

(2017) 04 BOM CK 0126
In the Bombay High Court
Case No : 1075 of 2016

Niraj S/o Narendra Walle

APPELLANT

Vs

Smt. Vijaya W/o Narendra Walle

RESPONDENT

Date of Decision : 05-04-2017

Acts Referred:

[Court Fees Act, 1870](#), [Section 7\(IV\)\(c\)](#) -
Computation of fees payable in certain suits
[Bombay Court Fees Act, 1959](#), [Section 6\(IV\)](#)
(HA) - .

Citation : (2017) 04 BOM CK 0126

Hon'ble Judges : Z.A.HAQ

Bench : SINGLE BENCH

Advocate : S.D. Chande, Saurabh A. Chaudhari

Judgement

1. Heard Shri S.D.Chande, Advocate for the petitioner and Shri Saurabh A. Chaudhari, Advocate for the respondent No.5. None for the other respondents though served.

2. The original plaintiff has challenged the order passed by the trial Court rejecting the application (Exh. No.47) filed by him seeking review of the order passed by the trial Court on 30th August, 2013 by which the plaintiff was directed to compute the court fees payable by him in accordance with valuation of sale deed dated 24th December, 2010. The petitioner / plaintiff has also challenged the order passed by the trial Court on 30th August, 2013.

3. The submission on behalf of the petitioner / plaintiff is that he is not executant of the sale deed dated 24th December, 2010 and as he is not seeking decree for the possession of the property which is subject matter of the sale deed dated 24th December, 2010, he is not required to pay ad valorem court fee on the valuation of the sale deed. To support the submission, the learned Advocate for the petitioner has relied on the judgment given in the case of Suhrid Singh @ Sardool Singh V/s. Randhir Singh & Ors. reported in AIR 2010 SC 2807.

4. The learned Advocate for the respondent No.5 has relied on the provisions of Section 6(iv)(ha) of the Maharashtra Court Fees Act which lays down that in a suit for declaration that any sale or contract for sale or termination of contract for sale of any movable or immovable property, the plaintiff is liable to pay onehalf of ad valorem fee leviable on the value of the property. It is submitted that the judgment given in the case of Suhrid Singh @ Sardool Singh V/s. Randhir Singh & Ors. (supra) is relying on the provisions of Section 7(iv)(c) of the Court Fees Act, 1870 as amended in Punjab and in the present case liability of the plaintiff to pay the court fee would be as per Section 6(iv)(ha) of the Maharashtra Court Fees Act. It is submitted that the provisions of Section 7(iv)(c) of the Court Fees Act, 1870 as amended in Punjab are different than the provisions of Section 6(iv)(ha) of the Maharashtra Court Fees Act.

5. After examining the two provisions, I find that the judgment relied upon by the learned Advocate for the petitioner clinches the issue. Paragraph No.6 of the above referred judgment is relevant, which is reproduced below: "6. Where the executant of a deed wants it to be annulled, he has to seek cancellation of the deed. But if a nonexecutant seeks annulment of a deed, he has to seek a declaration that the deed is invalid, or nonest, or illegal or that it is not binding on him. The difference between a prayer for cancellation and declaration in regard to a deed of transfer/conveyance, can be brought out by the following illustration relating to "A" and "B" two brothers. "A" executes a sale deed in favour of "C". Subsequently "A" wants to avoid the sale. "A" has to sue for cancellation of the deed. On the other hand, if "B", who is not the executant of the deed, wants to avoid it, he has to sue for a declaration that the deed executed by "A" is invalid/void and nonest/ illegal and he is not bound by it. In essence both may be suing to have the deed set aside or declared as nonbinding. But the form is different and court fee is also different. If "A", the executant of the deed, seeks cancellation of the deed, he has to pay advalorem court fee on the consideration stated in the sale deed. If "B", who is a nonexecutant, is in possession and sues for a declaration that the deed is null or void and does not bind him or his share, he has to merely pay a fixed court fee of Rs. 19.50 under Article 17(iii) of Second Schedule of the Act. But if "B", a nonexecutant, is not in possession, and he seeks not only a declaration that the sale deed is invalid, but also the consequential relief of possession, he has to pay an advalorem court fee as provided under Section 7(iv)(c) of the Act. Section 7(iv)(c) provides that in suits for a declaratory decree with consequential relief, the courtfee shall be computed according to the amount at which the relief sought is valued in the plaint. The proviso thereto makes it clear that where the suit for declaratory decree with consequential relief is with reference to any property, such valuation shall not be less than the value of the property calculated in the manner provided for by clause (v) of Section 7."

The plaintiff is admittedly not executant of the sale deed dated 24th December, 2010. The plaintiff has not prayed for decree for possession. Considering the proposition laid down in the judgment given in the case of Suhrid Singh @

Sardool Singh V/s. Randhir Singh & Ors. (supra) the plaintiff is not liable to pay the ad valorem court fee as per Section 6(iv)(ha) of the Maharashtra Court Fees Act. The impugned orders are passed overlooking the above legal position and, therefore, they are unsustainable. The impugned orders are set aside. Rule made absolute in the above terms. In the circumstances, the parties to bear their own costs.