

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.2462 OF 2023

Vilas Vishnupant Jadhav
and another

.....Petitioners

Versus

Surekha Shankar Jadhav
and others

.... Respondents

Mr. Vijay D. Patil, Advocate i/b. Kalpesh U. Patil, for the
Petitioners.

Mr. Aniket Malu, Advocate a/w. Akshay Petkar i/b. Amey
Deshpande, for Respondent Nos.1 to 6.

CORAM : SARANG V. KOTWAL, J.

DATE : 15th MARCH, 2023

P.C. :

1. Heard Shri Vijay Patil, learned counsel for the
Petitioners and Shri Aniket Malu, learned counsel for
Respondent Nos.1 to 6.

2. By consent of both the learned counsel for the
Petitioners and the contesting Respondent Nos.1 to 6, the
Petition is taken up for final decision at the admission stage.

3. The Petitioners are the original Plaintiffs and the
Respondents are the original Defendants. The suit was filed

before the Civil Judge, Senior Division, Pune being Special Civil Suit No.967/2022 for declaration that the gift deed dated 27.11.2017 is illegal; and for partition and declaration in respect of the suit property.

4. The original Defendant Nos.1 to 6 i.e. the Respondent Nos.1 to 6 herein preferred an application for rejection of plaint under O-7 R-11 of the Code of Civil Procedure. The learned trial Judge partly allowed that application vide order dated 17.1.2023 passed below Exhibit-34 in the said suit. Vide that order the Plaintiffs i.e. the Petitioners herein were directed to correct the valuation of the suit and to pay sufficient court fees within 30 days from the date of the order. The reasons given by the learned Judge were in paragraph-7.

5. The Defendant Nos.1 to 6 had contended that the Plaintiffs had paid the court fees on the valuation of the property in the year 2017, but, it should have been paid on the valuation as per the prevailing rate of the property at the time of institution of the suit. The suit was instituted on

30.4.2022. According to those Defendants, the valuation of the property mentioned in the gift deed was Rs.5 Crores and, therefore, the Plaintiffs should have paid the Court fees to the tune of Rs.3 Lakhs, however, they had paid Rs.1,35,000/- only.

6. The Plaintiffs had opposed this contention.

7. The learned Judge referred to Section 6(iv)(ha) of the Maharashtra Court Fees Act, 1959 (for short, 'the said Act'). The learned Judge observed that the Plaintiffs had taken the value of the property which was prevailing in the year 2017 and the suit was filed in the year 2022. The learned Judge observed that the Plaintiffs were expected to file the document showing the current valuation of the immovable property as was prevailing in the year 2022 i.e. at the time of institution of the suit. Having observed thus, the learned Judge further observed that having regard to the specific provisions of O-7 R-11 (c) of C.P.C., direction was given to the Plaintiffs to correct the valuation of the suit and to pay the deficit court fees. On this reasoning, the

impugned order was passed.

8. Learned counsel for the Petitioners submitted that the issue is no more *res integra*. This Court had already taken a view that the value of the property which was mentioned in the instrument is the relevant factor and not the valuation which was prevailing at the time of institution of the suit. He relied on the ratio of the judgment passed by a Single Judge Bench of this Court in the case of **Laxman Dinkar Dagade & Ors. Vs. Bhagwan Bhausaheb Thorat & Ors.**¹. The relevant observations are in paragraphs-5 & 6, which read thus :

- “5. The provisions of Section 6(iv)(ha) of the said Act provide that any suits for declaration that any sale, or contract for sale or termination of contract for sale, of any moveable or immovable property is void, then the court fee payable shall be one half of the ad valorem fee leviable on the value of the property. Significantly, this provision makes reference to 'value of the property' and not 'market value of the property'.
6. The impugned order, however takes the view that market value of the property and not the value of the property as prevalent in the years 1971 and 1979 can be taken into account for the purposes of determining valuation and payment of court fees. This approach,

1 2015 SCC OnLine Bom 5353

is contrary to the law laid down by this Court, in the cases of Abdul Gaffar Abdul Samad v. Niranjana Kumar Ramnath Prasad Dwivedi & Ors. 2005 (3) Bom.C.r. 879 and Sau. Asha Sopan Maithane vs. Ramkrushna Punjaji Wanare & Ors., 2010 (5) AIR Bom R. 326 wherein this Court has held that the words employed in Section 6 (iv)(ha) of the said Act are 'value of the property' and not 'market value of the property'. Accordingly, value of the property for which the sale deed was executed would be relevant and not its market value in the matter of determination of court fees.”

Learned Counsel for the Petitioners, therefore, submitted that based on this ratio, the reasoning of the learned trial Judge is not correct and the order needs to be set aside. Learned counsel for the Respondent Nos.1 to 6 tried to support the impugned order. However, he could not controvert that the judgment in **Laxman Dagade's** case (supra) covers the issue.

9. I have considered these submissions. It is obvious that the issue in question is covered by the judgment in **Laxman Dagade's** case (supra). It is clearly laid down in paragraph-6 of that judgment that the value of the property

is important consideration for Section 6(iv)(ha) of the said Act and not the market value of the property. Accordingly the value of the property for which the deed was executed would be relevant and not its market value. In that case, the concerned document was a 'sale deed'. In the present case, it is a 'gift-deed'. The ratio of that judgment squarely applies to the facts in this case. Therefore, the impugned order is required to be set aside. Hence, the following order :

:: O R D E R ::

- i. The petition is allowed.
- ii. The order dated 17.1.2023 passed by the 14th Jt. Civil Judge, Senior Division, Pune below Exhibit-34 in Special Civil Suit No.967/2022 is set aside and consequently the application below Exhibit-34 filed under O-7 R-11 of C.P.C. by the Defendant Nos.1 to 6 stands rejected in its entirety.
- iii. Writ Petition is disposed of accordingly.

(SARANG V. KOTWAL, J.)