

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

51 WRIT PETITION NO.1434 OF 2015

DILIP JAHAGIR BIRHADE
VERSUS
STATE OF MAHARASHTRA AND OTHERS

...

Advocate for Petitioner : Mr. S.S. Patunkar i/by. J.P. Legal Associates
AGP for Respondent – State : Mr. S.N. Morampalle
Advocate for Respondent No.3 : Mr. Girish V. Wani
Advocate for Respondent Nos.8-A to 8-D : Mr. S.P. Sirsat h/f.
Mr. N.L. Chaudhari
Advocate for Respondent No.12 : Mr. U.S. Patil
Advocate for Respondent No.13 : Mr. Girish Rane

...

WITH

WRIT PETITION NO.1518 OF 2015

SUDHAKAR DEVENDRA BIRHADE
VERSUS
DEELIP JAHAGIR BIRHADE AND OTHERS

...

Advocate for Petitioner : Mr. V.P. Patil

...

CORAM : SHARMILA U. DESHMUKH, J.

DATE : 17-01-2023

PER COURT :

. Heard.

2. As the writ petitions raise common issue, the Petitions are heard together and decided by this common order. Petitioner in Writ Petition No.1518 of 2015 is original plaintiff no.2 in Regular Civil Suit No.49 of 2014 and is aggrieved by the order dated 09.12.2014, whereby the Trial Court has directed the valuation of the

suit property in accordance with the provisions of Section 6 (ha) and Section 6 (v) of the Bombay Court Fees Act, 1959. Petitioner in Writ Petition No.1434 of 2015, the original plaintiff no.1 in Regular Civil Suit No.49 of 2014, is aggrieved by the order dated 09.12.2014 and order dated 04.12.2014 rejecting the application for abandonment of part of claim.

3. Regular Civil Suit No.49 of 2014 was instituted by the petitioners seeking relief of cancellation of sale-deed and consequent declaration, injunction and possession. It is the case of the petitioners in Regular Civil Suit No.49 of 2014 that the sale-deeds executed by the grand father of the petitioner in favour of the defendant no.7 in the year 1964 be cancelled and Defendant No 3 and 4 i.e town planning authorities be directed to hand over possession of 3 plots sanctioned in town planning scheme. The illegal transactions by way of sale-deeds dated 03.04.1974, 02.06.1986, 01.10.2001, 01.10.2004, 21.9.2011, 21.01.2013 be declared as null and void and not binding on the petitioners. Application (Exh.37) was filed by the respondent nos.13 and 14 raising the issue of deficit Court fees, which the Trial Court decided and directed the Petitioners to value the suit property in accordance with the provisions of Section 6 (ha) and Section 6 (v) of the Bombay Court Fees Act, 1959.

4. Learned counsel for the petitioners submits that for the purpose of considering the valuation, the averments of the plaint are required to be considered and as per paragraph-16 of the plaint the suit has been valued in accordance with the provisions of Section 6 (iv) as the suit was filed for a declaration without injunction.

5. Learned counsel for the petitioner appearing in Writ Petition No.1434 of 2015 adopts the submissions of the learned counsel for the petitioner in Writ Petition No.1518 of 2015 and submits that where the relief of declaration as regards the sale deeds is superficial in nature, the plaintiff is not required to pay the court fees. In support of his contention, he relies upon the decision of this Court in the case of **Khanderao Bhujangrao Babar vs. Bharatbai Shrimant Gomsale & Ors**, 2009 (3) ALL.M.R. 568.

6. I have considered the submissions.

7. Petitioner in Writ Petition No.1518 of 2015 who is original plaintiff no.2 in Regular Civil Suit No.49 of 2014, seeks to cancel the sale-deeds executed by his grand father in favour of Defendant no.7 in the year 1964 and also the cancellation of the sale-deeds executed thereafter. In addition to the cancellation of the sale-

deeds, the petitioner was also seeking possession of three plots finally sanctioned in town planning scheme from the defendant nos.3 and 4 i.e. town planning authorities. The declaration as far as the sale-deeds are concerned is sought in respect of the plot bearing Survey No.813/A/7, plot nos.189/1 and 189/2. In the present case, it cannot be said that the relief which is sought by the petitioner is superficial in nature as the cancellation of sale deeds is the substantive relief sought by the Petitioners. Provisions of Section 6 (ha) of Bombay Court Fees Act, 1959 clearly applies which is as under:

“6 (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 immovable property is void – [one half] of *ad valorem* fee leviable on the value of the property;

8. In addition to the cancellation of the sale deeds, the petitioner is seeking declaration that in the Town Planning Scheme, the Petitioners deceased grandfather and other co-owners were sanctioned Final Plot No 189 and Defendant No 3 and 4 be directed to hand over the three plots to the Petitioners as legal heirs. As such the suit is required to be valued under the provisions of

Section 6 (v) of the Bombay Court Fees Act.

9. The Petitioners have averred in the plaint that the suit has been filed to obtain possession of Final Plot No 189 from Defendant Nos 3 and 4. The Petitioners wants to set aside the sale-deed executed in respect of the suit property. As such, the petitioner is liable to pay court fees of the subject property under Section 6 (v) for possession of land and under Section 6 (ha) for avoidance of sale, contract for sale etc. As regards the reliance placed on the decision of this Court in **Khanderao Bhujangrao Babar (supra)**, the decision is distinguishable on facts. In that case substantive relief claimed by the Plaintiff was in respect of specific performance and a declaration in respect of subsequent sale deeds as inoperative was sought. In the present case, the substantive relief is setting aside of the sale deeds and the decision relied upon does not assist the case of the Petitioners.

10. Considering the above, the petition devoid of merits and the same is accordingly dismissed.

11. As the suit is of the year 2014 and by order of this Court further proceedings was stayed, the trial court is directed to decide

the suit expeditiously and in any event within a period of one year from today.

(SHARMILA U. DESHMUKH, J.)

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