



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 4265 OF 2016

1. Onkar S/o. Ganesh Malegawe,
Age: 35 years, Occ: Agri.,
2. Panchakshari S/o Ganesh Malegawe,
Age: 28 years, Occu: Agri.,
3. Somnath S/o Ganesh Malegawe,
Age: 26 years, Occu: Agri.,
All are R/o. Shankhteerth,
Tq. Mudkhed, Dist. Nanded.

....Petitioners
[Original Plaintiffs]

VERSUS

1. Saraswati W/o Ganesh Melgave,
Age: 58 years, Occu: Agri.,
2. Ganesh W/o Maroti Melgave,
Age: 58 years, Occu: Agri.,
3. Narayan W/o Gangaram Khansole,
Age: 58 years, Occu: Agri.,
4. Sau. Indubai W/o Baba Pachling,
Age: 50 years, Occu: Household,
All are R/o Shankhteerth,
Tq. Mudkhed, Dist. Nanded

.....Respondents
[Original Defendants]

Appearance :

Mr. Dhananjay M. Shinde, Advocate for the Petitioners

Mr. Ashish B. Shinde, Advocate for Respondent No.4

CORAM : NEERAJ P. DHOTE, J.

Reserved On : 14th August, 2025

Pronounced On : 4th September, 2025

JUDGMENT :

1. This Writ Petition under Articles 226 and 227 of the Constitution of India is directed against the order dated 27/01/2016, passed by the learned 2nd Joint Civil Judge, Senior Division, Nanded (hereinafter referred to as 'the learned Trial Court') below Exhibit – 13, in Special Civil Suit No.62/2015, directing the Petitioners to correct the valuation and pay the requisite court fees in the suit within one (01) month, failing which the consequences under Order VII Rule 11 (b) and (c) of the Code of Civil Procedure, 1908 (hereinafter referred to as 'C.P.C.') shall follow.

2. The brief facts giving rise to the present Writ Petition are as under :

(a) The Petitioners are the Original Plaintiffs and the Respondents are the Original Defendants in the above-referred suit. The said suit is for Partition and Separate Possession of the suit land. The Respondent No.4 preferred an Application under Order VII Rule 11 (b) and (c) of C.P.C. contending that, as the suit was for a declaration that, the Sale Deed executed by Defendant No.3 in favour of Defendant No.4 is null and void, for partition and possession, the Plaintiffs were required to pay the court fees as per the provisions of Section 6 (iv)(ha) of the Maharashtra Court Fees Act, 1959 (hereinafter referred to as 'the Act of 1959'), which comes to Rs.26,147/- (Rupees Twenty Six Thousand One Hundred Forty Seven). The Plaintiffs did not file their Say / Reply to the said Application. After hearing both the sides and considering the provisions of the Act of 1959, the learned Trial Court passed the impugned order.

3. Heard both the sides. Perused the papers on record.

4. It is submitted by the learned Advocate for the Petitioners that, the Petitioners are not the parties or executants to the Sale Deed, which was executed by the Defendants between them and, therefore, they are not required to pay the court fees as is contended by Defendant No.4 in the Application. He further submitted that, the said provision of Section 6 (iv)(ha) of the Act of 1959 is applicable to the party, who executed the Sale Deed. The Petitioners had not sought avoidance of the Sale Deed and, therefore, the said provision of the Act of 1959 will not be applicable in the suit. He further submitted that, considering the nature of the suit, the court fees payable would be as per the provisions of Section 6 (iv) (j) and / or as per Section 6 (v) of the Act of 1959. He submitted that, the Writ Petition be allowed. In support of his submissions, he relied on the Judgment in **Suhrid Singh @ Sardool Singh Vs. Randhir Singh & Ors.; 2010 DGLS (Soft.) 176 – 2010 AIR (SC) 2807.**

5. It is submitted by learned Advocate for Respondent No.4 that, considering the nature of reliefs sought in the Plaint, the learned Trial Court has rightly passed the impugned order, in accordance with the provisions of the Act of 1959. He submitted that, the Judgment cited by the learned Advocate for the Petitioners was based on the provisions of the Court Fees Act, 1870, by which, the court fees in the State of Punjab was governed. He further submitted that, in the case at hand, the provisions of the Act of 1959 were applicable and this Court, in **Prism Reality Vs. Govind Yashwnt Khalade;**

MANU/MH/0090/2015, has considered the above-referred Judgment cited on behalf of the Petitioners and observed, in a similar fact situation, that, the said provision of Section 6 (iv)(ha) of the Act of 1959 was applicable where the relief sought was avoidance of a Sale or Contract. He submitted that, the Writ Petition be dismissed.

