


<p>MHKO050043612019</p> 	<p><u>Order below Exh. 38 in RCS No.331/2019</u> <u>Sarada Export Coporation Prop.</u> <u>Badrinarayan Bankatlal Sarada Vs.</u> <u>Ramesh Rajaram Dhamne and 5 other</u> <u>CNR No.MHKO050043612019</u></p>
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The instant application is filed under Order VII Rule 11 (b) (c) of the Civil Procedure Code read with the Bombay Court Fees Act by the defendant no.4 and 5.

2. **Shorn of unnecessary details brief facts leading to the filing of instant application are as follows :-**

The plaintiff has filed the instant suit seeking relief of declaration of ownership regarding the suit property along with a consequential relief of possession and removal of encroachment. The plaintiff has also sought relief of injunction along with relief of declaration that sale deeds executed in favour of defendant no.1, 2, 4 & 5 being sham and bogus, they may be declared as null and void and not binding upon the plaintiff..

3. The relief sought by the plaintiff regarding declaration that the sale deeds executed in favour of defendant no.1, 2, 4 & 5 as null and void and not binding upon plaintiff is assailed by the defendant no.4 and 5 in the instant application.

4. According to defendant no.4 & 5, it was necessary for the plaintiff to properly value the suit as per the Bombay Court Fees Act as the plaintiff has sought declaration that the sale deed executed in

favour of defendants be declared null and void. According to the defendant nos. 4 & 5, the plaintiff ought to have valued and computed Court Fees as per section 6(iv)(ha) of the Bombay Court Fees Act. However, the plaintiff has not done so. According to the defendant nos.4 & 5, the valuation done by the plaintiff under section 6(v) of the Bombay Court Fees Act, is illegal, incorrect and therefore, as per provision of Order VII Rule 11(b)(c), plaint is liable to be rejected.

5. According to the defendant nos.4 & 5, if valuation is done in accordance to section 6(iv)(ha) of the Bombay Court Fees Act, then this Court will loose its pecuniary jurisdiction and therefore question of valuation needs to be decided at first. In sum and substance, the defendant nos.4 and 5 pray for rejection of plaint under Order VII Rule 11 on account of incorrect and insufficient valuation as required by the Bombay Court Fees Act.

6. After filing of the instant application, the plaintiff has filed reply below Exh.39. It is the contention of the plaintiff that the suit is properly valued. The suit property is an agricultural land and as per the pleading of the plaintiff, the plaintiff is only seeking relief that sale-deeds executed in favour of defendants are not binding on his ownership in the suit property and therefore according to the plaintiff valuation is done as per section 6(v)(j) of Bombay Court Fees Act and for the said formal declaration, Court Fees Stamp of Rs.1,000/- is annexed along with the plaint. Thus, it is submitted by the plaintiff that suit is properly and sufficiently valued and hence,

plaint cannot be rejected under Order VII Rule 11 of Civil Procedure Code

7. I have heard learned counsel Mr. Jamadar appearing for defendant no.4 & 5 as well as Mr. Khanjire appearing for the plaintiff. Learned counsel Mr. Jamadar submitted in consonance with his application. He submitted that once the plaintiff has sought relief of declaration that sale deeds are null and void and not binding, then the suit has to be valued under section 6(iv)(ha) of the Bombay Court Fees Act. He submits that the plaint discloses that Court fees is calculated as per section 6(v) of the Bombay Court Fees Act where as valuation ought to have been done under section 6(iv)(ha) of Bombay Court Fees Act. To bolster his stand he has placed his reliance upon following judgments :-

A] Prism Reality, Pune Vs. Govind Yashwant Khalade and Ors. reported in 2015(2) Mh.L.J.472.

B] Shri. Abdulsattar Gulabbhai Bagwan Vs. Shri. Vaibhav Lxmangiri Gosawi & Ors. reported in 2012(2) ALL MR 310.

