



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO.100/2019

Smt. Kusum Wd/o Tulsiram Wasudeo Guhe,
aged about 65 Yrs., Occ. Nil,
R/o Plot No.28, Shivshakti Nagar,
Ground Floor, Dattawadi, Nagpur.

... Petitioner

- Versus -

1. Shri Kishore S/o Tulsiram Ghue,
aged about Major, Occ. Business,
R/o Plot No.28, Shivshakti Nagar,
Ground Floor, Dattawadi, Nagpur.
2. Mrs. Surekha Hemraj Umredkar @ Surekha
Tulsiram Ghue,
aged about Major, Occ. Business,
R/o Akash Institute Hostel
Electronic Zone, Hingana Road,
Nagpur.
3. Shri Rupesh S/o Tulsiram Ghue,
aged about Major, Occ. Business,
R/o Plot No.28, Shivshakti Nagar,
Ground Floor, Dattawadi, Nagpur.
4. Mrs. Nisha Prabhakar Thakare,
aged about Major, Occ. Business,
R/o Galli No.9, Near Tukdoji Putala
Bajrang Nagar, Manewada Road,
Nagpur.

... Respondents

Mrs. Smita Pushkaraj Deshpande, Counsel for the Petitioner.

Mr. Bhupesh Wamanrao Patil, Counsel for Respondent No.1.

CORAM: MRS. VRUSHALI V. JOSHI, JJ.

DATE OF RESERVING THE JUDGMENT : 20.10.2023

DATE OF PRONOUNCING THE JUDGMENT : 2.11.2023

JUDGMENT

Heard. **Rule.** Rule made returnable forthwith. Heard finally by consent of learned counsel for the parties.

2. The petitioner has challenged the order passed by the learned trial Court refusing to exempt the petitioner / original plaintiff from paying the court fees. The petitioner who is old aged lady and mother of respondents / original defendants has filed the civil suit bearing R.C.S. No.693/2018 for declaration that the gift deed dated 21.5.2014 is not binding on the petitioner. While filing the said civil suit, she has mentioned at the last paragraph that being a poor lady and indigent person she has not paid the required court fees. The respondents / original defendants have filed the application

under Order VII Rule 11(b) and Section 9A of the Code of Civil Procedure stating therein that the petitioner has challenged the gift deed and has stated that she has contributed for purchasing the suit property and declare her as owner of property. Gift deed was executed fraudulently by stating her husband that the will is being executed and gift deed is executed and the petitioner is also the witness on the said gift deed. The defendants in the suit have stated that as she has challenged the said gift deed, the valuation of suit property is necessary and she has to pay the required court fees on suit property. The suit property is not properly valued and she has not paid the required court fees hence they have prayed to reject the plaint.

3. The plaintiff has resisted the application by filing reply at Exh.22. The plaintiff has denied the contentions and stated that she was not aware about the execution of the alleged gift deed. The defendant No.1 played fraud on the plaintiff and obtained her signature as attesting witness on the gift deed without giving

knowledge of the document and, therefore, the plaintiff prayed for declaration that said gift deed is not binding on her. In her reply she has stated that as per Section 6(iv)(j) of the Maharashtra Court Fees Act and the Government Notification dated 1.10.1994 and 23.3.2000 being a lady litigant she is exempted from court fees. The trial Court has considered this issue of exemption of court fees and observed that as the plaintiff has challenged the gift deed and claimed her right of ownership through her deceased husband who had already executed the gift deed, the plaintiff is duty-bound to value the suit to the tune of Rs.17,30,000/- which is the subject matter of the gift deed. The trial Court has rejected the contention of plaintiff stating that Section 6(iv)(j) of the Maharashtra Court Fees Act will not be applicable as this is not a matrimonial dispute. Plaintiff is seeking the declaration of gift deed which was executed by her husband in her presence. The dispute between the plaintiff and defendant is a property dispute which has not arisen from matrimonial dispute and, therefore, it has rejected the claim of the plaintiff and directed the plaintiff to properly value the suit property

so far as the relief of declaration in respect of registered gift deed and ownership of the entire property can be entertained and directed the plaintiff to pay the required court fees. Being aggrieved by the said order, the plaintiff has filed this suit.

