

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

10 C.R.A. NO.65 OF 2023

SHRIGANESH ALIAS VINOD UTTARESHWAR WARAD
VERSUS
SANDHYA SANJAY WARAD THR GPA HOLDER PRABHU
MAHALINGAPPA WARAD

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Advocate for Petitioner/Applicant : Mr. Biradar Chandrakant D.

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CORAM : S. G. MEHARE, J.
DATE : 09.10.2023

PER COURT :-

1. Heard the learned counsel for the applicant. The respondents were served, but they did not appear.
2. Respondent No.2, defendant no. 2, and her three sisters owned 2 hectors and 31 from Survey No.232/2/1 of village Kingaon Tq. Ahmedpur. The above field would be referred to as 'suit field' hereinafter. Respondents Nos.3/1 to 3/7 are the legal heirs of deceased respondent No.3, who was the sister of respondent No.2. Respondent No.1 was the plaintiff. The petitioner was defendant No.2.
3. The parties would be referred to their original position in the suit for convenience.

4. The plaintiff had filed a suit for injunction and declaration of ownership. The plaintiff had purchased 2 hectares of land from respondent No.2 from the above field survey number by a registered sale deed on 12.10.1999 for the sale consideration of Rs.2,50,000/- and was enjoying the suit land from the date of its purchase. Defendant No.2 and her three sisters had shared the sale consideration. However, as the sale deed was registered hastily, the suit land remained to be measured. Hence, defendant No. 2 and her three sisters executed an agreement dated 22.03.2000 for measuring the land sold to the plaintiff except the portion of land acquired for the road. As per the sale deed, the entries in the name of the plaintiff were recorded in the Revenue record. On 15.04.2000, defendant No.2 and her three sisters measured the land privately, and the land measuring 18 R. on the north side of the road was confirmed, boundary marks were fixed, and accordingly, the plaintiff is in possession of the said land.

5. Defendant No.2 sold 31 R. of land to defendant No.1, the present petitioner Shriganesh, by a registered sale deed dated 05.03.2018 for Rs.21,00,000/- (Twenty One Lacs). The plaintiff alleged that the possession of that land was not

handed over to defendant No.1. The consideration mentioned in the sale deed was also disputed. The description, i.e. the boundaries of the land sold to defendant No.1 by a sale deed, has also been disputed. It is alleged that the land within the four boundaries of the plaintiff has also been included in its description. Hence, the sale deed is not binding upon the plaintiff. It has also been objected that defendant No.1, being not an agriculturist, is not entitled to purchase the said field. It has also been objected that the sale deed in favour of defendant No.1 was in violation of the Prevention of Maharashtra Prevention of Fragmentation and Consolidation of Holdings Act. The plaintiff had a preferential right to purchase the remaining land arising out of the same survey number.

6. On the basis of the above pleading, it has been prayed to issue the prohibitory injunction against the petitioner not to disturb his field and declare that she is the owner of 2 Hectors of land arising out of Gut No.232/2/1. It has also been prayed to declare that the sale deed dated 05.03.2018 between defendant No.1 and her three sisters and defendant No.2 is illegal and not binding upon the plaintiff.

7. Before addressing the questions raised, it is made clear that there is no prayer regarding the preferential right to purchase the land, and the declaration of the sale deed dated 05.03.2018 is illegal.

8. Defendant No.1 had applied under Order VII Rule 11 of the C.P.C. He had objected that since the declaration of the sale deed dated 05.03.2018 has been claimed illegal and not binding upon the plaintiff, the Court fee is to be paid on the consideration of Rs.21,00,000/-.

9. Hearing both respective parties, the learned Trial Court allowed the application partly, holding that the suit of the plaintiff present respondent No.1 is governed under Section 6(iv)(j) of the Maharashtra Court Fee Act. The Trial Court relied on the case of *Prism Reality Vs. Mr. Govind Yashwant Khalade and others reported in 2015(4) Mh.L.j. 472* and ordered the plaintiff to pay the Court fee under Section 6(iv)(d), III proviso on Rs.2,50,000/- as per the scheduled I of the Court Fees Act.

10. The learned counsel for the petitioner has vehemently argued that without claiming any right, title or interest in the land measuring 31 R. of the land sold to defendant No.1, the

plaintiff has vaguely prayed it to be declared illegal and not binding upon her. Defendant No.1 never disputed the right, title or interest of the plaintiff over 2 Hectar of the land out of the land measuring 2 Hectar 31 R. In other words, he would submit that the plaintiff never claimed the right, title or interest over the remaining land of 31 R. However, a vague prayer has been made that the sale deed dated 05.03.2018 be declared illegal and not binding upon him. The pleadings are not specific about how the sale deed in question affects her rights. However, it has been pleaded that the boundaries mentioned in the sale deed dated 05.03.2018 on the southern side are incorrect, and his land is included therein. Even if it is considered liberally that the prayer is correct, in those circumstances, the Court fee ought to have been levied as per Section 6(iv)(ha) of the Maharashtra Court Fee Act.

11. Hearing the learned counsel for the petitioner, the question for determination is how the suit is to be valued for the purposes of Court fee and Jurisdiction of the Court, where the declaration has been sought that the sale document is not binding to which the plaintiff was not party.

12. The Division Bench of this Court in the case of *Dilip Khushalchand (Srisrimal) Jain and others Vs. Hardik Deepakbhai Ramani, in Writ Petition No.8968 of 2018, decided on 05.05.2022*, has answered the reference on the similar question that the court fee payable in regard to the suit for declaration of the sale deed to which the plaintiff is not a party to the sale deed binding on him and for consequential injunction would be governed by Section 6(iv)(j) of the Maharashtra Court Fees Act.

13. Admittedly, the plaintiff seeking the declaration of the sale deed between defendants No.1 and 2 was not a party to the said sale deed. The question of Court fee in such a suit has been set at rest by the Division Bench in the case of *Dilip Khushalchand (cited supra)*. Learned trial Court has correctly relied upon the said judgment and passed the legally correct and proper order.

14. In view of the above discussion, the Court is of the view that the impugned order has been passed by the learned Trial Court exercising jurisdiction vested in it and did not act in the exercise of its jurisdiction illegally or with material irregularity.

15. There is no substance in the present civil revision application; hence, the revision application is dismissed at the admission stage.

(S. G. MEHARE, J.)

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