

Order below application vide exh.26 in**R.C.S. No.230/2017.**

This is an application filed by the defendant no. 2 under section 9 A and order 7 rule 11 of C.P.C and raised objection in regard of Pecuniary Jurisdiction.

2. The suit is filed for declaration, Partition, and Possession and Perpetual Injunction. The plaintiffs have filed an interim application against defendant no. 2. Defendant no. 2 is a purchaser out of suit land, who appeared and has filed his Written Statement and say on the interim application.

3. It is argued by the advocate for defendant no. 2 Shri. R.K.Aacharya that, the provision of section 9 A are mandatory in nature and the provision has not left any chance to the court, but to frame preliminary issue as soon as the objection is raised in the matter in regard of preliminary issue, and requested to frame preliminary issue and thereafter decide the application under section 9 A of Code of Civil Procedure, 1908. To support the arguments he relied on the following authorities.

1. Foreshore Hos. Soci. Versus Praveen Reported in 2015(3) Mh. L. J. 315
2. Mukund Ltd.Versus Mumbai International. Appeal No.1167/2010 decided on 15 February 2011

3. Ajit Rameshkumar Patni & others Versus Vijay Sarthi reported in 2017(3) Mh. L. J. 230.

4. The advocate for the plaintiff argued that, an opportunity has to be given to the plaintiff to file say and hear on the application whether there is any substance in the objection which is raised or not. He further submitted the principle of natural justice has to followed. To support his contentions he relied on the following authorities.

1. Tayyabhai M. Bagasarwalla Versus Hind Rubber Indust, reported in AIR 1997 SC 1240.
2. Mani Seervai of Bombay Versus Tuljaram Muriymal Devnani reported in 2006(2)Mh.L.J. 61

5. I have gone through the above mentioned authorities. So far as, authority of Foreshore supra is concern, the Hon'ble apex court has held that, Limitation can be considered as Preliminary issue.

6. So far as the authority of Ajit Patni, Tayyabhai, Mani Seervai (Supra) are concern they are on the point of courts lacking inherent jurisdiction and after framing Preliminary issue an opportunity must be given to the parties to led oral and documentary evidence. So, the facts and the ratio laid down in the authorities are not applicable to the case in hand.

7. I have also gone through the provision of 9A and its object. On perusal of section 9 A,” the court shall proceed to determine at the hearing of such application the issue as to preliminary issue before granting or setting the order granting the interim relief. Any such application shall be heard and disposed of by the court as expeditiously as possible and shall not in any case be adjourned to the hearing of the suit” the legislature has used words determination and not adjudication of the application and such application be heard and dispose of by court as expeditiously as possible. In my opinion the legislature is intending to decide the application of objection first and if it is allowed then adjudicate the issue by giving opportunity to led evidence by the parties.

8. It is held by the apex court in **Meher Singh Versus Deepak Sawhny reported in 1998 (3) Mh. L. J. Page No. 940** held that, if there is pure question of law , then it may be decided without recording evidence, and where it is a mix question of fact and law opportunity has to be given to the parties to lead evidence. It is also observed by Division Bench in Tayyabhai case (supra) in para 16,” An application raising objection to the jurisdiction to the court is directed to be heard with all expedition.

9. Taking into consideration all the above discuss

aspects, I am of the opinion that, when the objection as to preliminary issue is raised, instead of framing direct preliminary issue, the application raising objection is to be heard prima facie on the maintainability of objection first, by giving opportunity to both the parties. There may be some instances where the preliminary issue is not required to be framed. Where preliminary issue is framed section 9 A mandates the court to give opportunity to led oral and documentary evidence to adjudicate the preliminary issue. So, I do not agree with the arguments advanced by the advocate for defendant no. 2 and proceed to hear on the application instead of directly framing preliminary issue on pecuniary jurisdiction.

10. Learned advocate for defendant argued that, this court has no pecuniary jurisdiction to try and entertain the suit, as the consideration amount shown in the sale deed is Rs.31,00,000/- and plaintiff has sought relief in regard of sale deed so suit ought to have valued for 31,00,000/-. The plaintiff ought to have pay the court fee as per section 6 (4) (ha) of the Bombay Court Fees Act. To support his contention he has relied upon **Niroj Versus Vijaya reported in 2017(4) Mh.L.J. Page No. 403.** On the other hand learned advocate for the plaintiff submitted that, plaintiffs have sought relief of the sale deed executed by defendant no. 1 in favour of defendant no. 2 is not binding on the

share of plaintiffs. So the suit has been properly valued as per provisions of Sec. 6(4)(j) of the Bombay Court Fees Act and requested to reject the application. To support his arguments he relied upon following authorities.

