

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

WRIT PETITION NO.2703 OF 2018

Smt. Pushpa W/o Rambhau Sakharkar and others .Vs. Prashant Charandas Bagde and
others

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Shri M. Ateeque, Advocate for the petitioners.

Shri N.B. Kalwaghe, Advocate for the respondent Nos.1 to 4.

CORAM : ANIL S. KILOR, J.

DATED : 18/01/2023

1. Heard.

2. In this writ petition, the challenge is raised to the order below Exh.11 dated 28.11.2017 passed by the 3rd Joint Civil Judge, Junior Division, Bhandara, allowing the application of the defendant filed under Section 9-A of the Code of Civil Procedure read with Section 8 of the Maharashtra Court Fees Act and thereby directing the plaintiffs to make correct valuation of suit within two months from the date of the order.

3. It is the case of the petitioner that the prayer in the plaint is only to the effect that the sale-deed dated 27.08.2015 is not binding on him which falls under Clause 6(iv)(j) of the Maharashtra Court Fees Act and thus, the

valuation was properly made and the stamp duty was accordingly paid.

4. Whereas, the learned counsel for the respondents/defendants have pointed out that the plaintiffs are seeking declaration that the sale-deed is void ab initio and therefore, section 6(iv)(ha) of the Maharashtra Court Fees Act, will apply to the present case as held by the learned trial Court. In respect of his contentions, he has placed reliance on the judgment of the co-ordinate Bench of this Court in the case of *Laxmidas N. madhvani Vs. Madhvani Private Ltd*¹.

5. He has also placed reliance on the judgment of the co-ordinate Bench of this Court in the case of *Sanjay Ramchandra Shendkar and others Vs. Narayan Antu Zendge and others*².

6. In the light of rival contentions, I have perused the plaint and the impugned order.

7. From the prayer clause, more particularly, prayer clause (a) it can be seen that the plaintiffs have sought declaration that the sale-deed dated 27.08.2015 is null and void ab initio as defendants have not honoured the

1 1986(88) BomLR 308

2 2022(4)Mh.L.J.

mentioned cheque in the sale-deed, therefore, sale-deed is not binding upon, to the extent of plaintiffs shares.

8. Thus, from the prayer clause (a), I have no hesitation to hold that the suit is for declaration that the sale deed is void ab initio.

9. At this stage, it would be appropriate to refer to Sections 6(iv)(ha) and 6(iv)(j) of the Maharashtra Court Fees Act, which reads thus:

“6(iv)(ha) for avoidance of sale, contract for sale, etc.

In suits for declaration that any sale, or contract for sale or termination of contract for sale, of any moveable or immovable property is void - [one-half] of ad valorem fee leviable on the value of the property;

6(iv)(j) for other declarations

In suits where declaration is sought, with or without injunction or other consequential relief and the subject-matter in dispute is not susceptible of monetary evaluation and which are not otherwise provided for by this Act [ad valorem fee payable, as if the amount or value of the subject matter was [one thousand rupees;]

In all suits under clauses (a) to (i) the plaintiff shall state the amount at which the values the relief sought, with the reasons for the valuation;”

10. This Court in the case of *Laxmidas N. Madhvani* (Supra), has observed thus :

“14. A suggestion was made on behalf of the plaintiffs that even then the value of the subject-matter of the suit would be less than Rs. 50,000. The argument was that under Clause (ha) the Court fee which is payable is one-fourth of the ad valorem fee leviable on the value of the property. Even if it is held that in the present case the value of the property is Rs. 1,02,000, one-fourth of this would be Rs. 25,500. Therefore it is suggested that the value of the subject-matter of the suit also should be held to be Rs. 25,500, which is clearly within the competence of the City Civil Court. The argument, in my opinion, is highly fallacious. What is provided in Clause (ha) is the amount of the Court fee that is to be paid; not the valuation of the subject-matter of the suit for the purpose of jurisdiction. Correctly understood, Clause (ha) says that for the purpose of calculating Court fee in a suit for a declaration that any sale of immovable or moveable property is void, one must first calculate the value of the property and thereafter calculate the ad valorem fee that is payable 'on that value of the property and actual payment should be made to the extent of one-fourth of the ad valorem fee so calculated. The value of the subject-matter of the suit for the purpose of jurisdiction has to be determined totally independently. In my opinion, therefore, merely because under Clause (ha) one-fourth of ad valorem fee is payable on the value of the property it does not mean that valuation of the property for the purpose of jurisdiction should be one-fourth of the total value.”

11. This Court in the case of *Sanjay Ramchandra Shendkar* (Supra) has observed thus :

“19. Section 6 set out the amount of fees payable under the Act in the Suit and it's computation and a Suit seeking a declaration that any sale or contract for sale or termination of contract for sale of any movable or immovable property being void, is set out in section 6(iv)(ha), whereas a Suit where the declaration is sought with or without injunction, or other consequential reliefs, and if the subject matter in dispute is not susceptible of monetary evaluation and which are not otherwise provided under the Act, such Suit is governed by clause (j).

When the plaint of the present Suit is perused, the plaintiffs though claim that they are not executants of the Power of Attorney nor they are parties to the sale deeds executed by defendant no.18 in favour of defendant nos.1 to 17 and 19 to 72 on the basis of the fraudulent Power of Attorney, the relief sought is a declaration that the said documents is void, illegal and not binding on the plaintiffs.

The nature of relief sought is therefore, of avoidance of the sale, for which a specific provision is available under Section 6(iv)(ha) in the Maharashtra Court Fees Act, and where a Suit seek a declaration that sale of any movable or immovable property is void and a party want to avoid the same, clause (ha) is attracted. For other declarations, the Suit should be governed by clause (j). A declaration to the effect that the sale deed is void and it is not binding upon the plaintiff, thus must squarely fall within the purport of clause (ha). Merely because the plaintiffs are not party, either to the Power of Attorney since they claim that it is forged one, nor are they parties to the sale deeds, the situation would not turn around, since ultimately they intend to avoid the sale deed executed by defendant no.18 in favour of the

other defendants and the declaration is sought to the effect that the sale deeds are not binding upon the plaintiffs, since they are void. The contingency being specifically stipulated by clause (ha) of Section 6(iv), the impugned order which levy the Court fee on the basis of the said entry do not warrant any interference.”

12. From the above referred observations of this Court, and considering the prayer in the plaint, I have no hesitation to hold that Section 6(iv)(ha) of the Maharashtra Court Fees Act, would apply in the present case. Hence, the learned trial Court has not committed any error in allowing the application Exh.11. Accordingly, the petition is **dismissed**.

JUDGE