4. While arguing the matter plaintiff has stated that as per the notification dated 23.3.2000 the property dispute shall mean property dispute arising and concerning the matrimonial matters. She has relied on the judgment of our High Court in the case of Manoramabai Joshi V/s. Arun Joshi and another reported in **2008(1) Mh.L.J. 905** in which it is held that the said dispute is between the son and the mother and considering the purpose of beneficial Legislation in the form of notification issued by the Government for benefit of woman about the property dispute and view taken by the Courts in different cases the dispute is pertaining to the property consisting of matrimonial dispute and, therefore, the petitioner is entitled for the exemption.

5. The respondent has relied on the judgment in the case of Kailash Satyanarayan Khandal V/s. Vijaykumar Satyanarayan Khandal and others reported in 2018(6) ALL MR 574 stating that the Court has discussed about the notification and the law and has come to the conclusion that in said case the disputes are not the matrimonial disputes and hence relying on the said judgment prayed to dismiss the petition.

6. The petitioner has challenged the order passed on the application filed under Order VII Rule 11 for rejection of the plaint as the suit is not properly valued and court fee is not paid. The petitioner has claimed exemption as per Section 6(iv)(j) of the Court Fees Act. She has specifically stated that as she is a poor lady and indigent person she has not paid the court fees. In reply to the application under Order VII Rule 11 (b) she has taken said plea.

7. The petitioner has filed the said suit for declaration for ownership and as the gift deed is fraudulently executed the said gift

deed is not binding on her. The defendants are the sons and daughters of petitioner. She has claimed that her husband was misled by her sons and daughters and got executed the gift deed. She was also not aware about it. Now her children are not maintaining her after her husband's death, she is owner of suit property after the death of her husband and has filed suit for declaration. Exemption from payment of court fee is rejected by the trial Court stating that it is not a "matrimonial dispute" and being property dispute she cannot be exempted. The issue raised before this Court is whether the 'property dispute' in this case comes under the purview of clarification given in Government Resolution dated 23.3.2000.

8. The petitioner has relied on the judgment in the case of *Manoramabai Joshi* (supra) wherein this Court has observed in paragraphs 9 and 10 as follows:-

"9. The facts in the case of Smt. Ramila Rajnikant Kilachand V/s. Mr. Harsha Rajnikant Kilachand and Ors. 2004(5) Mh.L.J. 506=2004(4) ALL MR 106 were almost similar, except that in the said case, besides the woman, her sons were also claiming certain shares in the property. The learned Single Judge of this Court referred to the authorities rendered by this Court in

different matters and came to the conclusion that there are different facts of the dispute and if the women can relate the property dispute to the dispute pertaining to matrimonial matters, she can take exemption from payment of Court fees and that too to the extent of her own share and not for the shares claimed by her sons or other family members. The learned Single Judge made following observations in para 20 of the said Judgment:

“Suffice for me to state that in the present case, the status of plaintiff is that of a wife/widow. She is claiming a declaration of her share in the property of her deceased husband on the basis that she has a right therein upon his demise. She has averred that, that right is being denied to her not just by other members of her deceased husband's family but even her own son. She claims her individual right in the property and prays for ascertainment of the share therein and upon such ascertainment to grant the same and for that purpose, even, partition the assets and properties, by metes and bounds. It is, therefore, a clear case where on account of matrimonial relationship, the plaintiff asserts her right in the properties of her deceased husband which devolves either in terms of intestate succession or by testamentary disposition being executrix and beneficiary of the estate. This is a case of a woman beneficiary coming as a litigant to the Court seeking her share in the estate of her deceased husband, denied to her by the members of the husband's family. In my view, such matters is covered by the explanation and could safely be termed as a property dispute arising out of matrimonial relationship. To the extent of the plaintiff's share in the property of her deceased husband she is therefore, entitled to seek exemption from payment of Court fees. It is

