

Order below Exh. 57 in R. C. S. No. 327/2012.

1. Perused the application and say filed thereon by the plaintiff .
2. Heard ld. advocate for both sides at length .
3. Present application has been taken out for enquiry of the valuation of the suit property and in the event of failure by the plaintiff to deposit deficit court fee for return of plaint.
4. In view of the rival submissions advanced, only point arises for determination is " Whether the application can be allowed as prayed for ?" My finding to this point is " partly in the affirmative " for following reasons .

REASONS

5. It is submitted on behalf of the defendants that the plaintiff has under valued the suit . The suit property in fact is 11 R land comprising two rooms constructed in bricks and cement and one front portion (Padvi) .However, the plaintiff has not valued suit property correctly.

6. According to the defendants , the plaintiff should have valued the suit property for Rs. Six lacs to Seven lacs for the purpose of jurisdiction and upon that value he should have paid one half ad-voleram court fee.

7. Per contra, it is submitted by ld. advocate Shri. S. T. Kote on behalf of the plaintiff that suit is for declaration of ancestral ownership right of the plaintiff . Accordingly proper court fee is affixed and thus application as taken out is not legal ,is merely filed to protract the trial of the suit . Moreover, if the Court comes to the conclusion that insufficient court fee is paid the plaintiff is ready to deposit the deficit Court fee as directed in the judgment, with all these , he ultimately prayed for dismissal of the application .

8. Perusal of the plaint shows that the suitland with grampanchayat house property no. 1081 comprising two rooms having roof of tins sheets with front portion (Padvi) more particularly described in paragraph no. 1 of the plaint

admeasuring 11 R along with suit land wherein said suit house is situated is the " suit property" . The suit claims declaration that said suit property including suit land and suit house is ancestral property owned and possessed by the plaintiff .

9. In view of the suit claim, section 6 (iv) (d) of the Bombay Court Fees Act,1959 is applicable . Accordingly, as per article 1 of schedule 1 of the said Bombay Court Fees Act will govern present suit. For computation of the courtfee,it is necessary to ascertain value of the subject matter i. e. suit property which will be as per the market rate prevailing at the time of institution of the suit .

10. During argument though it is submitted on behalf of the defendants that enquiry be held under sections 8 and 9 of the Bombay Court Fees Act,1959 , in my opinion direction to plaintiff to revalue the suit in view of section 6 (iv) (d) of the Bombay Court Fees Act, 1959 and pay necessary court

fee accordingly will suffice the purpose . Therefore, following order.

ORDER

1. The plaintiff shall revalue the suit in view of section 6 (iv) (d) of the Bombay Court Fees Act, 1959 and shall pay court fees thereon as per article 1 schedule 1 of the said Act within two weeks .
2. Failure on the part of the plaintiff to comply shall automatically result in rejection of plaint under Order 7 Rule 11 (c) of Civil Procedure Code.
(Dictated and pronounced in open Court)

Place :- Shirampur

Date :- 12.08.2014

(**V. B. Pargaonkar**)

Civil Judge, Sr. Dn.,
Shrirampur.

Order dictated on – 12.08.2014

Order Transcribed on- 13.08.2014

Order Checked on - 13.08.2014

Order signed on - 13.08.2014

Order uploaded on - 13.08.2014

(**V. B. Pargaonkar**)

Civil Judge, Sr. Dn.,
Shrirampur.