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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.3780 OF 2021

Dnayneshwar Pundlik Patil and Others

PETITIONERS

VERSUS

Gramvikas Mandal Navalnagar
through President Vijay Naval Patil

RESPONDENT

.....
Mr. Paresh B. Patil, Advocate for the petitioners
.....

[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 15th MARCH, 2023

ORDER :

1. The petitioners are aggrieved by order dated 10th April, 2018 passed by 4th Joint Civil Judge, Junior Division, Dhule below Exhibit-34 in Regular Civil Suit No. 35 of 2018, thereby rejecting the application filed by the petitioners under Order VII, Rule 11 (C) of the Civil Procedure Code.

2. Petitioner – original defendant No.4, has filed said application Exhibit-34 contending that the plaintiff has paid insufficient stamp duty, though the plaintiff has claimed relief that the alleged sale deeds are not binding on it, but deliberately the relief of cancellation of sale deeds is not claimed, so as to avoid payment of court fees stamp on the sale consideration. It

is further contended that the suit is barred by limitation and is bad for non joinder of necessary parties. Another ground raised is that notice under section 80 of the Civil Procedure Code was not issued and, therefore, the plaint is liable to be rejected.

3. The Trial Court, after hearing the parties, rejected the said application holding that non joinder and misjoinder of parties and limitation are not criterion to reject plaint and that the provision, under which application Exhibit-34 is filed, is having different scope. Admittedly, the suit is not against the Government and, therefore, issuance of notice under section 80 of the Civil Procedure Code, is not required. About objection of non payment of necessary court fees, it is observed that only prayer is made that sale deeds are not binding on the plaintiff and the plaintiff has not sought relief of cancellation of sale deeds and, therefore, court fee stamp paid by the plaintiff is sufficient.

4. By relying on "***Suhrid Sigh @ Shardool Singh V/s Randhir Singh and Others***" AIR 2010 SC 2807, wherein it is held that "*where the executant of a deed wants it to be annulled, he has to seek cancellation of the deed. But if a non executant seeks annulment of a deed, he has to seek declaration that the deed is invalid, or nonest or that is non binding on him*", it is held that

the plaintiff being non executant of the alleged sale deeds, the plaintiff has rightly claimed the relief of declaration that the alleged sale deeds are not binding upon the plaintiff.

5. Having heard learned advocate for the petitioners and having considered the grounds raised in the writ petition and the annexures filed along with the same and on going through the impugned order, this Court has not found any illegality or perversity in the order passed by the Trial Court. The impugned order is a well reasoned order. No case is made out by the petitioners to warrant exercise of extraordinary writ jurisdiction to cause interference in the order impugned. The writ petition is, therefore, dismissed.

[NITIN B. SURYAWANSHI]
JUDGE