

Digitally signed
by BIPIN
DHARMENDER
PRITHIANI
Date:
2022.07.29
11:19:09
+0530

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION 1492 OF 2020

Prakash Pandrinath Raikibe ... Petitioner
Versus
Mukund Dhonduji Khairnar
(since decd. through LHRS) ... Respondent

Ms. Nikita K. Dharamshi i/by C. K. Legal for the Petitioner.
Mr. Sandeep Shinde i/by Mr. K. B. Palkar for the Respondents 1A to 1C.
Mr. Akshay Bankapur for the Respondents 4 to 6.

CORAM: ROHIT B. DEO, J.
DATE : 27th JULY, 2022

P.C. :-

. The petitioner is defendant 7 in Regular Civil Suit 122 of 2016 which is instituted by deceased respondent 1 seeking specific performance of the agreement for sale dated 26th June, 1995.

2. The plaintiff amended the suit plaint and petitioner – defendant 7 is added in the array of defendants on the premise that the suit property is sold by the original defendants to defendant 7 vide registered sale deed dated 17th June, 2016.

3. The prayer clause is consequentially amended and it would be apposite to reproduce prayer 9A, which is vernacular :-

"अ) दावा कलम 1 यात वर्णन के ले ल्या दावामिळकतीचे खरे दीखताकामी आवश्यक असणारी परवानगी प्रतिवादीनी घेवुन दावामिळकतीचे खरे दीखत कब्जासह वादीचे लाभात लिहून व नोंदवुन देण्याचा हुकुम व्हाव९-अ-1" प्रतिवादी क्र. 1 व 2 यांनी

प्रतिवादी क्र. 7 व 8 यांचे लाभात करून दिलेले तथाकथित, बनावट, खोटा, लबाडीचा व बेकायदेशिर असा दावा मिळकतीबाबतचा खरे दीखताचा दस्त क्र 1866/2016 हा वादीवर व दावा 'मिळकतीवर बंधनकारक नाही असा ठराव करून मिळावा."

4. The defendants 7 and 8 preferred application - exhibit 51 seeking a direction that the plaintiff be directed to pay Court fees in accordance with law. Reference is made to the provisions of Section 6 (iv)(ha) of the Maharashtra Court Fees Act (for short 'Act'). The application further contends that the Trial Court does not have the pecuniary jurisdiction to entertain the suit. Such objection is presumably raised on the premise that the valuation of the suit shall have to be determined on the basis of the sale deed *qua* which declaration is sought by amending the plaint.

5. The learned Trial Judge was pleased to reject the application - exhibit 51. The learned Trial Judge reasoned that it is settled law that party to the document need not to pay Court fees on the basis of the valuation of the document. The learned Trial Judge does not appear to have addressed the objection on the basis of the valuation.

6. While divergent views are indeed taken by various learned Single Judges of this Court on the applicability of the provisions of Section 6(iv)(ha), in my considered view, the issue which arises in the context of the factual matrix involved, is authoritatively answered by the Division Bench in case of ***Dilip Khushalchand (Srisrimal) Jain and Ors. v/s. Hardik Deepakbhai Ramani and Ors*** in Writ Petition 8968 of 2018. The decision is rendered by the Division Bench answering a reference made by learned Single Judge in view of the divergent views.

7. Considering that the Division Bench has decided the issue involved, it would suffice to note the relevant articulation, which reads thus :-

“18. As indicated earlier, the Hon’ble Supreme Court has made a distinction between a Plaintiff who is not a party to the sale deed and the Plaintiff who is a party to the sale deed. A Plaintiff who is a party to the sale deed, as held by the Supreme Court, the Plaintiff will have to seek cancellation of sale deed whereas a Plaintiff who is not a party to the sale deed will have to seek declaration that the sale deed is not binding on him/it is illegal/its invalid/non-est.

