

R.M. AMBERKAR
(Private Secretary)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO. 230 OF 2022
WITH
INTERIM APPLICATION NO. 17770 OF 2022

Sushant Bapusaheb Nimbalkar & Anr. .. Applicants
Versus
Prashant Bapusaheb Nimbalkar .. Respondent

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- Ms. Neha R. Kokare for Applicants
 - Mr. Pandit Kasar for Respondent
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CORAM : MILIND N. JADHAV, J.

DATE : DECEMBER 09, 2022

P.C.:

1. By the present Civil Revision Application, the Applicants have prayed for the following reliefs:-

- “(A) This petition may be allowed and the impugned Order dated 09.04.2022 passed by the learned Civil Judge Junior Division, Phaltan Taluka, Satara District in R.C.S. NO. 85 of 2022 may be quashed and set aside.*
- (B) The Defendants’ (Petitioners) Application vide Exh. 13 in R.C.S. No. 85 of 2022 dated 28.03.2022 may be confirmed and upheld.*
- (C) In the alternative the Respondent (Original Plaintiff) may be ordered to pay the requisite court fee stamp and annex the clause regarding court fees and pecuniary jurisdiction, and that it may be ordered that this suit be filed in the proper court.”*

2. The impugned order dated 09.04.2022 has been passed in Application below Exh. 13 in R.C.S. No. 85 of 2022. The Application below Exh. 13 has been filed by Defendants (Applicants herein) under Order VII, Rule 11 of the Code of Civil Procedure, 1908 (for short “CPC”) for seeking rejection of plaint on the following three grounds:-

- (i) That Plaintiff (Respondent herein) filed Suit for declaration of gift deed as void. That the gift deed has shown value of the property at Rs. 42,85,750/- whereas Plaintiff has not paid Court fee on the said amount / valuation;
- (ii) Since the gift deed is valued at Rs. 42,85,750/-, learned Trial Court does not have jurisdiction to entertain and try the suit filed by Plaintiff;
- (iii) That there is no cause of action to the suit.

3. Ms. Kokare, learned Advocate for Applicants submitted that the learned Trial Court upon meaningful reading of the plaint ought to have seen that no cause of action was disclosed in the plaint; that the Plaintiff has not paid Court fee as per valuation of the gift deed and most importantly the value of the property in the gift deed is shown at Rs. 42,85,750 and hence, the Plaintiff is liable to pay appropriate advalorem Court fee on the said value of the property mentioned in the gift deed. She submitted that Plaintiff is in possession of the suit property and thus, cannot value the suit under the provisions of Section 6(iv)(j) of the Maharashtra Court Fees Act, 1959 (for short **“the Act”**) and as such, the cause of action in the subject suit is susceptible of monetary evaluation. Hence, she submitted that the

impugned order rejecting the Application filed by Defendants under Order VII, Rule 11 of CPC deserved to be set aside.

4. *PER CONTRA*, Mr. Kasar, learned Advocate for Respondent (Plaintiff before the Trial Court) submitted that Plaintiff has sought a declaration of the gift deed as null and void. However, he submitted that the Plaintiff is a non-executant to the gift deed. He further submitted that Plaintiff has not sought cancellation of the gift deed and hence, there is a vital difference between seeking a prayer for declaration and cancellation with respect to the gift deed. He submitted that a non-executant to the gift deed who is in possession of the suit property and sues for declaration that the gift deed is null and void is required to pay a fix Court fee of the amount of Rs. 1,000/- and is not required to pay the Court fee as per the value of the subject property mentioned in the gift deed. He has referred to and relied upon the provisions of Section 6(iv)(j) of the said Act.

5. I have considered the rival submissions and perused the pleadings. On perusal of the plaint, it is clear that Plaintiff has filed the subject suit for seeking a declaration that the gift deed dated 11.11.2020 is void on the ground that it is executed by playing fraud on the Plaintiff. Admittedly, Plaintiff is not an executor / executant or party to the gift deed. In that view of the matter, Plaintiff has not prayed for cancellation of the gift deed. Admittedly, Plaintiff has also,

therefore, not prayed for any consequential relief in the suit pursuant to his principal prayer for declaration. This is because the Plaintiff is already in possession of the suit property.

6. While considering the submission, the learned Trial Court has referred to and relied upon the decision of the Supreme Court in the case of **Suhrid Singh @ Sardool Singh Vs. Randhir Singh & Ors¹**. The decision of the Supreme Court has been followed by this Court in the case of **Niraj s/o. Narendra Walle Vs. Vijaya w/o. Narendra Walle & Ors.²** In the case of Suhrid Singh (first supra), the Supreme Court has made a clear differentiation with respect to prayer of cancellation and declaration in regard to a deed of transfer / conveyance.

7. Mr. Kasar has drawn my attention to the decision of the learned Single Judge of this Court in the case of **Vasant Kisan Idhol Vs. Manjurabai Kisanrao Idhol³** and contended that the learned Trial Court has returned a correct finding and there is no jurisdictional error whatsoever committed by the learned Trial Court in concluding that Court fee paid by Plaintiff is properly calculated and that the said Court has jurisdiction to try and entertain the suit.

8. Provisions of Section 6(iv)(j) of the Act which I find relevant in the present case reads thus:-

¹ Supreme Court Civil Appeal Nos. 2811-2813 dated 29.03.2010

² 2017 (4) Mh.L.J. 402

³ 2017(5) ALL MR 158

“6. Computation of fees payable in certain suits

The amount of fee payable under this Act in the suits next hereinafter mentioned shall be computed as follows:

(i)

(ii)

(iii)

(iv) (j) **for other declarations**

In suit 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 (j) the plaintiff shall state the amount at which the values the relief sought, with the reasons for the valuation;”

9. On reading of the plaint, it is clear that the Plaintiff has sought declaration that the gift deed is void on the ground of fraud. Since admittedly Plaintiff is not a party to the gift deed and has not sought cancellation of the gift deed, the provisions of Section 6(iv)(j) would be applicable to the Plaintiff's case. The said provision is with respect to declaration with or without injunction or other consequential reliefs and the subject matter in dispute is not susceptible of monetary evaluation and which are not otherwise provided for by the Act. Perusal of the plaint further reveals that it is the Plaintiff's case that the alleged gift deed has been executed by Defendants in their own favour by playing a fraud upon their father when the Plaintiff has also a substantive right in the suit property.

10. As noted above, the averments in the plaint would indicate

that the Plaintiff is not seeking cancellation of the gift deed or possession of the suit property. The relief sought is for a declaration that the gift deed dated 11.11.2020 is null and void. Hence, what needs to be seen while considering the question of appropriate valuation is the subject matter in dispute. In the present case, the subject matter in dispute is an alleged fraudulent execution of the gift deed dated 11.11.2020. There is no consideration passed for execution of the said gift deed.

11. In view of the above observations and findings, the provisions of Section 6(iv)(j) of the Act clearly apply to the Plaintiff's case. The learned Trial Court has rightly considered the nature of relief sought by Plaintiff i.e. Respondent herein. The valuation of the suit is proper. There is no jurisdictional error committed by the Trial Court in passing the impugned order. Civil Revision Application is therefore dismissed.

12. In view of disposal of Civil Revision Application, nothing further survives in the Interim Application. The same is also disposed of.

[MILIND N. JADHAV, J.]

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