuation of suit for the purpose of court fees and pecuniary jurisdiction and further directed to deposit court fees as per Section 6(iv)(ha), Section 6(iv)(d) and Section 6(j) of Maharashtra Court Fees Act, 1959 (for short 'the Act, 1959'). Petitioner is aggrieved by this order.

8. Heard learned advocate for petitioner, learned senior

advocate for respondent No.1, learned advocate for respondent No.10, learned advocate for respondent Nos. 5 to 8 and learned advocate for respondent Nos. 9/1 and 9/2.

9. Learned advocate for petitioner strenuously submitted that Section 6(iv)(ha) and Section 6(iv)(d) of the Act, 1959, are not applicable to facts of the present case but Section 6(iv)(j) is applicable and accordingly petitioner has paid court fees. He, therefore, submits that impugned order cannot be sustained in view of decision in *Asha Sopan Maithane Vs. Ramkrushna Wanare, 2010 (6) ALL.M.R.673*. In support of his arguments, he further relied on *Suhird Singh @ Sardool Singh Vs. Randhir Singh and Others [AIR 2010 SC 2807]* , *Khanderao s/o Bhujangrao Babar Vs. Bharatbai w/o Shrimant Gomsale and Others [2009(3) ALL.M.R. 568]*, *Common Piru Caudhari Vs. Berubai Chendu Redhiwale and Others [2017(5) Mh.L.J. 388]* and *Niraj s/o Narendra Walle Vs. Vijaya w/o Narendra Walle and Others [2017(4) Mh.L.J. 402]*.

10. Learned senior advocate for respondent No.1 opposed the petition, contending that suit property is not mentioned in compromise decree passed in Special Civil Suit No.06/2008. Said property is sold in the year 1995 and present suit is filed without making Vaishali (widow of deceased Anil) as party defendant. Nature of the property is not disclosed and the earlier proceedings

are also not disclosed by petitioner. According to him, trial Court was justified in holding that Section 6(iv)(ha) is applicable. He submits that if possession is claimed, then Section 6(v) would apply and if partition of joint family property is claimed, then Section 6(vii) would apply. Explanation to those Sections would not apply as agricultural land is not specified by petitioner. By pointing out averments, he further submits that Section 6(v)(a) is applicable to house property. He, therefore, supported impugned order and submitted that there is no substance in present petition and the same may be dismissed.

11. Learned advocate for respondent Nos. 5 to 8, learned advocate for respondent No.10 and learned advocate for respondent Nos. 9/1 and 9/2, adopted arguments of learned senior advocate for respondent No.1.

12. I have given due consideration to the rival submissions, perused the writ petition memo and grounds raised therein, documents filed on record, affidavit-in-reply filed by respondents and the impugned order.

13. Before considering rival submissions, it is apposite to consider relevant provisions of Section 6 of the Act, 1959, which reads thus :-

"6.(iv)(d) In suits for declaration in respect of ownership, or nature of tenancy, title, tenure, right, lease, freedom or exemption from, or non-liability to, attachment with or without sale or other attributes, of immovable property, such as a declaration that certain land is personal property of the Ruler of any former Indian State or public trust property or property of any class or community—one-fourth of ad valorem fee leviable for a suit for possession on the basis of title of the subject-matter, subject to a minimum fee of one hundred rupees;

Provided that if the question is of attachment with or without sale the amount of fee shall be the ad valorem fee according to the value of the property sought to be protected from attachment with or without sale or the fee of sixty rupees, whichever is less :

Provided further that, where the defendant is or claims under or through a limited owner, the amount of fee shall be one-third of such ad valorem fee, subject to the minimum fee specified above :

Provided also that, in any of the cases falling under this clause except its first proviso, when in addition any consequential relief other than possession is sought the amount of fee shall be one-half of ad valorem fee and when the consequential reliefs also sought include a relief for possession the amount of fee shall be the full ad valorem fee ;"

"6.(iv)(ha) 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;"

"6.(iv)(j) 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;

In all suits under clauses (a) to (I), the plaintiff shall state the amount at which he values the relief sought, with the reasons for the valuation;"

"6(v) In suits for the possession of land, houses and gardens—according to the value of the subject-matter; and

such value shall be deemed to be, where the subject-matter is a house or garden—according to the market value of the house or garden and where the subject-matter is land, and—

(a) where the land is held on settlement for a period not exceeding thirty years and pays the full assessment to Government—a sum equal to forty times the survey assessment;

(b) where the land is held on a permanent settlement, or on a settlement for any period exceeding thirty years, and pays the full assessment to Government—a sum equal to eighty times the survey assessment ; and

