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MHAU070010452025



ORDER BELOW EXH.21 IN RCS NO.142/2025

- 1) Present application is filed by the defendants to direct the plaintiff to pay the Court fee as per the valuation of all the sale-deeds in respect of which plaintiff has prayed for declaration.
- 2) Heard learned Advocate for defendants at length. It has submitted that the plaintiff has filed present suit for partition, wherein she has claimed for cancellation of sale-deeds of No.318/2013, 783/2014, 448/2015, 2132/2016, 3764/2016, 5391/2017, 581/2019, 3646/2019. The valuation of all the sale-deeds is of Rs.41,97,000/-. As per the valuation the plaintiff is bound to pay the Court fees of Rs.68,8,60/-. The plaintiff has not paid necessary Court fee. Hence, in view of provision under Order 7 Rule 11 (a) (b)(c)(d) of the Code of Civil Procedure the plaint is required to be rejected. So also, plaintiff has not challenged sale-deeds within the period of 3 years of the execution. Hence, prayed to allow this application.
- 3) Heard learned Advocate for the plaintiff. It has submitted that the present application is not maintainable because plaintiff was not party in alleged sale-deeds. She has not executed any document. Therefore, she is not bound to pay Court fee as prayed. The plaintiff has prayed for partition of the joint family property. Hence suit is within limitation. Hence, prayed to reject the application.
- 4) Learned Advocate for defendants relied upon the cited case laws ***Sunil s/o Bhaskarrao Gondkar Vs. Sadashiv s/o Manku***

Salien, Writ Petition No.4173/2021. Wherein the Hon'ble Bombay High Court has held that, the plaintiff was not party to the sale-deed in the present suit, but he has filed suit for partition and cancellation of sale-deed with relief of possession and injunction. Therefore, he is bound to pay the Court fee for the prayer of possession and injunction.

5) In the case of **Tarvindrasngh Mahendrasingh Dhillan Vs. Ambadas Asaram Mhaske reported in DLD (Civil) 2024-2704.** Wherein the Hon'ble Bombay High Court bench at Aurangabad has rejected the plaint, as in view of Article 59 of the Limitation Act the suit for cancellation of sale-deeds was not filed within limitation. The plaintiff has created illusory cause of action.

6) Learned Advocate for plaintiff relied upon following case laws **Dilip Khushalchand (Srisrimal) Jain & others Vs. Hardik Deepakbhai Ramani Writ Petition No. 8968/2018.** The Hon'ble Bombay High Court Bench at Aurangabad held in suit for cancellation of mutation entry on the basis of the sale-deed and for which plaintiff was not party and relief was claimed only injunction, therefore, held that the plaintiff was not bounding to pay court fee as per Section 6(iv) (ha) (j) of the Maharashtra Court Fees Act.

7) Perused the application, say filed by the plaintiff. I have gone through the record of the suit. Admittedly, the plaintiff has filed suit for partition, declaration, possession and perpetual injunction. It is also admitted that the plaintiff has not executed any alleged sale-deed. It is also admitted that the plaintiff has claimed declaration in respect of sale-deeds executed in the year of 2013, 2014, 2015, 2016, 2017 & 2019. Lastly, in the year of 2019 successively. The plaintiff has

claimed the relief of partition, separate possession, declaration and perpetual injunction. According to the plaintiff the relief claimed is not susceptible of monetary evaluation, therefore, it was valued Rs.1000/- only and Court fee of Rs.200/- was paid. The plaintiff has claimed exemption from court fee under Sec.7 (iv) (j) of the Maharashtra Court Fees Act.

8) The defendants have by this application prayed to direct the plaintiff to pay Court fee of Rs.68,860/- on the basis of valuation all the sale-deeds. The plaintiff has submitted that she is not party to any sale-deeds, therefore, she is not bound to pay any court fee on the basis of valuation of the sale-deeds.

9) Admittedly, the plaintiff has challenged validity of the sale-deeds executed since 2014, the last sale-deed is of 27.06.2019. As per the provision under Article 57 of the Limitation Act the suit for declaration in respect of sale-deed is required to be filed within 3 years from the date of its execution. The plaintiff has, no doubt claimed relief of declaration in respect of sale-deeds but the last sale-deed is executed in the year 2019 and the claim in that respect cannot be barred.

10) Considering the law laid down in the citation supra I find that in the case of ***Dilip Khushalchand (Srisrimal) Jain & others Vs. Hardik Deepakbhai Ramani*** the Hon'ble Bombay High Court has held that the plaintiff is not bound to pay Court fee as per valuation of sale-deed, because he had prayed only for relief of injunction. Whereas, the in the case of ***Sunil s/o Bhaskarrao Gondkar Vs. Sadashiv s/o Manku Salien*** upon which defendant has relied the Hon'ble Bombay High Court, by considering the prayer of the

“possession” claimed by the plaintiff in the suit for partition held that the plaintiff is bound to pay Court fee on the basis of relief of possession. Hence, in the present suit the plaintiff has claimed declaration in respect of sale-deeds lastly executed on dated 27.06.2019 which is within 3 years. The plaintiff is bound to pay Court fees in respect of possession as per the provision of the Bombay Court Fees Act.

11) **Order 7 Rule 11 Rejection of plaint reads as under;**

The plaint shall be rejected in the following cases:—

- (a) where it does not disclose a cause of action;*
 - (b) where the relief claimed is undervalued, and the plaintiff, on being required by the Court to correct the valuation within a time to be fixed by the Court, fails to do so;*
 - (c) where the relief claimed is properly valued, but the plaint is returned upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp-paper within a time to be fixed by the Court, fails to do so;*
 - (d) where the suit appears from the statement in the plaint to be barred by any law;*
 - [(e) where it is not filed in duplicate;]*
 - [(f) where the plaintiff fails to comply with the provisions of rule 9:]*
- [Provided that the time fixed by the Court for the correction of the valuation or supplying of the requisite stamp-paper shall not be extended unless the Court, for reasons to be recorded, is satisfied that the plaintiff was prevented by any cause of an exceptional nature from correcting the valuation or supplying the requisite stamp-paper, as the case may be, within the time fixed by the Court and that refusal to extend such time would cause grave injustice to the plaintiff.]*

Hence, as per the provision Under Order 7 Rule 11 of the C.P.C. the plaintiff shall pay Court fee on the basis of relief of “possession” as per

the provision. The time to the plaintiff to pay correct Court fee is required to be given. If, plaintiff fails to correct valuation of the suit within time necessary order will be passed. Hence, order:-

ORDER

- 1) The application is partly allowed.
- 2) The plaintiff is directed to pay Court fee in respect of relief of “possession” prayed by her in the suit within one month on the failure of plaintiff further necessary order will be passed against her.

Place:- Gangapur
Date :- 09.05.2025

(Nilesh R. Indalkar)
Civil Judge (S.D.)
Gangapur