

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 7666 OF 2021

Godabai W/o Dhannu Kanise
Age- 53 years, Occ- Household,
R/o Near Tulja Bhawani Temple,
Padamsinghpura, Tq & Dist. Aurangabad.

PETITIONER

VERSUS

1. Vinay s/o Pundlik Chowdhary
Age- 62 years, Occ- Business & Agri.,
2. Dr. Varsha W/o Jagannath Kaginalkar
Age- 46 years, Occ- Doctor
3. Ajay S/o Pritamdas Bajaj (HUF)
Age- 50 years, Occ- Business
4. Usha w/o Ajay Bajaj
Age- 42 years, Occ- Business
5. Shakuntala w/o Ashok Badhe
Age- 61 years, Occ- Household,
6. M/s. Gangamai Industries and
Construction Ltd.,
Through Milind s/o Bhanudas Patange
Age- 52 years, Occ- Service
7. Hemraj S/o Laxman Salampure
(deceased) through his L.Rs.
- 7-A. Parubai Wd/o Hemraj Salampure
(deceased)
- 7-B. Bhojraj S/o Hemraj Salampure
Age- 62 years, Occ- Agri
- 7-C. Chotiram S/o Hemraj Salampure
Age- 57 years, Occ- Agri.,

- 7-D Laxmibai W/o Bhola Kanise
Age- 47 years, Occ- Household
- 7-E Meerabai W/o Punam Ssalambad
Age- 37 years, Occ- Household
- 7-F Rukhminibai W/o Lala Kanise
Age- 52 years, Occ- Household
- 8. Sandu s/o Laxman Salampure
(Deceased) through his L.Rs.
- 8-A. Mohnabai Wd/o Sandu Salampure
Age- Major, Occ- Agri.,
- 8-B. Keshav s/o Sandu Salampure
Age- Major, Occ- Agri.,
- 8-C. Gourabai Sandu Salampure
Age- Major, Occ- Household.,
- 9. Aasara s/o Laxman Salampure
(Deceased) through his L.Rs.
- 9-A. Sundaraai Wd/o Aasaram Salampure
Age- 71 years, Occ- Household
- 9-B. Raju S/o Aasaram Salampure
Age- 32 years, Occ- Agri.,
- 9-C. Rekha w/o Santosh Sale
Age- 31 years, Occ- Household
- 9-D Sandu s/o Aasaram Salampure
- 9-D-i Padmabai Wd/o Sandu Salampure
Age- 36 years, Occ- Household
- 9-D-iiPratic S/o Sandu Salampure
Age- 15 years, Occ- Nil
- 10. Uttam S/o Laxman Salampure
Age- 62 years, Occ- Agri,

11. Fulchand Laxman Salampure
Age- 47 years, Occ- Agri
12. Smt. Sundarabai W/o Ramu Devre
Age- 69 years, Occ- Agri.,
13. Smt. Sakunbai W/o Hiranman Tirkhe
Age- 57 years, Occ- Agri.,
14. Arjundas S/o Kakuram Motwani
Age- 67 years, Occ- Business
15. Sitaram S/o Rameshwar Agrawal
Age- 61 years, Occ- Business
16. Sunil S/o Shankarlal Sawaiwala
Age- 55 years, Occ- Business & Agri.,
17. Prakash S/o Baburao Kale
Age- 55 years, Occ- Agri.,
18. The Administrator of Cidco
Office-Udyog Bhavan, Near Cidco
Bus Stand, Cidco Aurangabad.

RESPONDENTS

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Mrs. Pooja V. Langhe h/f. Mr. Vijay R. Lange, Advocate for the petitioner.

Mr. A.P. Bhandari, Advocate for respondent No. 1.

Mr. R.V. Gore, Advocate for respondent No. 6

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[CORAM : NITIN B. SURYAWANSHI, J.]

RESERVED ON: 19th JUNE, 2023

PRONOUNCED ON: 17th JULY, 2023

ORDER :

1. By this petition filed under Article 227 of the Constitution of India, petitioner challenges the order passed by learned 10th Joint Civil Judge, Senior Division, Aurangabad, below Exhibit-92,

in Regular Civil Suit No. 1087/2013, thereby directing the petitioner/plaintiff to make further valuation of the suit on the basis of sale deeds of defendant nos. 8 to 17 and in accordance with law.

2. Petitioner/plaintiff filed suit for partition and separate possession of the ancestral property including land and house property. A relief is also claimed that, sale deeds executed by defendants No. 1 to 5 in favour of defendants No. 8 to 17 be declared illegal, null and void abinitio and not binding on the share of plaintiff. Defendants opposed the suit by filing written statement.