(c) where the whole or any part of the annual survey assessment is remitted— a sum computed under sub-paragraph (a) or sub-paragraph (b), as the case may be, in addition to eighty times the assessment or, the portion of assessment so remitted ;”

14. Admittedly, petitioner has claimed declaration that two sale deeds dated 28/09/1995 are not binding on him. He has also claimed partition of joint family property along with consequential relief of permanent injunction and possession, but has valued the suit at Rs.1,000/- for the purpose of court fees and pecuniary jurisdiction of the Court. The disputed property is land Survey No.165/5 (Gut No.165/7), admeasuring 27R. Out of two properties in sale deeds, one property is agricultural land and another is house property. Documents from Registrar's Office, Rahata, filed by defendant Nos. 1 to 4, show that house property is admeasuring 287.28 Sq.Mtrs. and it's value is Rs.58,87,500/-. Since plaintiff has claimed the same to be a joint family property and is claiming partition in the same, he ought to have valued suit in accordance with correct value of the property and deposited

court fees as per his share in view of Section 6(v) read with Section 6(vii) of the Act, 1959, and for agricultural property, plaintiff should have deposited court fees as per Section 6(iv)(d) of the Act, 1959. As the petitioner/plaintiff is not a party to the sale deeds which are challenged, he is required to pay court fees as per Section 6(iv)(ha) of the Act, 1959.

15. In *Asha Sopan Maithane* (supra) plaintiff had sought 1/4th share after partition of agricultural land and its possession, so also, relief of cancellation of sale deed and declaration and ownership in relation to instrument to which he was not a party. In these facts, learned Single Judge of this Court held that plaintiff has to pay separate and independent court fees on all the three heads i.e. under Section 6(iv)(d), (ha) and (vii).

16. The trial Court has recorded a finding that in Special Civil Suit No.06/2008, filed by one of the members of plaintiff's family, plaintiff was arrayed as defendant No.4. Compromise took place in the suit and plaintiff got 1/5th share in the properties in that suit. Trial Court, therefore, held that taking into consideration pleadings in the plaint and genealogy of plaintiff, it can be assumed that plaintiff is claiming 1/5th share in suit property and therefore, it is necessary to direct plaintiff to correct valuation of the suit for the purpose of computation of court fees as per 1/5th share in the house

and agricultural property as well as pecuniary jurisdiction.

17. From prayers made in the suit, it is clear that plaintiff is claiming declaration that sale deed dated 28/09/1995 is not binding on him, so also, he is claiming 1/5th share and possession of the suit property of his share.

18. In ***Suhird Singh @ Sardool Singh*** (supra), it is held :-

"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."

19. The Hon'ble Apex Court was considering provisions of Section 7(iv)(c) of Court Fees Act, 1870 and Section 34 of Specific Relief Act, (47 of 1963). In a suit for declaration that sale deeds executed in favour of defendants are null and void and for joint possession, the Hon'ble Apex Court held that, it is not a suit for cancellation of sale deeds. Therefore, the court fee need not be paid on sale consideration mentioned in sale deeds and court fee payable is computable under Section 7(iv)(c) of Court Fees Act, 1870.

In the light of above ratio and facts of the present case, trial Court is justified in directing petitioner to properly value the suit.

20. In *Khanderao s/o Bhujangrao Babar (supra)*, learned Single Judge of this Court has held that provisions of Section 6(iv) (ha) or (j) of the Act, 1959, are not attracted in the facts of that matter, and therefore, no court fees is required to be paid in respect of declaratory relief sought for by plaintiff.

Facts of the present case are different and hence, this citation will not assist the petitioner's case.

21. In *Common Piru Caudhari (supra)*, the learned Single

Judge of this Court considered provisions of Section 6(iv)(j) and Section 6(iv)(ha) and considering prayers made in plaint, held that declarations sought by plaintiff would be squarely covered by clause (j) of Section 6(iv) of the Act, 1959. This ruling is rendered in different facts and circumstances and hence, does not support petitioner's case.

22. In *Niraj s/o Narendra Walle* (supra), by relying on *Suhird Singh @ Sardool Singh* (supra), the learned Single Judge of this Court has set aside direction issued to plaintiff to pay court fee in accordance with valuation of sale deed. It is to be noted that, in that case, plaintiff had not prayed for decree for possession. Whereas, in the case in hand, petitioner has prayed for decree for possession.

23. In the light of aforesaid discussion, there is no illegality or infirmity in order impugned in present petition. No case is made out by petitioner to warrant exercise of extraordinary jurisdiction. Writ petition, being devoid of merits, is dismissed. No costs.

24. In view of dismissal of writ petition, civil applications also stand disposed of.

(NITIN B. SURYAWANSHI, J.)