

MHAH190005172023



ORDER BELOW EXH. 42 IN RCS NO.103/2023
(Subhash Kharad Vs. Mangal Kathwate)

Defendant No. 1 has filed this application under Order 7, Rule 11 of C.P.C. for rejection of the plaint because the suit is undervalued. The defendant contended that plaintiffs had claimed relief on the basis of a registered sale deed. However, plaintiff has not paid court fees as per the value of the sale deed. The plaintiffs have wrongly valued the suit.

02) Further Defendant has contended that, the government valuation of the property mentioned in the sale deed is about Rs.18,15,844/-. The valuation of the subject matter is 18,15,844/- therefore, this Court has no jurisdiction to try this suit. Therefore, the present suit is not maintainable to this court

03) The plaintiffs have filed their say and resisted the application. The plaintiffs contend that the defendants have filed present application only to prolong the matter. The application is not tenable in the eye of law. They further contended that, they are not party to the sale deed and they have not prayed for cancellation of sale deed, they have only prayed for declaration on the basis of Sale Deed. Therefore, they have properly valued the suit. Lastly, prayed that the application be rejected with costs of R.1000/-.

04) Heard learned advocate Shri. N.A. Vaibhase for the defendant and also perused written notes of argument filed at Exh.53 and Ld. Advocate

Shri S.S. Bharde for the plaintiffs.

05) Ld. Advocate for the defendant has submitted that, the plaintiff shall value suit as per amount mentioned in the Sale- Deed. The market value of the suit property is more than 5 lakh rupees, hence this Court has no jurisdiction to try present suit. On the other hand, Ld. Advocate for the plaintiff has submitted that, though the plaintiff is seeking relief on the basis of the Sale-Deed, the plaintiff is not party to the said Sale Deed. Plaintiff seeking remedy of declaration. Therefore, plaintiffs have properly valued the suit.

06) I have perused the plaint and documents filed on record. It is the contention of the defendant that, the suit property is nonagricultural property, hence, court fees need to be calculated on its market value. However, defendant has not produced any documentary proof which shows suit property is nonagricultural property. Therefore, I do not find substance in this argument.

07) Furthermore, as far as contention of the plaintiff that, he has prayed for declaration that, sale deed not binding upon him and he has properly valued suit as per his prayer, I have placed reliance upon ***Dilip Khushalchand (Srisrimal)Jain and ors Vs Hardik Deepakbhai Ramani and ors. Writ Petition No.8968 of 2018 decided on 05 May 2022***, In the said case Hon'ble Bombay High Court held that, "The Court Fee payable in regard to suit for declaration of Sale Deed to which the plaintiff is not party to the Sale Deed binding on him and for consequential injunction would be governed by Section 6 (iv) (j) of the Maharashtra Court Fees Act." The said judgment is later on followed in ***Kamal Hiranman Hole and***

others Vs. Atrium Holmes LLP, through Partners and others 2023 SCC OnLine Bom 249.

08) Further Section 6 (iv) (j) of Maharashtra Court Fees Act is as follows-

“6- The amount of fee payable under this Act in the suits next herein after mentioned shall be computed as follows:

(iv)(j) In suits where declaration sought with or without injunction or other consequential relief and the subject matter in dispute is not susceptible of monetary evaluation and which are not otherwise provided for by this Act, Ad Volorem fee payable as if the amount or value of subject matter was one thousand rupees”

09) The plaintiff is not party to the contract for which he prayed for the avoidance of the sale. In view of the aforementioned discussion, it is clear that, if the plaintiff is not a party to the agreement, then he has to pay the Court Fee as per section 6(iv)(j) of the Court Fees Act i.e value of the subject matter is one thousand rupees. The plaintiff has valued the suit as Rs.1000/- and affix Rs. 200/- for declaration.

10) Further, the plaintiff has filed a present suit for declaration and permanent injunction. Clause 15 of the plaint shows that the plaintiff has valued the suit as Rs.1000/- and affix Rs. 200/- for declaration. This Court fees is proper for declaration of avoidance of contract as per section 6(iv)(j) of the Court Fees Act but, on perusal of clause 16 (b) of the plaint, it is clear that plaintiff has sought declaration of ownership over the suit property also. Sec. 6(iv)(d) of the Maharashtra Court Fees Act provides for computation of fees in suit for declaration of ownership. Therefore, it

clearly shows that that, plaintiff has not paid court fees for declaration of ownership as per Sec. 6(iv)(d) of the Maharashtra Court Fees Act. The valuation of the suit of Rs. 1000/- is not sufficient. However, it is a settled principle of law that a plaint should not be rejected threshold for improper valuation of the plaint. Therefore, it is necessary to give sufficient time to the plaintiff to correct the valuation of the plaint and affix proper Court fee stamp in accordance with law.

11) Therefore, I am of the opinion that plaintiff has paid deficient court fees. The plaintiff has to pay court fees as per Section 6(iv)(d) of the Maharashtra Court Fees Act also. Hence, in the result, I pass the order:

ORDER

- 1) Application (Exh.42) is partly allowed.
- 2) The plaintiff is directed to value the suit accordance of Section 6(iv) (d) of the Maharashtra Court Fees Act within one month from today. On failure of plaintiff to value the suit within prescribed time, the plaint will be rejected in accordance with Order VII Rule 11(b) of the Civil Procedure Code.
- 3) No order as to cost.

Place: Shevgoan
Date: 20.01.2024

sd/-
(Monali A. Bendre)
2nd Jt. Civil Judge Jr. Division,
Shevgaon.