C] Manoj Jain and Ors. Vs. Pramod Jain and Ors. reported in AIR 2017 Madya Pradesh 39.

D] Gajanan Anandrao Dake & Anr Vs. Vishwanath Ahilaji Thembekar and Anr. repoted in AIR 1978 Bombay 1.

E] Sau. Asha Sopan Maithane Vs. Ramkrushna Punjaji Wanare repoted in Writ Petition No.4870 of 2009 before Hon'ble Bombay Hight Colurt, Nagpur Bench.

F] Smt. Veena Challa Vs. A. Pandu Ranga Reddy &Anr. repoted in

AIR 2012 Andhra Pradesh 47.

8. Per contra leaned counsel Mr. Khanjire vehemently opposed the instant application on the ground that the suit is property valued. He submits that the plaintiff is seeking relief of declaration only to the extent that the sale deeds are not binding upon the plaintiff. Thus, as the plaintiff has not sought relief of cancellation of the entire sale deed, Court Fees need not be calculated as per section 6(iv)(ha) of Bombay Court Fees Act. Learned counsel Mr. Khanjire has placed his reliance on following judgments :-

A] Suhrid Singh @ Sardool Singh Vs. Randhir Singh & Ors. reported in AIR 2010 SC 2807

B]Om Plastic Industries, Dhule and Ors Vs. Bombay State Finance Corporation Mumbai and Ors. reported in 2001(1) Mh.L.J. 560.

C] Art Commercias Advertising Pvt Ltd; Bombay and Ors. Vs. Vicco Laboratories, Bombay and Anr. reported in 1990 Mh.L.J. 463.

9. Perused the record. Before proceeding ahead, it would be just and proper to reproduce Order VII Rule 11 of the Civil Procedure Code. Order VII Rule 11 of the e Civil Procedure Code reads as follows :-

11. Rejection of plaint - “ The plaint shall be rejected in the following cases :- ”

(a) where it does not disclose a cause of action;

(b) where the relief claimed is under-valued, and the plaintiff, on

being required by the Court to so correct the valuation within a time to be fixed by the Court, fails to do so;

(c) where the relief claimed is properly valued, but the plaint is written upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp-paper within a time to be fixed by the Court, fails to do so;

(d) where the suit appears from the statement in the plaint to be barred by any law;

[Provided that the time fixed by the Court for the correction of the valuation or supplying of the requisite stamp-papers shall not be extended unless the Court, for reasons to be recorded, is satisfied that the plaintiff was prevented by any cause of an exceptional nature from correcting the valuation or supplying the requisite stamp-papers, as the case may be, within the time fixed by the Court and that refusal to extend such time would cause grave injustice to the plaintiff.]

10. Now reverting to the hub of the matter, the real bone of contention between the parties inter se dispute is whether the relief sought by the plaintiff seeking declaration of cancellation of sale deed as not binding upon him falls under the ambit of section 6(iv) (ha) of Bombay Court Fees Act or under section 6(v) of Bombay Court Fees Act as computed by the plaintiff. For the said purpose it would be just and proper to look into the relevant prayer clause of the plaint.

11. Perusal of the prayer clause in paragraph 13(f) of the

plaint reads as follows :-

" प्रतिवादी नं.१ व २ यांनी प्रतिवादी नं.३ यांचे कडुन क.ग.नं.८५८ मधील हे.०.११.३५ आर व प्रतिवादी नं.४ व ५ यांनी प्रतिवादी नं.६ यांचे कडुन क.ग.न. ८५८ मधील हे.०.१२.५० आर इतक्या क्षेत्राचे तथाकथीत करुन घेतलेले खरेदीपत्र हे वादीचे दावा मिळकतीमधील मालकी हक्कावर कोणत्याही प्रकारे बंधनकारक नसल्याचे ठरवून / हक्कज्ञापन होवून मिळावे. "

12. Thus, a bare perusal of the prayer clause shows that the plaintiff has sought relief that the alleged sale deed executed in favour of defendants be declared null and void and not binding upon rights of the plaintiff. Thus, though the plaintiff has come up with the case that sale deed is not binding upon him however, under the ambit of such declaration the plaintiff is actually seeking cancellation of the sale deeds. The relief sought by the plaintiff stating that the sale deed are not binding upon him cannot be granted unless the sale deed are canceled by declaring them null and void. Thus, at the very instance it is seen that the plaintiff is seeking cancellation of sale deed though not worded in the same sense.

