

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 4211 OF 2022

Yashwant Balu Patil

.. Petitioner

Versus

Housabai Krushna Patil and Ors.

.. Respondents

-
- Ms. Pallavi Karanjkar i/by Mr. Sandeep Koregave for Petitioner
 - None for Respondents
-

CORAM : MILIND N. JADHAV, J.

DATE : FEBRUARY 21, 2023.

P.C.:

1. Heard Ms. Karanjkar, learned Advocate for Petitioner.
2. On 07.02.2023, this Court passed the following order:

"1. Heard Mr. Koregave, learned Advocate for the Petitioner.

2. Mr. Koregave would submit that inadvertently the challenge to the order dated 28.02.2019 has not been adverted to in the prayer clause of the Writ Petition. He would submit that as a consequence thereof the impugned orders dated 17.01.2022 and 23.03.2021 came to be passed. Petitioner is the Plaintiff. He therefore seeks to carry out the necessary amendment to challenge the impugned order dated 28.02.2019 also. Leave to amend is granted. Amendment is permitted to be carried out forthwith. Copy of the amended Petition be served upon Respondents.

3. The controversy in the present Writ Petition is very narrow in as much as the Petitioner is not a signatory to the subject document of which declaration is sought for setting it aside. Hence, according to him Petitioner's case is governed by Section 6(iv)(j) of the Bombay Court Fees Act, 1959.

4. By virtue of the impugned order dated 28.02.2019, the said contention of the Petitioner has been rejected by the learned Trial Court.

5. An arguable case has been made out by Mr. Koregave.

6. Issue notice to Respondents. Humdast permitted.

7. In addition to service of notice through Court, Petitioner shall serve a copy of the Petition on Respondents and inform them about the next date of hearing by any permissible mode of service and file affidavit of service with tangible proof thereof before the returnable date.

8. Respondents are directed to file their Reply after the service of the amended Writ Petition.

9. In the meanwhile, ad-interim relief is granted in terms of prayer clause (c).

10. It is clarified that if Respondents do not appear on the adjourned date this Court shall pass appropriate order and dispose of the Writ Petition in accordance with law.

*11. List the Writ Petition on **21st February, 2023**. To be placed High on Board."*

3. Record indicates that contesting Respondent Nos. 1 to 8 and 20 are duly served. None appears for Respondents. This matter cannot be protracted any further in their absence.

4. By the present Writ Petition, exception is taken to the common order dated 28.02.2019 passed below Exhibits 35, 36 and 42. These Applications were filed by Respondent Nos.1 to 8 and 20 under Section 9A, Order VII Rule 11 of the Civil Procedure Code, 1908 (for short "**CPC**") read with Section 6 (iv) (ha) of the Bombay Court Fees Act, 1959 seeking rejection of the plaint, contending that the Trial Court did not have pecuniary jurisdiction to try the suit, as valuation of the suit property was in excess of its pecuniary jurisdiction. Petitioner - Plaintiff filed his reply below Exhibit 37 to oppose the Applications. Writ Petition takes further exception to the order dated

23.02.2021 passed below Exhibit 88. This Application below Exhibit 88 is filed by Respondent Nos.1 to 8 and 20 seeking rejection of plaint on the ground of non-compliance of the above order dated 28.02.2019. Petitioner – Plaintiff resisted the Application, *inter alia*, contending that he has complied with the above order and corrected the valuation of the suit plaint and deposited Court fee of Rs.26,215/- as directed by the learned Trial Court which was in respect of the Plaintiff's claim / share in the suit property. Admittedly, Plaintiff has claimed 1/8th share in the suit property as belonging to him. By order dated 23.03.2021, the learned Trial Court allowed the Application filed by Respondent Nos.1 to 8 and 20 below Exhibit 88 and directed Petitioner – Plaintiff to comply with the order dated 28.02.2019.

5. Petitioner – Plaintiff being aggrieved, filed review Application under Section 47 of the CPC below Exhibit 111 seeking review of the order dated 23.03.2021. Respondents resisted the said Application by filing their reply. Learned Trial Court rejected the review Application filed by Petitioner – Plaintiff vide order dated 17.01.2022.

6. Thus, challenge in the present Writ Petition is to the three orders, viz; orders dated 28.02.2019, 23.03.2021 and 17.01.2022.

7. Controversy is with respect to payment of Court fee by Plaintiff. Record shows that Plaintiff has paid proportionate Court fee to the extent of his share, i.e. 1/8th share.

8. The learned Trial Court has however held that though Plaintiff is entitled to 1/8th share, considering the challenge in the suit plaint which is for cancellation of the sale deed, for the purpose of paying ad-valorem Court fee, Plaintiff's share cannot be restricted to 1/8th only and he needs to pay Court fee for the entire valuation of the suit property. The aforesaid finding is returned by the learned Trial Court in paragraph Nos. 9 and 10 of the impugned order. However, it is seen that the said finding is contrary to settled principles of law.

9. Record clearly reveals that Petitioner - Plaintiff herein has sought cancellation of the sale deed to which the Plaintiff (Petitioner) is not a party nor a signatory. This is the most uncial fact.

10. In that view of the matter, for the purpose of payment of ad-valorem Court fee, provisions of Section 6(4)(j) would clearly apply as contended by Petitioner. That apart, record clearly shows that the Court fee has now been paid by the Petitioner – Plaintiff and the same is in excess of the Court fee that is required to be paid by him under the provisions of Section 6(4)(j).

11. Ms. Karanjkar has placed reliance on the following two decisions of this Court:-

- (i) ***Sushant Bapusaheb Nimbalkar & Anr. Vs. Prashant Bapusaheb Nimbalkar in C.R.A. No. 230 of 2022 passed on 09.12.2022***, and

(ii) *Shri Ganpat @ Ganpati Laxman Devne Vs. Smt. Kasturibai Shankar Devne & Ors. in Civil Writ Petition (S) No.8924 of 2021 passed on 30.08.2021.*

11.1. The facts of the present case are squarely covered by the aforesaid two decisions. It is seen that the Petitioner is a non executant of the sale deed of which cancellation is sought. In that view of the matter, Petitioner would be entitled to pay Court fee under the provision of Section 6(iv)(j) and not 6(iv)(h) or any other provision. In that view of the matter the impugned orders, *inter alia*, directing the Petitioner to pay Court fee as per ad-valorem value of the entire property cannot be sustained.

12. In view of the above, all three impugned orders are not sustainable and to that extent stand quashed and set aside.

13. It is clarified that the directions for rejection of the plaint on account of non compliance of the impugned order passed below Exhs.35, 36 and 42 under Order VI Rule 11(b) of CPC stand set aside.

14. Writ Petition is allowed in terms of prayer clause (b).

15. Writ Petition is disposed.

[MILIND N. JADHAV, J.]