

Order below Exh.46 in R.C.S.No.115/2012.

1 The defendants have filed this application for rejection of
plaint under O.7 R.11 of the Civil Procedure Code, 1908.

2 Ld. Adv.Karanjkar submitted that, the plaintiff No.2 Smt.Bai
Sambhaji Gavhane has filed this suit for declaration that, sale-deeds of
the suit properties 1-B,C,D are void and illegal and are not binding upon
her $\frac{1}{2}$ share and for possession of suit property 1-A. However, she has
not paid court fees on value of the suit properties 1-B,C,D in sale-deeds
dtd. 12/1/1994, 1/6/1999 and 16/1/2002. The total value of the said sale-
deeds comes Rs.2,67,000/-. She has been challenging the said sale-
deeds as illegal one. Therefore, she has to pay court fees on said value
to the extent of her share. According to him, during life-time of
husband, the plaintiff No.2 being wife was not co-parcener and was
entitled for maintenance only. She had no share in the suit property
during life-time of Sambhaji. If at final decision, Court declared the
sale-deeds as illegal one, in that event the plaintiff Nos.1 and 2 will get
equal share in $\frac{1}{2}$ share of Sambhaji. Thus according to him, at the best,
the plaintiff No.1 will be $\frac{3}{4}$ th share and the plaintiff No.2 will be $\frac{1}{4}$ th
share in suit properties. However, for avoiding the court fees of $\frac{1}{4}$ th
share of the plaintiff No.1, the plaintiff No.2 has claimed her $\frac{1}{2}$ share
and claimed exemption in payment of court fees. But, the plaintiff No.1
has to pay court fees on $\frac{3}{4}$ th share and the plaintiff No.2 has to pay
court fees on $\frac{1}{4}$ th share and the plaintiff No.2 has to pay court fees on
1/3rd share as per Sec.6(iv)(ha) of Bombay Court Fees Act.

3 Adv. Karanjkar further submitted that, the plaintiff No.2 has claimed exemption for payment of court fees on the basis of notifications of State of Maharashtra exempting woman litigants for payment of court fees dtd.1/10/1994 and 23/3/2000. According to him, the plaintiffs have filed suit for declaration challenging the sale-deeds as illegal and not binding. Therefore, they have to pay court fees as per Sec.6(iv)(ha) of Bombay Court Fees Act. The notification dtd.23/3/2000 of State of Maharashtra exempts woman litigants in respect of property disputes arising out of and concerning matrimonial matters. The dispute in this suit is not arising out of and concerning matrimonial matters as it is not between parties to a marriage. Therefore, the plaintiff No.2 is not entitled for an exemption for payment of court fees by virtue of notification dtd.23/3/2000. In support of it, he has relied upon ruling in case of Smt.Subai Mura Rabari wd/o. Mura Sura Rabari V/s. Paras Devraj Gundecha & Ors. 2011 (4) All MR-111.

4 On the other hand Ld.Adv. Kum.Gholap for the plaintiffs vehemently submitted that, the plaintiffs have not sought relief of cancellation of sale-deeds. The plaintiffs are not parties to the alleged sale-deeds. Therefore, sale-deeds are not binding upon the shares of the plaintiffs in the suit property. She submitted that, if the widow claimed her share in husband's property and challenged the illegal sale-deeds and sought declaration that, those sale-deeds are not binding, then the plaintiff No.2 being woman litigant is exempted from payment of court fees as per notification dtd.23/3/2000 as the said dispute is arising out of matrimonial matter. In this light, she has relied upon the case of

Ramila Rajnikant Kilachand V/s. Harsh Rajnikant Kilachand & others,
2004(6) Bom.C.R. 75.

5 In the diverse submissions of both learned counsels and after going through the pleadings in plaint, it appears that, plaintiff No.1 is son and plaintiff No.2 is widow of deceased Sambhaji Manohar Gavhane. The suit properties 1-A to 1-D are ancestral lands of the deceased Sambhaji. The plaintiffs and deceased Sambhaji had joint family. Therefore, the suit property is co-parcenary and joint family property. The plaintiffs have common share in the suit property. However, the deceased Sambhaji did not cohabit the plaintiff No.2. Therefore, she and her son i.e. plaintiff No.1 have been residing at her parental house since 1977. Thereafter, she had filed maintenance petition in the year 1989. But Sambhaji had not paid maintenance amount. Thus, Sambhaji had deserted her and son. However, the deceased Sambhaji executed three sale-deeds in favour of the defendant Nos.1 to 3 without legal necessity of joint family and for inadequate consideration. Therefore, they are illegal and not binding upon their shares. Thus, the plaintiffs have sought declaration in para 12(a) that the sale-deeds in respect of the suit properties 1-B,C,D are void and illegal and not binding upon the plaintiffs. In para 12(b), they have claimed relief of possession of suit property 1-A. In the alternate, they have claimed their 2/3rd share in the suit property 1-A if prayer in para 12(b) is not allowed.