19. Agreement which is not enforceable at law is void. An agreement is void when it is without consideration, it is executed by a person not competent to enter into a contract and by a person who is not of the age of majority, is not of sound mind and is not disqualified by any law to which he is subject. The contract is voidable if it is caused by coercion, fraud or misrepresentation or by undue influence. In case of void agreement, the agreement has no legal existence. Therefore, when a Plaintiff seeks declaration that the agreement, instrument/deed is void, he wants the entire agreement to be cancelled. Void agreement has no sanctity in law. But this is not the case with the Plaintiffs who seek declaration that the instrument/deed is not binding on him. The instrument deed may be otherwise valid, but since the Plaintiff is not a party to the instrument/deed wants the declaration that the said instrument/deed is not binding on him. Therefore, in such cases, the Plaintiff need not seek declaration that the instrument or deed is void. Therefore, 6(iv)(ha) applies only to the persons who seek declaration that the agreement is void i.e. they challenge the very legality of the agreement and that it is void. But in case of the Plaintiffs who seek declaration that the instrument/deed is not binding on them, they do not question the execution of the agreement. Their only contention is that the instrument/deed is not binding on them. The deed or instrument may be otherwise valid inter parties. In such cases, the Plaintiffs are not required to seek declaration that the instrument/deed is void.

*20 As held in the case of **Common Piru Caudhari** (supra) there is a vast difference between a declaration that any sale or contract for sale is null and void and the declaration that sale or contract for sale has no binding effect. In the former case the very existence of the transaction is challenged whereas in the latter case existence of the contract or the instrument is not denied but its effect is sought to be made not applicable to the person who is not a party to the instrument or contract. This would mean that in the latter case, existence of contract is not denied but declaration is sought by the claimant that the instrument or contract is not binding on him but it binds the other*

executants. In the former case the existence of the contract itself is under cloud. In such a case the entire contract is sought to be cancelled whereas in the latter case only the contract to the extent of the claimant is sought to be not binding. Therefore, the Plaintiff in both the categories cannot be placed on the same pedestal. They have to be treated differently. For the reasons given above, it would be apposite to make distinction between the Plaintiff who seeks declaration of cancellation of sale deed and the Plaintiff who seeks avoidance of sale deed on the ground that he is not a party to the sale deed.”

8. In view of the question answered by the Division Bench, it is apparent that since the plaintiff who has sought the declaration that the Deed of Conveyance or similar document does not bind him and the plaintiff is not a party to such document, Court fees are payable under Section 64(iv)(j) and not 6(iv)(ha).

9. The learned counsel for the petitioner would invite my attention to the decision rendered by a learned Single Judge (Ranjit More, J.) which supports her contention that Court fees will have to be paid on the basis of the value of the sale deed of which avoidance is prayed. While the decision does support the contentions of the learned counsel for the petitioner, I am afraid in view of the decision rendered by the Division Bench answering the reference, I cannot fall in line with the view taken by the learned Single Judge. The fact that the said decision was not brought to the notice of the Division Bench is immaterial. As a fact, decisions which have taken view similar to that taken by Ranjit More, J. were considered by the Division Bench and it is only in view of the divergent views that there was an occasion for the Division Bench to answer the question authoritatively.

10. The emphasise placed by the learned counsel for the petitioner on the descriptive expressions used in prayer clause, to buttress the submission that the plaintiff is in essence seeking cancellation of the

sale deed and at any rate is seeking a declaration that the sale deed is void in rem, cannot be accepted. Merely because the plaintiff describes the sale deed as fraudulent or motivated by dishonesty, no interference can be drawn that the declaration seeks cancellation or total nullification of the document. The prayer clause, to my mind is unambiguous. All that is prayed is a declaration that the sale deed does not bind the plaintiff.

11. In view of the answer given by the Division Bench to the question referred, I am not inclined to interfere in writ jurisdiction.

12. Petition is dismissed.

13. At the joint request of the parties, the learned Trial Judge is requested to expedite the Trial of the suit and to conclude the same within 12 months from the date of framing of issues.

[ROHIT B. DEO, J.]