

Amberkar

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 923 OF 2024

Navnath Vasant Aswale

.. Petitioner

Versus

Surubai Maruti Boke & Ors.

.. Respondents

-
- Mr. Nitesh V. Bhutekar for Petitioner
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CORAM : MILIND N. JADHAV, J.

DATE : JANUARY 23, 2024

P. C.:

1. Heard Mr. Bhutekar, learned Advocate for Petitioner.
2. Perused the impugned order dated 16.10.2023. By the reliefs in the Suit, Plaintiffs seek cancellation of the gift deed on the basis of the title of the Plaintiffs to the suit property. The other relief is for permanent injunction. However, the impugned order is passed in an Application filed by Defendants under Order VII, Rule 11 of the CPC. Petitioner who is the Plaintiff is aggrieved by the directions contained in clauses 2 and 3 thereof which directed the Plaintiff to pay court fees under Section 6(iv)(ha). Plaintiff being aggrieved by the said direction would submit that in view of the reliefs prayed for, the Plaintiff is liable to pay court fees under Section 6(iv)(j) of the Maharashtra Court Fees Act, 1959.
3. It is seen that the impugned order is passed on an Application filed by the Defendants. Though the Application stands rejected and

the suit would have to be proceeded with, for proceeding of the suit, the impugned directions have been passed calling upon the Plaintiff to pay the court fees.

4. The aforesaid position is clearly covered by the decision of this Court in the case of **Vasant Kisan Idhol Vs. Manjurabai Kisanrao Idhol**¹.

5. In view of the above, no purpose would be served for issuing notice in such a case. The present Writ Petition deserves to be allowed and in view of the specific prayers sought for by the Plaintiff in the suit, it is beyond doubt that the Plaintiff would be liable to pay the court fees under Section 6(iv)(j) and not under Section 6(iv)(ha) as determined by the learned Trial Court. In that view of the matter, clause Nos. 2 and 3 of the impugned order dated 16.10.2023 stand quashed and set aside. Also equally consequential directions for payment of court fees to the Plaintiff in paragraph No. 5 of the impugned order are also quashed and set aside. Rest of the order dated 16.10.2023 is sustained.

6. In view of the above, the learned Trial Court shall take cognizance of this order and proceed with the Suit in accordance with law after the Plaintiff deposits the court fees as directed hereinabove.

7. With the above direction, Writ Petition is allowed and disposed.

[MILIND N. JADHAV, J.]

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1 2017(3) Mh.L.J. 520