6 As per pleadings in para 11 of the plaint, the plaintiffs have contended that, the value of three sale-deeds comes to Rs.2,67,000/-.

Out of it, the plaintiffs have half share. Therefore, half value of the sale-deeds comes to Rs.1,33,500/- and an amount of Rs.2,67,000/- is valued for jurisdiction purpose. The plaintiff No.1 has paid court fees on his half share on value of Rs.1,33,500/-. The plaintiff No.2, however, has claimed exemption of her half share for payment of court fees on value of Rs.1,33,500/- on the basis of notification of State of Maharashtra dtd.1/10/1994. Whereas the plaintiff No.1 has paid court fees of his half share for relief of possession by making valuation of 40 times on assessment of the suit property 1-A and plaintiff No.2 claimed exemption of court fees for her half share for relief of possession of suit property 1-A as per notification.

7 After going through the pleadings in plaint, arguments of Advocate for defendants, there finds substance that, the plaintiff No.1 being son and plaintiff No.2 being widow of deceased Sambhaji have claimed that, the suit properties 1-A to 1-D are the ancestral properties of deceased Sambhaji. Alleged three sale-deeds were executed by deceased Sambhaji on 12/1/1994, 1/6/1999 and 16/1/2002. It means during life-time of deceased Sambhaji, the plaintiff No.1 had only half share and the plaintiff No.2 had only right of maintenance only. For the moment even assuming that, the sale-deeds executed by deceased Sambhaji are illegal, then the half share of deceased Sambhaji will devolve upon the plaintiff Nos.1 and 2 in equal proportion. It means after demise of Sambhaji, plaintiff No.2 will get $\frac{1}{4}$ th share and plaintiff No.1 will get $\frac{3}{4}$ th share. This is not a question here for determination of shares of plaintiffs. But, whatever may be the share of the plaintiffs, but they have to value the suit correctly.

8 The plaintiff No.2 has claimed exemption for payment of court fees on the basis of notifications dtd.1/10/1994 and 23/3/2000. Therefore, we have to see whether she is entitled for exemption for payment of court fees in this suit.

9 In case of Ramila Rajnikant Kilachand V/s. Harsh Rajnikant Kilachand & others, (supra) the Hon'ble Bombay High Court held in para 20 of the judgment that,

" Suffice for me to state that in the present case, the status of plaintiff is that of a wife/widow. She is claiming a declaration of her share in the property of her deceased husband on the basis that she has a right therein upon his demise. She has averred that, that right is being denied to her not just by other members of her deceased husband's family but even her own son. She claims her individual right in the properties and prays for ascertainment of the share therein and upon such ascertainment to grant the same and for that purpose, even, partition the assets and properties, by metes and bounds. It is, therefore, a clear case where on account of matrimonial relationship, the plaintiff asserts her right in the properties of her deceased husband which devolves either in terms of intestate succession or by testamentary disposition being executrix and beneficiary of the estate. This is a case of a woman beneficiary coming as a litigant to the Court seeking her share in the estate of her deceased husband, denied to her by the members of the husband's family. In my view, such matter is covered by the explanation and could safely be termed as a property dispute arising out of matrimonial relationship. To the extent of plaintiff's share in the property of her deceased husband she is, therefore, entitled to seek exemption from payment of Court fees. "

10 On the other hand, the Adv. for defendant relied upon a

ruling in Smt.Subai Mura Rabari wd/o. Mura Sura Rabari V/s. Paras Devraj Gundecha & Ors. 2011 (4) All MR-111. Wherein the plaintiff being woman had sought declaration that, the consent terms/decree obtained by defendant Nos.1 and 2 and all agreements between the defendants interse be declared as null and void and not binding upon the plaintiff and same be set-aside. The Hon'ble High Court, Bombay, by relying upon a case of Girish K. Munshi (Deceased), 2008 All MR-306 held that, the plaintiff is not entitled for exemption from payment of court fees.

11 In case of Munshi (supra), decided by the Division Bench of the Hon'ble High Court, Bombay, has considered the case of Ramila (supra), in para-12 of the judgment and considering the notifications dtd.1/10/1994 and 23/3/2000 of State of Maharashtra, observed that,

" After hearing the learned Senior Counsel Dr.Tulzapurkar and the learned Advocate General and in light of the extensive arguments forwarded on behalf of the Petitioner and the State, the various judgments of this Court regarding the exemption from payment of court fees by women litigants and several of court fees by women litigants and several other relevant judgments of this Court and the Hon'ble Supreme Court, the following issues can be clearly outlined.