6. In response, the learned Advocate for the Petitioners submitted that, the said Judgment of this Court was on different facts and in the case at hand, the possession was asked to the extent of the Petitioners and, therefore, the said provision of the Act of 1959 will not be applicable.

7. In *Suhrid Singh @ Sardool Singh Vs. Randhir Singh & Ors. (Supra)*, the civil suit was for declaration that, the Sale Deed executed by the Petitioner's father in favour of the first Defendant was null and void and the Plaintiff was entitled to the joint possession and the Will with the codicil made in favour of the third Defendant and gift deed made in favour of the fourth Defendant were void and non-est. The limited question before the Hon'ble Apex Court for consideration was what court fee was payable in regard to the prayer for declaration that, the Sale Deeds were void and not binding on the co-parcenary, and the consequential relief of joint possession and injunction. From the observations in the said Judgment, it is clear that, the court fees in the State of Punjab was governed by the Court Fees Act of 1870. As there was no prayer for cancellation of the Sale Deeds and the prayer was for declaration that, the Deeds were not binding on the co-parcenary and for joint possession, the court fee was computed under Section 7 (iv)(c) of the Court Fees Act, 1870.

8. This Court, in Prism Reality Vs. Govind Yashwnt Khalade (*Supra*), considered the said Judgment in Suhrid Singh @ Sardool Singh Vs. Randhir Singh & Ors. (*Supra*). It would be profitable to reproduce the relevant observations made in Paragraph Nos.8, 9 and 10 of the said Judgment :

“8. Having heard the learned counsel for the parties and considering the rival contentions, the issue which arises for consideration in the instant case is Section 6 (iv)(j) and Section 6 (iv)(ha). The said two provisions are therefore, reproduced herein for the sake of ready reference.

Section 6(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 movable or immovable property is void [one-half] of ad valorem fee leviable on the value of the property;

(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 he values the relief sought, with the reasons for the valuation; "

9. In so far as Section 6(iv)(j) is concerned, the same applies to suits which have been filed for declaration other than those sought in the earlier sections with or without injunctions 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. In so far as Section 6(iv)(ha) is concerned, the same applies to suits for declaration that any sale, contract for sale or termination of contract for sale, of any moveable or immoveable property is void. The said provision therefore, encompasses within itself suits that have been filed for avoidance of sale, contract for sale, etc.. In the light of the reliefs which have been sought in the instant suit vide prayer clauses (a) and (b), the suit as filed is undoubtedly for declaration in respect of the Development Agreement and the Sale Deed and by seeking the reliefs sought, what the Plaintiffs in fact are seeking to do is the avoidance of the said sale or contract. Hence, in so far as the said reliefs are sought, the provisions of Section 6(iv)(ha) can be said to be applicable. The fact that according to the Plaintiffs the said documents are sham and bogus cannot be considered for computing or determining the valuation of the suit and the payment of the Court Fees in respect thereof. The Sale Deed which has been executed by the Defendants No.2 and 3 in favour of the Defendants No.4 and 5 is undisputedly a registered document and clause (4) thereof the consideration has been mentioned and also the fact that the vendors have accepted that payment of the said BGP. 8 of 11 WPST-24111-14.doc 20.01.2015 consideration has been made to them so also is the Development Agreement. Hence, merely because the Plaintiffs questioned the Sale Deed as being sham and bogus, the Plaintiffs cannot be exempted from the rigours of Section 6(iv)(ha) of the Court Fees Act in the matter of valuation of the suit and payment of the Court Fees.

