

(2023) 01 BOM CK 0108

In the Bombay High Court

Case No : Writ Petition No.3587 Of 2022

Kamal Hiranman Hole ?And Others

APPELLANT

Vs

Atrium Holmes LLP And Others

RESPONDENT

Date of Decision : 24-01-2023

Acts Referred:

Code Of Civil Procedure, 1908 — Order 7 Rule 11(b), Order 7 Rule 11(d)
Maharashtra Court Fees Act, 1959 — Section 6(i)(ha), 6(iv)(a), 6(iv)(g), 6(iv)(j), 6(iv)(ha), 7(iv)(j)

Citation : (2023) 01 BOM CK 0108

Hon'ble Judges : Sandeep V. Marne, J

Bench : Single Bench

Advocate : Jaydeep S. Deo, Aditya Barthakar, Paresh M. Pote

Final Decision : Partly Allowed.

Judgement

Sandeep V. Marne, J

1. Rule. Rule made returnable forthwith. With consent of both the sides, the petition is taken up for final hearing.

2. By this Petition, Petitioners/Plaintiffs have challenged order dated 5 March 2022 passed by the Jt. Civil Judge, Senior Division, Pune thereby allowing the application filed by Defendant no.1 under the provisions of Order 7 Rule 11(b) and (d) of the Code of Civil Procedure and directing Petitioners/Plaintiffs to pay the court fee on the market value of the suit property to the extent of 3/5th share. Plaintiffs/Petitioners are thus directed to pay maximum court fee of Rs.3,00,000/- and on failure to pay the same, the plaint is directed to be rejected.

3. Plaintiffs/Petitioners have filed Regular Civil Suit No.54 of 2021 seeking 3/5th undivided share in the suit property. Plaintiffs/Petitioners have also sought a declaration that the sale deed dated 1 July 2014 executed by Defendant Nos.2 to 7 in favour of Defendant no.1 is not binding on their 3/5th share. Petitioners/

Plaintiffs have sought injunction against Defendant No.1 from carrying out any construction on the suit property. Petitioners/Plaintiffs have also sought relief for demolition of construction erected by Defendant No.1.

4. Defendant no.1 filed an application under the provisions of Order 7 Rule 11(b) and (d) of the Code of Civil Procedure on the ground that the suit is not properly valued. That the suit ought to have been valued in accordance with Section 6(i) (ha) of the Maharashtra Court Fees Act, 1959 ("the Act of 1959"). Accepting the contentions of Defendant No. 1, the trial court has proceeded to partly allow the application by impugned order dated 5 March 2022.

5. Appearing for Petitioners/Plaintiffs, Mr. Deo the learned counsel would contend that in prayer clause (c) of the plaint, Petitioners/Plaintiffs have merely sought a declaration about the sale deed not being binding on their 3/5th share. That they have not sought cancellation of sale deed. It is submitted that Petitioners/Plaintiffs are not signatories or parties to the sale deed. That therefore the provisions of section 6(iv)(ha) of the Act of 1959 would not be attracted and Petitioners / Plaintiffs are not required to value the suit on the basis of value of property. He would place reliance on the judgment of Division Bench of this Court at Aurangabad in Dilip Khushalchand (Srisrimal) Jain Versus Hardik Deepakbhai Ramani & ors. Writ Petition No.8968 of 2018 decided on 5 May 2022.. He would then invite my attention to prayer clause (e) in the suit to submit that the relief of demotion of construction is not covered by the provision of section 6(iv)(ha) and would be covered by the provision of Section 6(iv)(j) of the Act of 1959. He would therefore submit that the Trial Court has erred in directing payment of the court fee of Rs.3,00,000/-. Mr. Deo however fairly concedes that the suit was filed on an assumption that the suit property is an non-agricultural. However, it now transpires that it has been covered for use as non-agricultural purposes. He would therefore submit that Petitioners/plaintiffs are willing to value the suit appropriately and pay the balance court fee.

6. Per contra, Mr. Barthakar the learned counsel appearing for Respondents/Defendants would oppose the Petition and support the order passed by the Trial Court. He would submit that seeking declaration about sale deed being not binding on Plaintiffs/Petitioners' share is akin to seeking relief of cancellation of sale deed and that therefore the provisions of Section 6(iv)(a) of the Act of 1959 are attracted. He would dispute the application of judgment of this Court in Dilip Khushalchand (Srisrimal) Jain (supra) to the facts and circumstances of the present case. He would further submit that so far as the relief sought for demolition of construction is concerned, Plaintiffs / Petitioners are bound to value the suit by taking into consideration the value of construction. He would submit that even prayer clause (e) in the plaint would be covered by the provisions of Section 6(iv)(ha) of the Act of 1959.

7. I have heard the learned counsels for the parties and have perused the records of the case.

8. In prayer clause(c), Plaintiffs / Petitioners have sought a declaration that the sale deed dated 1 July 2014 executed by Defendant Nos.2 to 7 in favour of Defendant No.1 is not binding on their 3/5th share. Admittedly, Plaintiffs/Petitioners are not parties to the said sale deed. They are not seeking cancellation of sale deed. The provision of Section 6(iv)(ha) reads thus; "for avoidance of sale, contract for sale, etc.

In suits for declaration that any sale, or contract for sale or termination of contract for sale, of any moveable or immoveable property is void – [one half] of ad valorem fee leviable on the value of the property.

9. In the present case, it cannot be stated that Petitioners/Plaintiffs are seeking avoidance of sale as the sale is admittedly not executed by them. The issue is no more res integra and is covered by the Division Bench Judgment of this Court in Dilip Khushalchand (Srisrimal) Jain (supra). In paragraph 24 of the Judgment, this Court 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 7(iv)(j) as it is not susceptible to monetary evaluation".

Therefore, the prayer clause (c) in the plaint would be governed by the provision of section 6(iv)(g) of the Act of 1959 and Plaintiffs/Petitioners are not liable to pay the Court fee as per the valuation of the property sold.

10. Coming to prayer clause (e), Plaintiffs/Petitioners have sought relief of demolition of construction erected by Defendant No.1. The Trial Court has held in paragraph 17 that this relief would also be covered by provisions of Section 6(iv)(ha) of the Act of 1959. The provision of Section 6(iv)(ha) would apply to relief for avoidance of sale/contract for sale. The same has no application where relief of demolition of construction is sought. The prayer for demolition of construction would be covered by the provisions of Section 6(iv)(j) of the Act of 1959. Thus, here also the Trial Court has committed an error in holding that the prayer clause (e) would be covered by the provisions of section 6(iv)(ha).

11. Resultantly, I am of the view that the Trial Court has erred in passing the impugned order dated 5 March 2022. Mr. Deo however fairly concedes that the suit was valued on an assumption that the suit property is agricultural. After noticing that the suit property is permitted to be used for non agricultural purposes, Plaintiffs/Petitioners are willing to revalue the suit at Rs.41,95,800/- and pay total court fee of Rs.63,630/-. The fair stand of Mr. Deo is recorded. Accordingly, I proceed to pass the following order;

:: ORDER ::

(i) Order dated 5 March 2022 passed by the Joint Civil Judge, Senior Division,

Pune on application at exhibit 30 is set aside and the application for Defendant no.1 fled under the provisions of Order 7 Rule 11(b) and (d) of the Code of Civil Procedure is rejected.

(ii) Plaintiffs / Petitioners shall however revalue the suit at Rs.41,95,800/- and pay the deficit court fees thereon within a period of four weeks from today.

(iii)The Writ Petition is accordingly partly allowed. Rule made partly absolute. There shall be no order as to costs.