A) The intention of the Government behind issuing the 2nd Notification 23rd March, 2000.

a) The Notification dated 23/03/2000, which qualified property disputes, as disputes arising out of and concerning matrimonial matter, was issued as a consequence of various judgments of this Court wherein the term property disputes was given a wide interpretation.

b) The Notification dated 23/03/2000 is in the form of an amendment Notification. In view of this, it is pertinent

to note the reference made by Deshmukh J. in his judgment of 4/6/2007, to the judgment of the Privy Council in the case of D.R.Fraser & Co.Ltd. Vs. The Minister of National Revenue, AIR (36) 1949 (sic), wherein the Privy Council has observed that.. Where in amending act alters the language of the principal statute. The alteration must be taken to have been made deliberately.

c) The 2nd notification was issued with the intention of changing the then existing situation and if despite the amendment the situation continues to be the same, the amendment would be an exercise in futility.

d) Hence the intention of the Government behind issuing the 2nd Notification is amply clear from plain simple interpretation of the words of the Notification themselves, that the term property disputes would be restricted to only those concerning or arising out of matrimonial matters and would thence exclude petitions filed for probate of wills.

B) Interpreting it widely would go beyond the intent of the Government.

a) Notwithstanding the fact that the Notification exempting a certain class of women from payment of court fees is a beneficial piece of legislation, an extended meaning to the words Property disputes would tantamount to indulging in exercise of legislation in the garb of interpretation. A similar view was taken by Palkar J. in his judgment in the case of Smt.Ashabai w/o. Shivaji Shiral and Anr. Vs. The Executive Engineer, MSEB, 1999(2) Bom.C.R.194.

b) A petition for probate of a will is never a petition in relation to any dispute concerning any property but is in relation to the validity or otherwise of a Will. The judgment of the Supreme Court in the case of Delhi Development Authority Vs. Mrs.Vijaya Gurshaney and Anr. AIR 2003 SC 3669, which Deshmukh J. referred to in his judgment of 4/6/2007 clearly brings to light the aforementioned view, wherein it was held that a testamentary Courts is only concerned with finding out whether or not the testator executed the testamentary instrument of his free will and grant of probate or Letters, if Administration does not confer title to property. (Emphasis supplied)

d) As rightly contended by the Learned Advocate General, Mr.Ravi Kadam, on behalf of the state, testamentary cases do not arise out of matrimonial matter but rather arise out of "death".

C) Furthermore it is pertinent to differentiate between matrimonial matters and 'matrimonial relationship' as the two term are not synonymous and hence the term 'matrimonial matters' arising in the Notification of 23/3/2000 cannot be replaced by 'matrimonial relationship' so as to bring a petition filed by a widow for probate of her deceased husbands Will within the ambit of the Notification.

D) Lastly, the words 'property dispute arising out or concerning matrimonial matters' should be given their plain and simple meaning, that is, as dispute arising between parties to a marriage, (attention may be brought to the reference made by Deshmukh J. to the Family Courts Act 6 Sub-section 1 section 7, to elucidate the meaning of of the term 'matrimonial matters') and should therefore exclude testamentary petitions whertein not only is there an absence of a dispute, other than in cases when somebody filed a caveat, it is not a matter between two parties to a marriage.

12 After going through the above observations, particularly in "Clause-D" it makes clear that for exemption of court fees, there should be dispute arising between the parties to a marriage. In the circumstances, the ruling in case of Ramila Rajnikant Kilachand V/s. Harsh Rajnikant Kilachand & others, (supra) is now not helpful to the plaintiff No.2 in this suit, even though she being the widow of deceased Sambhaji has claimed her half share in the suit property in alternate. A substantive relief claimed by the plaintiffs is for declaration that, the sale-deeds executed by deceased Sambhaji in favour of defendants are not legal and binding upon them. In this suit, the dispute is not arising between the parties to a marriage. Therefore, as per observations in the

case of Girish K. Munshi (supra), the plaintiff No.2 is not entitled for exemption for payment of court fees as per notifications dtd.1/10/1994 and 23/3/2000.

13 Advocate for the plaintiffs submitted that, the plaintiffs have not sought relief for setting aside the sale-deeds, but they have prayed for declaring the sale-deeds as illegal and not binding upon the shares of the plaintiffs. Therefore, it is not necessary to pay court fees by the plaintiffs on the value of the sale-deeds. There finds no substance in this regard. The plaintiff No.1 has already valued the claim in para 12-A of the plaint to the extent of his half share and has given the court fees as per Sec.6(iv)(ha) of Bombay Court Fees Act for avoidance of sale-deeds. The plaintiff No.2 has now to pay court fees of her share. But she has not paid it by taking dis-advantage of notifications for women litigants. But she is not entitled for the exemption of payment of court fees as per the notifications. Even assuming that, she has $\frac{1}{2}$ share in the suit property, still she has to pay court fees upon her $\frac{1}{2}$ share on value of Rs.2,67,000/- as per Sec.6(iv)(ha) of the Bombay Court Fees Act. In this view of the matter, the following order is passed.

ORDER

The plaintiffs are directed to correct the valuation of the claim in the suit as per their shares and to pay court fees as per Sec.6(iv) (ha) of the Bombay Court Fees Act within seven(07) days, otherwise plaint shall be rejected as per O.VII, R.11 of Civil Procedure Code.

Date:-1/8/2014.

(R.V.Lokhande)
Civil Judge,S.D., Barshi.

