



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CIVIL REVISION APPLICATION NO. 96 OF 2024

1. Kusum w/o. Baburao Choure,
2. Dattu s/o. Shivaji Kukar,
3. Sarika w/o. Dattu Kukar

... PETITIONERS

(Ori. Defendant Nos.1,3 & 4)

VERSUS

1. Limbabai w/o. Suresh Kamble,
2. Dagdubai Limbajirao Nemane,
3. Sushilabai @ Rukminibai Sheshrao
Pandhavle,
4. Biru s/o. Tuljiram Choure

... RESPONDENTS

(Resp. Nos.1 to 3 - Ori. Plaintiffs &
Resp. No.4 – Ori. Defendant No.2)

...
Mr. A.R. Tapse – Advocate for Petitioners

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CORAM : SANDIPKUMAR C. MORE, J.

DATE : 9th August, 2024

ORDER :

1. The petitioners who are original defendant Nos.1, 3 and 4 in Regular Civil Suit No. 34 of 2013 has challenged the order below Exhibit-159 dated 05.03.2024 passed in the aforesaid suit by the Jt. Civil Judge Junior Division, Ambajogai, Dist. Beed (*hereinafter referred to as “the learned Trial Court”*). Under the impugned order

the learned Trial Court has rejected the application (Exhibit-159) filed by the petitioners for rejection of the plaint under Order VII Rule 11 of the Civil Procedure Code.

2. The petitioners/defendants have claimed that, since the plaintiffs who are present respondent Nos.1 to 3 challenged the sale-deed (Exhibit-148) executed by defendant No.1 in favour of defendant No.3 wherein consideration amount is shown as Rs.10,40,000/-, the plaintiffs should have valued the suit for the aforesaid amount and thereafter the suit would not lie before the learned Trial Judge as the valuation exceeds the pecuniary jurisdiction.

3. Learned Counsel for the petitioners submits that, the plaintiffs should have valued the suit as per Section 6 (iv) (ha) of the Maharashtra Court Fees Act by considering the purchase price of Rs.10,40,000/- mentioned in the said sale-deed. He also relied on the following judgments :

(i) This Court in the case of **Omprakash Champalal Ostwal and Others Vs. Ratnakanta Motilal Lalwani and Others** in *Writ Petition No. 5341 of 2021*.

(ii) This Court in the case of **Chandrika Chunilal Shah Vs. Orbit Finances Pvt. Ltd. and Others** in *Appeal from Order No. 1271 of 2010*.

4. Heard learned Counsel for the petitioners on admission and also perused the impugned order .

5. It is significant to note that, the plaintiffs have valued the suit as per Section 6 (iv) (j) of the Maharashtra Court Fees Act and on going through the impugned order it appears that, the learned Trial Court has upheld the said valuation by observing that, the plaintiffs were not party to the sale-deed (Exhibit-148) and by relying upon the judgments of this Court as well as Hon'ble Apex Court, held that there was no necessity of valuing the suit on the basis of consideration price as mentioned in sale-deed (Exhibit-148).

6. Admittedly, this Court in the case of **Chandrika Chunilal Shah** (*supra*) has observed that, when two or more reliefs are claimed in the suit then the suit has to be valued separately for those reliefs for the purpose of Court fees. There cannot be dispute about such observation. Further, this Court in the case of **Omprakash Champalal Ostwal** (*supra*) has held the Trial Court's order of valuing the suit on consideration amount mentioned in the agreements of sale under challenged, a proper one. However, in the said judgment, the judgment of Hon'ble Apex Court in the case

of **Suhrid Sing @ Sardool Sing Vs. Randhir Sing and Others** reported in *AIR 2010 (SC) 2807* was not considered. In this case the Hon'ble Apex Court has discussed the difference between a prayer for cancellation and declaration in regard of deed of transfer or conveyance.

7. The Hon'ble Apex Court has clearly observed that, if the executant of deed wants to annul the same, he has to seek cancellation of the deed and in that case Court fees would be calculated as per Section 6 (iv) (ha) of the Maharashtra Court Fees Act i.e. on the basis of consideration price mentioned in the deed. However, when a person who is non executant of the deed seeks its annulment, he has to seek a declaration that the deed is invalid or non-est and in that case the valuation of suit must be according to Section 6 (iv) (j) of the Maharashtra Court Fees Act. This judgment of Hon'ble Apex Court is followed by this Court in various other cases including the cases of **Abdul Sattar Gulabbhai Bagwan Vs. Vaibhav Laxamangiri Gosavi** reported in *2012 (1) Bom. CR 1* and **Dilip Khushalchand Jain Vs. Hardik Deepakbhai Ramani and Others** reported in *2023 (2) ABR 672* which are mentioned in the impugned order. Thus, the judgment of this Court in the case of **Omprakash Champalal Ostwal** (*supra*) cannot

be made applicable in the instant case, in view of the aforesaid observation of the Hon'ble Apex Court because here also the plaintiffs are not party to the sale-deed (Exhibit-148) of which they have sought annulment. Therefore, the valuation made by the plaintiffs as per Section 6 (iv) (j) of the Maharashtra Court Fees Act cannot be faulted with. In view of the same, no interference is required in the impugned order and therefore, present Civil Revision Application stands dismissed at admission stage.

8. The Civil Revision Application is accordingly disposed of.

[SANDIPKUMAR C. MORE]
JUDGE