

MHAU070027032025



Order Below Exh 10
Harun Dagdu Shaikh Vs. Kayum Jafar Shaikh

The present application is filed by defendants as per under order VII rule 11 (b,d) of Civil Procedure Code for rejecting the plaint.

Defendants contention -

2. It is the contention of defendants that, present suit is instituted seeking relief of enforcement of Agreement of sale, declaration and Perpetual Injunction. The alleged agreement of sale executed between plaintiff and defendant no. 01, in respect of suit property is not properly stamped. It violates section 35 of Stamp Act. Hence it is not admissible in law. This is the ground for rejection of plaint. The another contention of defendant is that, plaintiff seeking declaration that the sale deed executed by defendant no. 01 in favor of defendant no. 2 is illegal and not binding on him. In this circumstances plaintiff ought to have paid court fee on consideration amount mentioned in said sale deed. But plaintiff paid insufficient court fee. It violates section 6 of Maharashtra Court fee Act. Last contention of defendant is that, plaintiff not added collector in suit which is essential as per Order XXVII Rule 5 A of Civil Procedure Code. On above mentioned grounds defendant urged to reject the plaint.

3. Plaintiffs say -

The above application is opposed by plaintiff by filing say at Exh . It is the contention of plaintiff that, there is no substance in

the application. Admissibility of agreement of sale is a mixed question of fact and law. If there is any deficiency in such agreement then court is having ample power to impound the document and recover the stamp duty. On this ground, the plaint can not be rejected. So far as court fee on declaration is concerned, it is the contention of plaintiff that, he has valued suit at Rs. 5,50,000/- and total court fee of Rs. 15,830 is paid. So far as adding party is concerned, it is his contention that, court is having ample power to add or delete the parties. On this ground plaintiff urged to reject the application.

4. Heard Ld Adv of plaintiff Shri S.K.Ambekar. In support to his contention, he has relied on case law. i.e. *Dilip Khushalchand(Srisrimal) Jain and others vs. Hardik Deepakbhai Ramani and Ors. AIR online 2022 BOM 99*. Also heard Ld Adv of defendant Shri D.E.Pankade. He has in support to his contention relied on *following case laws*.

1. Paraksh Sahu Vs. Saulal and Ors. Civil Appeal No.(s) 6772 of 2019

2. Annaappa Maruti Zalke Vs. Ramu Balappa Bogarnal writ petition No 8341 of 2016

3. Venkat Dhamaji Gontalwar Vs. Vishwanath and another AIR 1983 Bombay 413

5. On perusal of order VII Rule 11 of Civil Procedure Code, it appears that reasons of rejection of plaint are mentioned there. From the contentions in application, it seems that defendant urged to reject the plaint on three main grounds. First one is, agreement of sale executed by

defendant no. 01 in favor of plaintiff is not properly stamped. The second ground is, plaintiff not propely paid court fees on consideration amount mentioned in sale deed.i.e. as per valuation of the suit property. Thus, plaint is under valued. The last ground is, plaintiff not added Collector as party to the suit. As per order XXVII Rule 5 A of Civil Procedure Code, plaintiff must add him as party to the suit.

6. It is contention of defendant that alleged Agreement of sale executed by defendant in favor of plaintiff is not properly stamped. Therefore, it vailates Serton 35 of Maharashtra Stamp Act. So far as this contention is concerned, I am of the opionin that it is not applicable to the present case. The reason is, after scanning order 7 and all rules of Civil Proceure Code, it gathers that, it is nowhere mentioned that the plaint cannot be rejected on such ground. On the contrary whether such agreement of sale properly stamped or not,whether registered or un-registered, whether it is admissible or not, is a question which needs to be decided after evidence of both the parties. At the time of deciding this application the said point need not be taken in to consideration.

7. I have perused the case laws. The case law at sr. no.1 and 2 are mainly on the point whether un- registered agreement of sale can be taken in to consideration even for collateral purposes. so far as above law is concerned, I am of the opinion that it is not applicable to the present facts of the case, at this stage. The reason is, as already mentioned the present stage of the case i s earlier stage i.e. maintainablity of the suit. The admissibility of agreement of sale in evidence is a later stage which needs to be considered at the time of

trial. In view of above discussion, the contention of defendant that, alleged agreement of sale was not properly stamped and therefore, plaint to be rejected, does not find force.

8. The another contention of defendant is, plaintiff not properly valued the suit. He has not paid proper court fees. In fact, plaintiff ought to have paid court fees on valuation of the property mentioned in sale deed executed by defendant No.1 in favor of defendant No.2. On this point Ld. Advocate of plaintiff advanced an argument that, if plaintiff is not party to the sale deed then he has not required to pay the court fee on consideration amount mentioned in such sale deed, in which relief is asked for. In support to his contention he has relied on following case laws *Dilip Khushalchand(Srisrimal) Jain and others*. The ratio of above case law is, suit for declaration of sale deed is not binding on plaintiff. Plaintiffs who are not party to the instrument, seeking declaration of avoidance of sale deed would be govern by Section 6 (iv)(j). In view of above situation it necessary to scanned the order 7 Rule 11 (b) of Civil Procedure Code. The order 7 Rule 11 (b) of Civil Procedure Code clearly speaks that where the relief claimed is under valued, 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, reject the plaint. Therefore, question before this court is, whether suit is under valued or properly valued. In present case, it is un-disputed that plaintiff is not a party to the said sale deed. Therefore, it is not necessary to the plaintiff to pay court fee on consideration amount mentioned in sale deed. Moreover, on perusal of plaint it transpires that plaintiff paid court fee on amount mentioned in

such agreement of sale. Therefore, I came to the conclusion that plaintiff properly paid the court fee to the suit.

9. The another ground of defendant is, plaintiff not added Collector as party to the suit which is essential as per Order XXVII Rule 5 A of Civil Procedure Code. So far as this ground is concerned, I am of the opinion that, adding improper parties or non-adding necessary party is not a ground which came in any of categories mentioned in Order VII Rule 11 of Civil Procedure Code. Hence above contention of the defendant does not find force. In view of above situation I am of the opinion that suit is not fall within any of sub rule of Order 7 Rule 11. Therefore, the application is deserves to be rejected. Accordingly, I have proceed to pass following order.

ORDER

Application is hereby rejected.

Date – 03/10/2025
Place - Gangapur

(R.N.Pathak)
Jt. Civil Judge (S.D.),
Gangapur

CERTIFICATE

I affirm that, the contents of this PDF file Judgment are same, word to word as per the original Order.

Name of the Stenographer : Balu Ashruba Age
Stenographer Grade 2

Court : CJSD Court, Gangapur.

Judgment date : 03/10/2025
Judgment signed by the
Presiding Officer on : 03/10/2025
Judgment uploaded on : 16/10/2025