

ORDER BELOW EXH.24 IN SPECIAL CIVIL SUIT NO.112 OF 2022

[1] The present application is filed by the learned advocate for defendant No.12 & 13 under Order 7 Rule 11(b) of CPC r.w. section 151 of CPC, with the contention that the plaintiffs had brought the suit for cancellation of sale deed of different suit properties and had paid court fees stamp of Rs.75,000/-, which is deficit in nature. It is submitted that when plaintiffs had filed suit for cancellation of sale deed of different properties, the plaintiffs have to pay court fees stamp on individual properties and therefore prayed for allowing the present application directing the plaintiffs to deposit deficit court fees and on failure to do so within time limit, he has prayed for rejection of the suit under given provision.

[2] The learned advocate for plaintiffs had filed reply vide Exh.45, wherein, they have negated the contention of application and had submitted that the defendants had no right to question the court fees paid as the said direction can only be given by the Court.

[3] This Court has heard learned advocates for both the parties at length and perused the record accordingly. The learned advocate for defendant No.12 & 13 had relied upon the ratio laid down in case of ***Ismail Yusuf Vavada & 12 versus The State of Gujarat & 2***, decided by the Hon'ble High Court of Gujarat in SCA No.20 of 2009, dated 15.01.2009. Per contra, the learned advocate for plaintiffs had relied upon the ratio laid down in case of ***Suhrid Singh @ Sardool Singh versus Randhir Singh & Ors.*** decided by Hon'ble Supreme

Court of India in Civil Appeal No.2811-2813 of 2010, dated 29.03.2010. He has further relied upon ratio laid down in case of ***Sujir Keshav Nayak versus Sujir Ganesh Nayak***, reported in AIR 1992 SC 1526. This Court has gone through the pleadings of the parties and have given considerable thought to the arguments. This Court has also gone through the ratio produced by the learned advocates by parties.

[4] Before going on to the merits of the present application, it seems important to deal with the provision under Order 7 Rule 11(b) of CPC, which provides that, when there is a deficit of court fees stamp, the the Court can direct the plaintiff to pay the deficit court fees within stipulated time period and if the plaintiff fails to do so, then the suit can be rejected under given provision. The learned advocate for the defendant No.12 and 13 had submitted that the plaintiffs had brought suit for cancellation of sale deed of properties and had paid court fees stamp of Rs.75,000/-. It is evident from perusal of plaint that the plaintiffs had prayed for cancellation of sale deeds of different properties as mentioned in para 8 of plaint. Looking to the sale deeds, it appears that all the properties are different and therefore, it attracts section 18 of Gujarat Court Fees Act, 2004 r.w. section 6(9) of the said Act. Section 18 of the Court Fees Act provides that when a suit is filed for two or more distinct subject, the court fees stamp is to be paid for each separate subject to the tune of Rs.75,000/- each. Moreover, section 6(9) of Gujarat Court Fees Act, 2004 provides that in suit for cancellation of sale of immovable properties, 1/2 of *ad valorem* fees is leviable on the value of the suit property. It is evident from the plaint that the value of 5 suit properties are in crores and two suit properties

are valued Rs.71,65,000/- and Rs.8,89,000/- respectively. Now going through the ratio produced by learned advocate for the defendant No.12 & 13, it clearly provides that when one suit filed for different properties, then it is known as multifarious suit of the court fees is to be levied on individual subject matter. Therefore, as per the calculation for each properties valuing more than Rs.1 crore, the plaintiffs have to pay Rs.75,000/- as court fees and for the suit properties with the value of Rs.71,65,000/-, the plaintiffs have to pay the court fees of Rs.66,350/-. For the suit properties of valuation of Rs.8,89,000/-, the plaintiffs have to pay the court fees of Rs.21,950/-, which amounts to total court fees of Rs.4,63,300/-. As the plaintiffs had deposited Rs.75,000/- as court fees, there are stamp of deficit of Rs.3,88,000/- as per section 18 of the Gujarat Court Fees Act, 2004 r.w. section 6(9) of the Act. At this juncture, this Court is of the view that the ratio produced by the Court for the plaintiffs are not applicable to the present situation as firstly, they are of different states and secondly, one is for dissolution of partnership and the second ratio of *Suhrid Singh* (Supra) relates to Courts Fees Act of Punjab, wherein, computation is made on different grounds. Therefore, taking the above discussion into consideration, this Court is of the view that the present suit is brought on deficit court fees stamp and therefore, following order.

-:: O R D E R ::-

[1] The present application is hereby allowed.

[2] The plaintiffs are hereby directed to pay deficit court fees stamp Rs.3,88,300/- (Rupees Three Lac Eighty Eight Thousand Three Hundred Only) within period of 30 days from this Order, failing

thereby, the suit will be rejected under Order 7 Rule 11(b) of CPC.

[3] No order as to cost.

Signed & pronounced in the open Court today on this 16th day of December, 2023 in open Court.

Kalol.

Date : 16/12/2023

(Ashishkumar N. Patel)

Principal Senior Civil Judge, Kalol
(Code No.GJ 00935)