Defendants No. 8 to 12 and 16 filed application under Order 7 Rule 11 of Code of Civil Procedure, contending that though the plaintiff by prayer clause D, sought relief of declaration that sale deeds be declared illegal, null and void abinitio and not binding on the plaintiff, intentionally consideration amount of each sale deeds is not mentioned. Total consideration amount of three sale deeds executed in favour of defendants itself comes to Rs. 86,00,000/- and as per Clause 6(iv) of Maharashtra Court Fees Act, 1959 (for short 'said Act'), the plaintiff is required to value the suit at Rs. 43,00,000/- and

pay ad valorem court fee thereon. Hence, they sought direction to the plaintiff to value the suit and to pay proper court fees.

3. The application was opposed by the plaintiff contending that the suit is correctly valued and proper court fees is paid. The Trial Court allowed the application. Hence, the present petition.

4. Heard the learned advocate for the petitioner and learned advocates for the respondents. Perused the memo of writ petition, annexures thereto, impugned order and the citations relied upon by both the parties.

5. Admittedly, the suit filed by the plaintiff is for partition and separate possession, wherein a prayer is made that sale deeds executed in favour of defendants are not binding on the plaintiff. Though, in the the prayer clause it is stated that sale deeds be declared illegal, null and void abinitio, in fact, the plaintiff is not seeking cancellation of sale deeds. Therefore, prayer in the plaint would be governed by the provisions of section 6(iv)(g) of the said Act and the plaintiff is not liable to pay court fees as per the valuation of properties (vide *Kamal Hiranman Hole and others vs. Atrium Holmes LLP and others*, 2023 (2) Mh.L.J. 484.

6. Admittedly, plaintiff is not party to the sale deeds. Section 6(iv)(ha) is applicable to the cases where plaintiff is a party to the sale deed is seeking declaration of avoidance of sale deed. In

Dilip Khushalchand (Sirsimal) Jain vs. Hardik Deepakbhai

Ramani and ors., 2022 Mh.LJ Online 36, it is held:

"24. From the above discussion in our judgment, section 6(iv)(ha) would be applicable to only to the Plaintiff who is a party to the sale deed seeking declaration of avoidance of sale deed. It would not be applicable to the plaintiffs who are not party to the instrument seeking declaration of avoidance of sale deed. Such Plaintiff would be governed by section 7(iv)(j) as it is not susceptible to monetary evaluation."

7. Since, in the present case, plaintiff is not party to the sale deeds executed in favour of defendants, the plaintiff is not liable to pay court fee as per the valuation of the suit properties.

8. In *Ravindra Narayan Rajarshi and others vs. Rohini*

Ganpatrao Heblikar and Another, 2017 SCC OnLine Bom 7025,

learned Single of this Court held:

"16. The present suit is for the specific performance and not merely for avoidance or cancellation of contract. The plaintiff is a non-executant to the subsequent sale deed which was executed lis pendens. In view of the ratio laid down by the Supreme Court in the case of Suhrid Singh @ Sardool Singh (supra), if a person is not an executant to a deed or agreement and seeks a declaration that it is not binding on it as void,

then, he is not required to pay ad-valorem Court fees on the consideration amount of the said agreement but is to be valued notionally. It is borne in mind that the plaintiff is compelled to seek relief in respect of such deed and against the transferee as the property is transferred during the pendency of the suit. Insofar as that relief is concerned, it being a consequential relief of declaration, is not susceptible to monetary consideration."

9. Since the suit filed by the petitioner is for the substantive relief of claiming partition and separate possession in which consequential relief is sought that sale deeds of the suit properties executed in favour of defendants are not binding on the share of the plaintiff, the plaintiff is not liable to pay Court fees in terms of section 6(iv)(ha) of the said Act.

10. Learned advocate for the respondent by relying on **Asha Sopan Maithane vs. Ramkrushna Punjaji Wanare and others**, 2010 (7) Mh.L.J. 380, argued that the plaintiff is liable to pay court fees to the extent of share to which she is entitled. In terms of section 6(v) of the said Act, the Court fees is payable according to the value of the subject matter. In the facts of the present case, it is not possible to accept the said submission, particularly, in view of the fact that the plaintiff is not signatory to the sale deeds, which she claims to be not binding on her share.

11. Learned Trial Court while passing the impugned order has misread and misconstrued the provisions of section 6(iv) and 6(iv)(ha) as well as the pleadings of the plaintiff. The Trial Court has failed to appreciate the ratio in the citations relied upon before it in proper perspective. For the aforesaid reasons, the impugned order cannot be sustained. Hence, the following order:

ORDER

- (I) Writ petition is allowed.
- (II) Impugned order dated 08.02.2021, passed by learned 10th Joint Civil Judge, Senior Division, Aurangabad, below Exhibit-92, in Regular Civil Suit No. 1087/2013, is hereby quashed and set aside.

[NITIN B. SURYAWANSHI, J.]