

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

WRIT PETITION NO.2889 OF 2022

Nitin Bhanudas Jadhav & Ors.

..Petitioners

Versus

Sangita Bapurao Fadtare & Ors.

..Respondents

Mr. Jitendra P. Gaikwad, for the Petitioners.

CORAM : NITIN W. SAMBRE, J.

DATE : 17th MARCH, 2022

P.C.

1. This petition is by defendant Nos.10 to 13 to Regular Civil Suit No.307 of 2018 questioning order dated 2nd December, 2021, whereby their application below Exh.144 for rejection of plaint under Order VII Rule 11 of the CPC came to be rejected.

2. The respondent No.1 initiated aforesaid suit under Section 8 of the Hindu Succession Act and Sections 34 and 38 of the Specific Reliefs Act seeking partition, possession, declaration and injunction.

3. The present petitioners claim that after the written statement was filed, they have discovered that the Gift-Deeds dated 24.12.2018 discloses the valuation on which the insufficient Court fee is paid. It is further

claimed that even the declaration sought in regard to the sale-deed, the stamp duty is not paid. Similarly, the valuation in the claim made in paragraph 6(c) is also not appropriately valued. It is claimed that the respondent No.1 has under valued the suit claim so as to avoid payment of adequate Court fee. It is also urged that plaint lacks cause of action. As such, sought rejection of the same. The said application Exh.144 was resisted by the respondent No.1/plaintiff through its reply Exh.151. It is claimed that since the transactions were carried out by the defendants on their own, it was necessary for her to sought declaration. According to the plaintiff, she has not sought cancellation of the deeds. As such, suit claim was appropriately valued. The said claim was rejected on 2nd December, 2021. As such, this petition.

4. Counsel for the petitioners, Mr. Jitendra Gaikwad while questioning the order impugned would invite attention of this Court to the pleadings in the plaint, so also the written statement, whereby the defence is set up by the defendants. According to him, application Exh.64 in categorical terms narrates as to how the suit claim is under valued as reflected in plaint paragraph 6(a) to 6(c), so also the non-disclosure of cause of action. He would urge that the valuation of the suit claim ought to have been based on the valuation of the property in Gift Deed

Nos.5549/2018 and 5540/2018. He would invite attention of this Court to Section 6(iv) (ha) of the Bombay Court Fees Act to substantiate his claim. He would also invite attention of this Court to the claim in paragraphs 6(b) and 6(c) of the plaint.

5. I have appreciated the aforesaid contentions.

6. The fact remains that whether the plaint discloses cause of action has to be ascertained from the pleadings in the plaint and not the defence raised. The defence of the petitioners cannot be taken into account for deciding the said cause *qua* the rejection of plaint. The fact remains that the entire bundle of facts are required to be appreciated so as to find out whether the plaint discloses cause of action for which the entire plaint is required to be read as a whole and not by segregating the contents therein. It is specifically pleaded in the plaint that the plaintiffs sought partition from defendant Nos.1 to 4 on 27th July, 2018. It is also specifically pleaded that the prayer for partition was refused and there was obstruction to the possession of the plaintiff by the defendants. As such, what can be noticed is the bundle of facts narrated in the plaint discloses cause of action.

7. Apart from above, this Court is required to be sensitive to the fact that the respondent/plaintiff is not

party to the alleged Gift-Deeds or the Deed of Exchange. The relief claimed in the plaint is restricted only to the extent of declaration that the said conveyance are not binding on the respondent No.1. Respondent No.1 has sought only declaration in regard to Gift-Deeds, Sale-Deed and Deed of Exchange. The fact remains that once the respondent No.1 is not party to aforesaid deeds, considering the nature of relief claimed in the plaint, it has to be inferred that the suit claim is properly valued. All these aspects are properly dealt with and considered by the Trial Court while passing the order impugned.

8. As such, no error could be noticed in the order impugned. That being so, the petition fails, dismissed.

[NITIN W. SAMBRE, J.]