13. Learned counsel Mr. Khanjire has placed his reliance primarily upon judgment of *Suhrid Singh* cited *supra*. In which it is been held by the Hon'ble Supreme Court that " *When there is no provision of cancellation of sale deed and the prayer is merely declaration of the deeds not being binding upon the co-parceners, the court fee was computable under section 7(iv)(c) of the Punjab Court Fees Act .*"

14. In **Prism Reality Vs. Govind** cited *supra* the Hon'ble Bombay High Court has discussed in detail the judgment of Hon'ble Apex Court in case of **Suhrid Singh**.

Paragraph no. 10 of the said judgment reads as follows :-

*“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 BGP. 9 of 11 WPST-24111-14.doc 20.01.2015 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. ”*

15. Thus, in view of Judgment of Hon'ble Bombay High Court in **Prism Reality Vs. Govind**, it is been specifically observed by the Hon'ble Bombay High Court that the facts in case of **Suhrid Singh**, the relevant act was Punjab Court Fees Act and specific provision as laid down in section 6(iv)(ha) of of Bombay Court Fees Act does not find a place in of Punjab Court Fees Act . The Hon'ble Court has further held that when sale deed allegedly executed is sought to be challenged and accordingly a declaration is sought then provision of section 6(iv)(ha) of of Bombay Court Fees Act would be applicable even in the case where plaintiff are not the executants or parties to

the said sale deed. The Hon'ble Bombay High Court has also further held that when plaintiffs have questioned the sale deed as being sham and bogus, the plaintiff cannot be exempted from the rigours of section 6(iv)(ha) of Bombay Court Fees Act.

16. Thus, in my view, the ruling cited *supra* i.e. in case of **Prism Reality Vs. Govind**, is squarely applicable to the case at hand. The plaintiff in the instant suit has sought declaration of the sale deed being null and void and thus, even if the plaintiff is not a party to the said sale deed, the plaintiff is liable to calculate the court fees in view of provision of section 6(iv)(ha) of Bombay Court Fees Act. Admittedly the plaintiff has not valued the plaint accordingly and thus, the plaint is directly hit by provisions of Order VII Rule 11(b) (c) of Civil Procedure Code. In view of the same, I proceed to pass following order :-

ORDER

1. The application stands allowed
2. The plaintiff is directed to properly compute court fees in terms of section 6(iv)(ha) of Bombay Court Fees Act.
3. The plaintiff is directed to comply with the order within period of two months from today.
4. Needless to mention here that necessary order under Order VII Rule 11 will be passed by this Court upon failure of Plaintiff to supply requisite court fees within two months from today and upon failure of plaintiff to comply with the instant order.
5. In case, if after annexing necessary additional court fees, it

is found that the suit would be barred before this Court for want of pecuniary jurisdiction, necessary steps shall be taken in relation to the same after compliance of this order.

6. Parties to take note.

Date- 30/08/2022
Ichalkaranji

(Shri. S. A. Ingley)
2nd Jt. Civil Judge Junior Division,
Ichalkaranji

-- C E R T I F I C A T E --

I affirm that the contents of this P.D.F. file Judgment/ Orders are same, word to word, as per the original Judgment / Order.

Name of stenographer	R. D. Jadhav
Name of Court	Shri. S. A. Ingley 2 nd Jt. Civil Judge Jr. Div., Ichalkarnaji.
Date of Dictation	30/08/2022
Order signed by P.O. on	30/08/2022
Order uploaded on	30/08/2022