clarified that after adjudication, if ultimately, it is found that the plaintiff is not sole beneficiary but there are others then to the extent of her sons share, plaintiff or the sons will have to pay Court fees. Suit for partition is not a suit where parties are strictly adversaries. It is a suit where all parties are plaintiffs and defendants. In such litigation it will not be proper to hold that the woman litigant would be entitled for exemption in payment of Court fees, not just qua her share as beneficiary but even that of her sons. As held by this Court (Patil, J.), exemption will be restricted to the plaintiff and her share in the estate of deceased.

From the above observations in Smt. Ramila Rajnikant Kilachand V/s. Mr. Harsha Rajnikant Kilachand and Ors. it is clear that the plaintiff had claimed share for herself, as well as, her sons by succession to her husband's property. This Court held that a woman litigant is entitled to the benefit of exemption under the notification dated 1st October, 1994 and it was clarified that if finally it is found that she is not sole beneficiary but there are others also, then, to the extent of her sons shares, the plaintiff or her son would have to pay Court fees.

10. In the present case, the plaintiff/petitioner, who is a woman, claims exclusive title over the property for herself. It appears that the dispute is between herself and her elder son. The defendant's other children are not the parties to the suit. Taking into consideration the facts of the present case, purpose of the beneficial social scheme in the form of notification issued by the Government for benefit of woman about the property dispute and the view taken by this Court in different cases, it must be held that the present dispute is pertaining to the property consisting the matrimonial dispute and therefore, the petitioner is entitled to the

exemption. The learned trial Court committed errors in directing her to pay Court fees to the extent of 5/6th share in the property.”

9. The issue in this case is about matrimonial relationship. The petitioner has filed the suit regarding property dispute. She has claimed declaration of ownership of property after death of her husband and to declare the gift deed executed by her husband and to which she is attesting witness is not binding on her. She has claimed property as owner and legal heir of her deceased husband which does not pertain to commercial transaction or purchase of sale. The Division Bench in Girish Kanaiyalal Munshi V/s. Sudha Girish Munshi and others reported in **AIR2008 Bom 136** has considered the observations in Ramila Rajnikant Kilachand V/s. Harsh R. Kilachand and others reported in **2004 (6) Bom. C.R. 75** that the “words “matrimonial matters” arising in the Government Notification dated 23.3.2000 which mean only cases of dispute between the parties to marriage cannot be replaced by the wider term matrimonial relationship. It is observed by the Division Bench that it pertains to difference between ‘matrimonial matters’ and ‘matrimonial relationship’ which two terms are not synonyms and

hence the term 'matrimonial matters' arising in the notification of 23.3.2000 cannot be replaced by 'matrimonial relationship' so as to bring a petition filed by a widow for probate with "property dispute arising out of concerning matrimonial matters" and should be given a plain and simple meaning i.e. a dispute arising out of a marriage between the parties and, therefore, exclude the testamentary petition which is not a matter between two parties to marriage."

10. Though the petitioner has relied on the judgment of *Manoramabai Joshi* (supra) the Division Bench has clarified the situation after considering the judgment of *Smt. Ramila Rajnikant Kilachand* (supra). Considering the law laid down in *Girish Kanaiyalal Munshi* (supra) it is clear that there is difference between matrimonial dispute and matrimonial relationship. The Division Bench has observed 'matrimonial dispute' arising out of marriage between the parties. In the case in hand it is not 'matrimonial dispute' it is out of 'matrimonial relation' which cannot come under 'property dispute'. The petitioner cannot be exempted from the

payment of court fees. Hence the petition stands dismissed with no orders as to costs.

(MRS. VRUSHALI V. JOSHI, J.)