



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

WRIT PETITION NO. 1028 OF 2019

(Gautam s/o Rajaram Bhagat and others Vs. Sumit s/o. Rameshrao Shelke and others)

*Office Notes, Office Memorandum of Coram,
appearances, Court's orders of direction,
and the Registrar's orders.*

Court's or Judge's order

Mr. N.B. Kalwaghe, Advocate for Petitioners.
Mr. M.L. Vairagade, Advocate for respondent Nos. 1 and 2.
Mr. S.S. More, Advocate for respondent Nos. 8 to 8(c).

CORAM : ABHAY J. MANTRI, J.

DATE : SEPTEMBER 12, 2024.

Heard, the learned Counsel for the petitioners and respondent Nos. 1 and 2. The learned Counsel for respondent Nos. 3 to 8 was present in the first half, but in the second half, none appeared for them. Perused the record.

2. By this petition, the petitioners/original plaintiffs are challenging the order dated 11.10.2018, passed below Exhibit 1, in Regular Civil Suit No. 200598/2018, thereby directing the petitioners to pay half ad valorem court fees on the claim pursuant to the provisions of Section 6(iv)(ha) of the Maharashtra Court Fees Act, 1959.

3. The learned Counsel for the petitioners vehemently contended that the petitioners filed the suit for declaration that the sale deed dated 02.02.2015 is not binding on them and also sought relief of partition and separate possession of the suit Belkhede, P.A.

property and therefore, submitted that the court fees is leviable as per Section 6 Rule (iv)(j) of the Bombay Court Fees Act. However, the learned Trial Court has erred in holding that as per section 6(iv)(ha) of the Court Fees Act, the petitioners are liable to pay half of the ad-valorem Court fees on the claim of the declaration of the relief on which the Court has considered the valuation as Rs. 75 lakhs.

4. To substantiate his contentions, he relied upon the judgment in the case of Common Piru Caudhari vs. Berubai Chendu Redhiwale and Others (2017)5 Mh.L.J.388 and urged for allowing the petition.

5. On confrontation, the learned Counsel for respondent Nos. 1 and 2 fairly submitted that the issue in dispute is covered by the said judgment; however, he opposed the petition and prayed for dismissal.

6. I have appreciated the submissions and gone through the impugned order, record, and citations relied upon.

7. At the outset, it appears that the petitioners are not claiming the relief of declaration that the sale deed dated 02.02.2015 is void but only claiming that the sale deed is not binding upon them. Thus, in my view, the court fees are leviable as per Section 6 Rule (iv)(j) and not as per Section 6(iv)(ha) of

the Bombay Court Fees Act. *Moreover*, the issue raised in the present petition is squarely covered by the judgment in the case of ***Common Piru Caudhari*** (supra). Therefore, I found a substance in the contention of learned Counsel in that regard.

6. In view of the discussion supra, the petition is allowed in terms of prayer clauses (b) and (c).

(ABHAY J. MANTRI, J.)