1. Common Piru Caudhari Versus Berubai Chendu Redhiwale reported in ALL M. R. 2017 (4) Page No. 283 .

2. Jayant Bhimsen Joshi and others Versus Raghavendra Bhimsen Joshi reported in B. C. R. 2016 (1) Page No. 462.

3. Vasant Kisan Idhol Versus Manurabai Kisanrao Idhol reported in 2017 (3) Mh. L. J. Page No. 520.

4. Archana Bhimrao Randaye Versus Dr. Kavita Dilip Changole reported in 2017 (3) Mh. L. J. Page No. 589.

5. Niraj Narendra Wale Versus Vijaya Narendra Wale reported in 2017 (4) Mh. L. J. Page No. 402.

11. So far as authority placed by the defendant is in regard of section 6 (4)(ha) of Bombay Court Fees Act Where the sale or contracts are declared to be void. So, the ratio in the authority is not applicable to the case in hand. So far as the authority placed by the plaintiff are in regard of , where the party to the contract is not executable and

where the relief is sought in regard of a sale deed not binding on the plaintiff there is no need to pay court fee as per section 6 (4)(ha) of Bombay Court Fees Act.

12. It is pertinent to note that, this court is not lacking with inherent jurisdiction to try and entertain the suit. The question is only to be decided whether the suit has been properly valued or not. On perusal of prayer clause 2 (c) it can be seen that the plaintiffs have only sought declaration that, sale deed is not binding to their share. It is pertinent to note that, nowhere the plaintiffs have sought avoidance of sale deed by way of cancellation, as null and void, or as sale deed is sham and bogus. So, in my opinion the provisions of section 6 (4)(ha) would not be attracted to the case in hand.

13. It is also pertinent to note that, the suit lands are agricultural lands. On perusal of provisions of The Maharashtra Suit Valuation (Determination of value of Land for jurisdictional purposes) Rule 2, where subject matter is land a sum equal to 200 times of the assessment payable in respect of land, is to be considered for the valuation and payment of court fees and accordingly the court fee is paid by the plaintiffs. In this regard the ratio laid down by Hon'ble Bombay High court **Sardarsingh Gopalsingh Gour Vs Swarupsingh Gopalsingh Gour**

reported in 2012(6) Mh.L.J. 704 in para 8 would be guiding in the case in hand. For reference I reproduce it :

8. *The second point raised by the revision applicants that, while considering the price of the suit land, which is subject matter of nine sale deeds, the concerned court should have taken into consideration the current market price of suit land which is suit matter of nine sale deeds are concerned said contention is devoid of merits. In respect of nine sale deeds, the plaintiffs have sought limited relief that those sale deeds are not binding upon them. The plaintiffs have not prayed that, sale deeds should be cancelled. It is specific case of plaintiffs that, they are not party to the said sale deeds and therefore, it should be declared that, those sale deeds are not binding upon them.*

14. It has also been held in **Ravindra Narayan Rajshree and others versus Rohini Ganpat Heblikar and others decided on 31.07.2017 MANU/MH/1646/2017 by Hon'ble Justice Mrudula Bhatkar** that where the plaintiff is not party to the sale deed and relief is sought in regard of sale deed is not binding in such case suit is to be valued under section 6 (4) (j) of The Bombay Court Fees Act, 1959 .

15. It is pertinent to be noted that, from the averments of the plaint it can be seen that, the plaintiffs

have sought substantive relief of declaration of their share in the suit land by way of partition and the relief of sale deed not binding on their share, are ancillary relief. The suit properties are agricultural lands. The defendants have compelled the plaintiffs to seek ancillary relief by the act of executing a sale deed without making plaintiffs party to the sale deed.

16. Considering all the aspects it can be seen that the law on the point of valuation and court fee is very much clear hence, I found no substance in the application to frame preliminary issues on the point of pecuniary jurisdiction in result I pass following order.

ORDER

1. The application Exh. 26 is rejected.
2. Parties to bear their own cost of the application.

Date : 09/03/2018.

(R.B. Kulkarni)
3th C.J.J.D., Shrigonda
Dist. Ahmednagar