10. In so far as the judgment of the Apex Court in *Suhrid Singh @ Sardool Singh* (Supra) is concerned, the Apex Court was concerned with a case under the *Punjab Court Fees Act* and especially *Section 7(iv)(c)* thereof which was in respect of suits seeking various declarations. Since the Plaintiff in the said suit was not the executant of the document and was seeking a declaration that the Apex Court observed that Court Fees would have to be paid in terms of Clause (c) of the said *Section 7* and not in terms of the consideration mentioned in the document. It would have to be borne in mind that the Apex Court was not concerned with a provision akin to *Section 6(iv)(ha)* of the *Bombay Court Fees Act*, as probably such a provision does not find a place in the *Punjab Court Fees Act*. However, as indicated above, in so far as the *Bombay Court Fees Act* is concerned, there is a specific provision governing the suits, where a declaration is sought in respect of a sale or contract for sale or termination of contract is void. Hence, the statutory regime prevailing in the *Punjab Court Fees Act* being different than the statutory regime prevailing in the *Bombay Court Fees Act*, the judgment of the Apex Court in *Suhrid Singh @ Sardool Singh*'s case (Supra) would have no application and would not aid the Plaintiffs in the instant case to contend that they are liable to pay Court Fees as per *Section 6(iv)(j)*. The learned counsel appearing for the Respondents also sought to place reliance on the judgment of the Learned Single Judge of the Madras High Court reported in 2006 DGLS (AHS) 16555 in the matter of *Siddha Construction (P) Ltd. Vs. M. Shanmugan and Ors.* The said judgment was rendered in the context of the Madras Court Fees and Suits Valuation Act, 1965, wherein also it appears that there is no provision akin to *Section 6(iv)(ha)*. In so far as the present case is concerned, it is squarely covered by the judgment of this Court in *Abdulsattar Gulabbhai Bagwan*'s case (supra), where the Sale Deed allegedly executed by committing a fraud was sought to be challenged and a declaration sought. This Court in the facts of the said case observed that it would be *Section 6(iv)(ha)* that would be applicable and that the Plaintiffs though not the executants or parties to the said documents would have to pay Court Fees accordingly as they in fact are seeking the avoidance of the sale or contract.

9. In the case at hand, the learned Trial Court has considered both the above-referred Judgments and came to the conclusion that, in the State of Maharashtra, the Court Fees of 1870 was not applicable and, therefore, the ratio in *Suhrid Singh @ Sardool Singh Vs. Randhir Singh & Ors.* (Supra) was not applicable to the facts of the case. It is further observed that, the Plaintiffs prayed for avoidance of the Sale Deeds and, therefore, Clause (ha) of Sub-Section (iv) of Section 6 of the Act of 1959 would be applicable and partly allowed the Application.

10. As the provisions of Section 6 (iv) (ha) of the Act of 1959 are already included in the above-referred Paragraphs reproduced from the Judgment in Prism Reality Vs. Govind Yashwnt Khalade (*Supra*), there is no need to burden this Judgment by quoting the same again. The cause title of the said civil suit preferred by the Petitioners reads as under :

“Claim : For Partition of the land more particularized as under

Nature : Agricultural Land

Block no. : 258

Area : 0 H. 43 R.

Situated at : Shankhteerth, Tq. Mukhed, Dist. Nanded.

Being Bounded as under

East : Land of Siddeshwar Bagak

West : Land of Kashinath Kirkan

South : Land of Kailas Kshirsagar

North : Land of Prabhakar Kirkan

(Hereinafter referred to be the suit land)

WITH

Recovery of possession of the suit land from the defendant no.3 and 4 to the extent of the share of the plaintiffs.

WITH

Declaration that the registered sale deed bearing no.116/2015 executed by the defendant no.1 in favour of the defendant no.3 is illegal, null, void and not binding upon the plaintiffs.

WITH

With further declaration that the registered sale deed bearing no.673/2015 executed by the defendant no.3 in favour of defendant no.4 is without authority, illegal, null and void and not binding upon the plaintiffs.”

11. As is clear from the above, the suit was for avoidance of the said Sale Deed executed between the Defendants. This Court, in Prism Reality Vs. Govind Yashwnt Khalade (*Supra*), considered the similar issue, and after considering the provisions of the Act of 1959 and the prayers made in the suit therein, which were more or less similar to the prayers made in the suit filed by the Petitioners, there is no reason for deviating from the ratio laid down

therein. The meaning of word '*Avoidance*' is simple and clear and the relief sought by the Petitioners in the suit is for the avoidance of the Sale Deeds executed by the Defendants. The learned Trial Court has rightly considered the factual and legal aspects of the matter and passed the impugned order. Had the Suit of the Petitioners not been for avoidance of the Sale Deeds, and had it been for declaration as contemplated under Section 6 (iv)(j) of the Act of 1959, the contention made by the learned Advocate for the Petitioners would have been acceptable. However, it is not so in the case at hand. As the issue involved in the Petition is squarely covered by the above-referred Judgment of this Court in Prism Reality Vs. Govind Yashwnt Khalade (*Supra*), I find no merit in the Writ Petition and the same is liable to be dismissed. Hence, the following order :-

ORDER

. Writ Petition is dismissed.

[NEERAJ P. DHOTE, J.]

Sameer...