

R.C.S.No 59/2018

Manoj Petkar Vs. Prabhakar Petkar

CNR No. MHWR040015002018

ORDER BELOW EXH. 20

(Passed on 17/07/2019)

1. Defendant nos. 1 to 3 filed application under Order VII Rule 11 of C.P.C. for rejection of plaint. Defendants submitted that plaintiff suit is for permanent injunction and declaration of gift-deeds executed by defendant no.1 in favour of defendant nos. 2 and 3 as illegal and not binding upon the plaintiff. Market value of property in survey no.9/1 which is subject matter of first gift-deed was assessed at Rs.17,84,000/- and market value of gift-deed in respect of land in survey no.10/1 is Rs. 12,35,500/-.

2. In para no.17 of the plaint, plaintiff valued the suit for the purpose of court fees and jurisdiction for the claim of declaration at Rs.1000/- and paid the court fees of Rs.200/-. Plaintiff is claiming declaration of his ownership and also claiming his possession. He is also claiming the declaration of gift-deeds are illegal. Under such circumstances, he had to pay the court fees on suit property as per section 6-d of Maharashtra Court Fees Act, 1959. As per section 6-d, the amount of fee shall be ½ advalorem fees. In the present suit, plaintiff did not mention market value and not paid court fees and therefore, plaintiff be directed to correct the valuation and to pay court fees required and in failure to reject the plaint.

3. Plaintiff filed reply at Exh.24 and objected the application. Plaintiff denied that he has ambiguously mentioned valuation of the suit for the purpose of court fees and jurisdiction in his para no.17 of the plaint. Plaintiff denied that he is claiming declaration regarding ownership over the suit property. Plaintiff denied that he is claiming declaration that gift-deeds are illegal, therefore, he has to pay court

fees as per section 6-d of the Maharashtra Court Fees Act, 1959.

4. Plaintiff submitted that defendant no.4 has filed Regular Civil Suit bearing no.07/2016 against defendant no.1 and others for partition and separate possession. During pendency of this suit, defendant no.1 intentionally executed partition deed on 18.05.2018 amongst legal heirs of Anandrao Petkar by document no.1140/2018. After execution of such partition deed, the defendant no.1 illegally executed gift-deeds of his share in favour of defendant nos.2 and 3 on 10.08.2018 and 30.08.2018. Both the gift-deeds are executed during pendency of Regular Civil Suit no. 07/2016 depriving the share of plaintiff.

5. Plaintiff is not party to the gift-deeds. Plaintiff is neither executor of the gift-deeds nor he is claiming the cancellation of the same. He is in possession of the property. He is claiming only declaration that deeds executed by defendant no.1 in favour of defendant nos. 2 and 3 are illegal and not binding on the plaintiff and therefore, claim of plaintiff is not come within the ambit of section 6-d and therefore, application be rejected.

6. Heard both learned advocates at length. They argued to the tune of their applications. Learned advocate for defendants argued that the plaintiff has challenged the gift-deeds to the tune of Rs.17,84,000/- and Rs.12,35,500/- seeking ownership, therefore, the plaintiff has to valued the suit as per section 6(iv(d) of Bombay Court Fees Act. On the other hand, Learned advocate for plaintiff argued that during pendency of previous suit i.e. RCS no.07/2016 defendant no.1 executed the gift-deeds and therefore, such gift-deeds are illegal and therefore, plaintiff has prayed for declaration. Learned advocate for plaintiff relied upon the judgment in the case of **Suhrid Singh @ Sardool Singh Vs. Randhir Singh & Ors. 2010 ALL SCR 1027** where *the Hon'ble Supreme Court of India held that the plaintiff in the suit was*

*not the executor of the sale-deed. There is no prayer for cancellation of the sale-deed and prayer is only for declaration that the deeds are not binding upon the plaintiff. Thus, the court fees is computable under section 7(iv)(c) of Panjab Court Fees Act. Learned advocate for plaintiff further relied upon the judgment in case of **Niraj Vs. Vijaya (2017) 4 Mh.LJ 402** wherein the Bombay High Court held that relying upon the ratio laid down in *Suhrid Singh* held that the plaintiff is not executant of the sale-deed neither he prayed for possession and therefore, he is not liable to be advalorem court fees as per section 6(iv)(ha) of the Maharashtra Court Fees Act. Learned advocate for plaintiff further relied upon the judgment in case of **Vasant Kisan Idhol Vs. Manjurabai Kisanrao Idhol (2017) 3 Mh.LJ 520** wherein the Bombay High Court held that while considering the correct valuation the subject matter of dispute is to be seen. When the plaintiff is claimed to be in possession of the land and challenged the sale-deed executed by some family members then plaintiff is not seeking declaration of his ownership but agitating his right to continue in possession and such right to continue would not be capable of monitory evaluation, therefore, section 6(iv)(d) of the Act would not apply.*

7. Perused record. In the plaint, plaintiff is seeking the relief as declaration of gift-deeds of suit property executed by defendant no. 1 in favour of defendant nos. 2 and 3 are illegal, not binding as executed during *lis-pendense*. The property is transferred during pendency of the suit is not itself sufficient to hold transaction void. But in the present suit, the plaintiff has challenged partition deed and the gift-deeds based upon such partition deed. Therefore, the plaintiff is claiming declaration of gift-deeds as illegal and void *ab-initio*. Therefore, plaintiff is not claiming cancellation or avoidance of the gift-deeds. The plaintiff is claiming the declaration to the effect that the gift-deeds are illegal. It is also pertinent to note that the plaintiff is asserting his possession and not claiming the possession over the

properties in the gift-deeds. Therefore, the suit is not governed by section 6 (iv)(ha) or 6(iv)(d) of Bombay Court Fees Act and the valuation under section 6(iv) (j) is appeared proper. Hence, the order.

ORDER

1. Application stands rejected.
2. Costs in cause.

Sd/-

(A. G. Mhaskey)
Civil Judge, Junior Division,
Seloo

Date : 17/07/2019