



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

956 WRIT PETITION NO. 11949 OF 2022

Shri. Ajinkya Nitin Kabra,
Age: 19 years, Occ. Student,
R/o. Nitin Pradipji Mantri,
Dwarka Bunglow, Mandai Road,
In front of Patrakar Bhavan, Beed, Tq. & Dist. Beed

...PETITIONER
(Orig. Plaintiff)

Versus

1. Sau Manisha Babulal Mantri,
Age: 50 years, Occ. Household,
R/o C/o Babulal Mantri,
At Post Badnapur, Tq. Badnapur, Dist. Jalna.

2. Dr. Sau. Mamta Mahendra Kabra,
Age: 59 years, Occ. Doctor,
R/o. 10 A, Shivaji Chowk,
Infront of District Court,
Jilha Peth, Jalgaon, Dist. Jalgaon

3. Dr. Shri. Prashant Subhash Somani,
Age. 39 years, Occ. Doctor,

4. Dr. Sau. Rachana Prashant Somani,
Age: 35 years, Occ. Doctor,

Both Respondents No.3 & 4
R/o. Sarvamangal Hospital,
13-B, Vivekanand Nagar,
Swatantra Chowk, Jalgaon-425 001.

5. Sau. Neha Prashant Mandawkar,
Age. 30 years, Occ. Service,
R/o. Plot No.202, Kumarwastu Housing Society,
Range Hills Road, Pune 411 030.

6. Ku. Nidhi Nitin Kabra,
Age. 25 years, Occ. Student,
R/o. C/o Sau. Neha Prashant Mandawkar,

Plot No.202, Kumarwastu Housing Society,
Range Hills Road, Pune 411 030.

...Respondents
(Orig. Defendants)

...
Mr. Siddharha B. Yawalkar, Advocate for the Petitioner
Mr. B. A. Darak, Advocate for R.no. 3 & 4
...

CORAM : ROHIT W. JOSHI, J.
DATE : 21st AUGUST, 2025

ORAL JUDGMENT:

1. The petitioner is plaintiff in Special Civil Suit No. 04.2021 which is pending on the file of learned 2nd Joint Civil Judge, Junior Division, Jalgaon.
2. The suit is filed for partition and separate possession. The plaintiff has also sought declaration that Gift Deed dated 14.10.2009 executed by defendant nos.1 & 5 in favour of defendant no.2 and sale deed dated 22.09.2020 executed by defendant no.2 in favour of defendant nos.3 and 4 are not binding on him and his share in the said properties. The plaintiff has valued the suit as a suit for partition and separate possession and has paid court fees accordingly. For the relief of declaration that the sale deed and gift deed are not binding on him the plaintiff has valued the suit 1,000/- each and has paid court fess of Rs. 200/- for each of the prayers. Defendant Nos.3 and 4 filed an application vide Exhibit-22 *inter alia* contending that the plaintiff must pay appropriate Court Fee as per Section 6 (ha) of the Maharashtra

Court Fees Act with respect to the declaration sought in the prayer clause that the aforesaid sale deed and gift deed are not bind on him and his share in the said properties. The said application came to be allowed by the learned Trial Court vide order dated 30.08.2022. This order is challenged by the plaintiff in the present petition.

3. Admittedly, the plaintiff is not a party to the sale deed or the gift deed with respect to which prayer for declaration is made. The learned Advocate for the plaintiff places reliance on the following judgments:-

- i. *Suhrid Singh @ Sardool Singh V/s. Randhir Singh*¹
- ii. *Shri Jayant Bhimsen Joshi V/s. Shri Raghavendra Bhimsen Joshi*²
- iii. *Niraj Narendra Walle V/s. Vijaya N. Walle*³
- iv. *Common Piru Caudhari V/s. Berubai Chednu Redhiwale*⁴
- v. *Diamond Developer V/s. Krishna Sitaram*⁵
- vi. *Sunita Yashwant Chaikwad v/s Bakati C. Deshpande*⁶
- vii. *Dilip Khushalchand Jain V/s. Hardik D. Ramani*⁷
- viii. *Dilip Khushalchand Jain V/s. Hardik D. Ramani*⁸

4. It will be necessary to state that the issue as to whether a person who is not a party to a transaction seeks a declaration that the transaction is not binding on him is required to pay court fees on the value of the transaction or court fee in accordance with Section 6(4j) of the Maharashtra Court Fees Act was referred to larger bench in the

1 2010 DGKS (SC) 214
 2 2015 Scc online bom. 5462
 3 2017 DGLS (Bom.) 790
 4 2017 (5) Mh.L.J 388
 5 2017 Scc online bom. 9801
 6 2019 Scc online Bom. 3494
 7 AIR Online 2020 Bom. 2213
 8 AIR Online 2020 Bom. 991

matter of ***Dilip Khushalchand Jain and Ors. Vs. Hardik Deepakbhai Ramani & Ors.*** reported in ***AIR Online 2020 Bom. 2213***. The reference is answered in the matter of ***Dilip Khushalchand Jain and Ors. Vs. Hardik Deepakbhai Ramani & Ors.*** reported in ***AIR online 2022 Bom. 991***. It is held in paragraph 24 of the said judgment the Division Bench while answering the reference has held as under:-

“24. From the above discussion in our judgment, Section 6(iv)(ha) would be applicable only to the Plaintiff who is a party to the sale deed seeking declaration of avoidance of sale deed. It would not be applicable to the Plaintiffs who are not party to the instrument seeking declaration of avoidance of sale deed. Such Plaintiff would be governed by Section 6(iv)(j) as it is not susceptible to monetary evaluation.”

5. It is thus clear that the plaintiff was not required to value the suit as per Section 6 (4) (ha) of the Act and the suit was required to be valued only in accordance with Section 6(4)(j). The learned Advocate for the respondent places reliance on Single Bench judgment of this Court in the matter of ***Sunil Vs. Sadashiv and Ors.*** reported in ***Manu/MH/3222/2022***. The said judgment supports the contention of the respondents. However, this judgment does not taken into consideration, the Division Bench judgement delivered on a reference made on the point. The Single Bench judgment has followed judgement of the Hon'ble Supreme Court in the matter of ***Suhrid Singh @ Sardool***

Singh Vs. Randhir Singh reported in AIR 2000 SC 2807. The said judgment is considered by the Division Bench while answering the reference and dealing with the said judgment it is held that the said judgment which is delivered taking into consideration provisions of the Punjab Court Fees Act will not be applicable to Suits filed in the State of Maharashtra which are governed by the provisions of the Maharashtra Court Fees Act.

6. In view of the above the impugned order is not sustainable and deserved to be quashed.

7. Writ Petition is **allowed** by quashing and setting aside order dated 30.08.2022 passed by the learned IInd Joint Civil Judge, Senior Division, Jalgaon on an application at Exhibit-22 in Special Civil Suit No.4 of 2021 and also rejecting the said application at Exhibit-22 filed in the said suit.

[ROHIT W. JOSHI J.]