

R.C.S.NO. 42/2015
Pandurang Vs. Delfi Properties pvt. ltd.

ORDER BELOW EXH. 39

1] Defendant nos. 1 and 2 have raised objection that the suit is under valued. It is their specific contention that the plaintiff ought to have valued the claim of declaration in respect of avoidance of sale on the basis of consideration amount of Rs. 4 lacs as shown in Sale-deed dated 19/06/2014 as per section 6 (iv)(ha) of the Maharashtra Court Fees Act (for short, “the Act”).

2] The plaintiff registered the application by his Reply (Exh. 40) denying the contentions raised in the application. As per his case, since he is not party to the Sale-deeds, he is not required to value and pay the court fees as per section 6 (iv)(ha) of the Act for seeking formal declaration that the disputed sale deed as void ab-initio. He has also claimed the relief of ownership in respect of the suit property with perpetual injunction. Whatever the valuation is made is proper and as per law. He lastly prayed for rejection of the application.

3] The points arise for my determination along with my findings thereon are as under:-

<u>Sr.No</u>	<u>Points</u>	<u>Findings</u>
1	Whether the suit is under valued?	Yes.
2	What order ?	The application is allowed.

REASONS

AS TO ISSUE NO. 1.

4] Heard the both sides. The main objection of defendant nos. 1 to 2 is that since the plaintiff has claimed the declaration of sale deed dated 19/06/2014 as void, he is required to make valuation of the said claim for the purpose of jurisdiction and court fees on the basis of consideration amount of Rs. 4 lacs as shown in the Sale-deed following the mandate of section 6 (iv)(ha) of the Act. In support of the said contention, he has relied upon the case M/s. Nandanwan Co-Operative Society Ltd. V/s. Nandanwan Cooperative Housing Society Ltd. & Ors., in Appeal from Order no. 978/2011 passed by the Hon'ble Bombay High Court on 19/12/2011, (www.Lawyersclubindia.com – website). It has been held that when specific relief pertaining to avoidance agreement is sought although the plaintiff is not party to the agreement, the said claim is required to be valued as per section 6(iv)(ha) of the Act.

5] As against the above, the plaintiff has submitted that since he is not party to the Sale-deed, he is not required to make

valuation under the aforesaid provision. In support of the said contention, he has relied upon **Suhrid Singh @ Sardool Singh V/s. Randhir Singh & Ors. Civil Appeal nos. 2811-2013 of 2010 [arising out of SLP © Nos. 6745-47/2009] decided by Hon'ble Supreme Court of India on 29th March 2010.** It has been held that if the person is not party to the instrument and he has just claimed avoidance of transaction as void ab-initio, he is not required to pay court fee as required for seeking relief of cancellation of instrument.

6] If the facts and circumstances in the aforesaid case law relied by the plaintiff are taken into consideration, it would disclose that the plaintiffs, therein, had sought their main and substantive relief of declaration in respect of existence of ancestral property and their joint possession with further declaration of Will-deed as null and void and then lastly the declaration of Sale-deed as void was sought. In the case in hand, the plaintiff, herein, has challenged the disputed Sale-deed as void as his main and substantive relief claiming that such execution of Sale-deed is coming in the way of his valid ownership. No doubt, he has also sought the reliefs of declaration of ownership with perpetual injunction, but said relief are shown as his further or subsequent reliefs. Once the plaintiff has claimed avoidance of Sale-deed as his main and substantive relief, he is required to make valuation of the said claim as required under section 6(iv)(ha) of the which is a specific provisions inserted by the legislature in the tate of Maharashtra particularly in the year 1970. Therefore, the case-law relied by the plaintiff cannot be made applicable to the case in hand

for its different facts and circumstances as well as in existence of specific provision of avoidance of sale in the Maharashtra Court Fees Act in that regard.

7] In view of the above discussion, I find force in the submission of defendant that the plaintiff ought to have valued the claim of declaration of disputed sale deed as void on the basis of its consideration amount being it a main and substantive relief. Accordingly, the case-law **M/s. Nandanwan Co-Operative Society**, as relied by the defendant will have to be applied to the case in hand as well having regard to the ratio laid down thereunder. Despite, the plaintiff has plainly shown the valuation for the purpose of jurisdiction and court fees for each relief at Rs. 1,000/- and paid fixed court fees of Rs. 200/- each which is improper. Hence, I hold that the suit is under valued. Hence, I answer point no. 1 in the affirmative.

AS TO ISSUE NO. 2

8] As I held earlier, the suit is under valued, the plaintiff will have to be directed to make valuation of the for the claim of declaration of sale deed as void on the basis of consideration amount as shown in the Sale-deed dated 19/06/2014 being his main and substantive relief by allowing the present application. Hence, in answer to point no. 2, I pass the following order.

ORDER

- 1) The application (Exh.39) is allowed.
- 2) The plaintiff is directed to make valuation of for the claim of declaration of sale deed as void for the purpose of jurisdiction and court fees on the basis of consideration of Rs. 4 lacs as shown in Sale-deed dated 19/06/2014 and pay the requisite fees as per the provisions of section 6(iv)(ha) of the Maharashtra Court Fees Act.

Place : Pali
Date : 19-08-2017

Civil Judge Junior Division, Pali.
19-08-2017