

Regular Civil Suit No. 34/2013.
Limbabai & others V/s. Kusum & others.
CNR No : MHBI060002332013.

ORDER BELOW EXH - 159.

Through this application by virtue of Order 7 Rule 11 defendants have prayed for rejection of plaint on count of valuation of the suit. This is the suit for partition and separate possession along with declaration that the sale deed executed by defendant no. 1 in favour of defendant no. 3 to be declared void ab-initio and not binding on the plaintiffs. The suit is filed by female coparceners against the male coparceners for the partition. After the final argument of the plaintiffs the Ld. Counsel for defendants when called upon to argue the suit finally has raised the objection as to jurisdiction of this Court and the valuation of the suit property.

2] Through this application, the defendants have contended that the plaintiffs have challenged the sale deed at Exh. 148 executed by defendant no. 1 in favour of defendant no. 3. That the defendants have prayed declaration vide prayer clause no. 2 of the plaint that the sale deed executed by the defendant no.1 in favour of defendant no. 3 to be declared void and ab-initio and not binding on the rights of plaintiffs. Concomitantly pointing out the consideration amount of the sale deed at Exh. 148 i.e. ₹ 10,40,000/- the defendants contended that it crosses the pecuniary jurisdiction of this Court, therefore, the suit is not maintainable before this Court. That the defendants also prayed for directions to the plaintiffs to correct the valuation as per Section 6(iv) (ha) of the Bombay Court Fee Act. In addition the defendants have

further prayed for settlement of preliminary issue to ascertain the valuation of the suit property.

3] Per contra, the plaintiffs have strongly retaliated the application by filing their say at Exh. 161. It is the reprisal of plaintiffs that the plaintiffs were not the parties to the alleged sale deed at Exh. 148 which was executed by the defendant no. 1 in favour of defendant no. 3 only to avoid the partition. Therefore, the plaintiffs are not entitled to value the suit as per the consideration of alleged sale deed. In fact, the plaintiffs have properly valued the suit as per Section 6(iv)(j) of the Maharashtra Court Fees Act. That the present application of the defendants is nothing but an intrigued attempt to cause delay in the trial.

4] Having heard the rival submissions and having gone through the plaint and the written statement, following points arise for my determination to which I record my findings against each of them for the reasons enumerated below;

Sr. No.	Points	
1]	Whether the suit is properly valued ?Affirmative
2]	Whether this Court has pecuniary jurisdiction over the suit ?Affirmative

REASONS

AS TO POINT NO. 1 :

5] it is the claim of defendants that the plaintiffs have under valued the suit. That the plaintiffs have specifically prayed that the sale deed at Exh. 148 to be declared void ab-initio not binding on the rights

of plaintiffs. That the consideration of the sale deed is ₹ 10,40,000/-. Therefore, the plaintiffs ought to have valued the suit as per Section 6(iv)(ha) of the Maharashtra Court Fee Act which says that in the suit for declaration that any sale deed of any immovable property is void, in such suit one half of the ad-valorem fee is to be leviable on the value of the property. Admittedly, which is not paid. In support of their submissions defendants relied upon **Abdul Sattar Gulabbhai Bagwan V/s. Vaibhav Laxamangiri Gosavi, 2012 (1) Bom. CR 1** wherein the Hon'ble Parent High Court was pleased to rule that in case of the declaration seeking the avoidance of the sale of an agreement Section 6(iv)(ha) would be attracted.

6] Per contra the plaintiffs in support their contentions relied upon **Dilip Khushalchand Jain V/s. Hardik Deepakbhai Ramani and others, 2023 (2) ABR 672** wherein the two Judge bench of Hon'ble Parent High Court is pleased to settle the law that the court fee for the suit for declaration, that the sale is not binding on the plaintiffs who are not party to the instrument seeking declaration of avoidance of the sale would be governed by Section 6(iv)(j) of Maharashtra Court Fee Act.

7] The plaintiffs further relied on the case of **Harshvardhan Shrikrishna Dole V/s. M/s. Goldminar Developers Pvt. Ltd., 2022 BHCCO 1730** wherein the Hon'ble Parent High Court pleased to rule that in case of avoidance of sale by the party who is not party to the sale deed Section 6(iv)(j) would be applicable. Section 6(iv)(ha) would only be applicable in the cases where the party seeking declaration of

avoidance of sale deed was party itself to the sale deed.

8] It is worth to mention that in both the supra cited authorities the Hon'ble Parent High Court was pleased to follow the ratio given in landmark case by the Hon'ble Apex Court i.e. ***Suhrid Sing @ Sardool Sing V/s. Randhir Sing and others, AIR 2010 (SC) 2807*** wherein the Hon'ble Apex Court was pleased to rule that where the executant of a deed wants to annul a deed, he has to seek cancellation of the deed. But, if a non executant seeks annulment of a deed he has to seek a declaration that the deed is invalid or non-est, illegal or that it is not binding on him. The difference between a prayer for cancellation and declaration in regard to a deed of transfer or conveyance can be brought out by the following illustration of A & B two brothers;

That A executes sale deed in favour of C. Subsequently, A wants to avoid the sale, A has to sue for cancellation of the sale deed. On the other hand, if B who is not the executant of the deed wants to avoid it, he has to sue for a declaration that the deed executed by A is invalid /void /non-est/illegal and not binding on him.

That in both the cases the Court fee shall be different. If A the executant of the deed seeks cancellation of the deed he has to pay ad-valorem court fees on the consideration stated in the sale deed, whereas if B who is not executant of the deed

sues for declaration that the deed is null or void and does not bind him or his share he has to merely pay the court fee required for the declaration only.

9] Having been gone through the supra guiding ratios, I am to state that nothing is left to be discussed after going through the guiding findings given by Hon'ble Apex Court and subsequently followed by the Hon'ble Parent High Court in both supra cited cases. In fact, recently in 2023 the Hon'ble Parent High Court is pleased to settle the law of the Court fee for avoidance of sale deed in supra cited case of ***Dilip Khushalchand Jain.***

10] Needless to mention that the plaintiffs being the female coparceners have prayed for avoidance of the sale made by the heirs of male coparceners of the Joint Hindu Family. Further, it is also needless to repeat that the female coparceners were not parties to the sale deed at Exh. 148. Indeed, I am to record my findings unhesitatingly in affirmative against the point no. 1 that the claim of plaintiffs as to declaration of the sale is governed by Section 6(iv)(j) of the Act and not by Section 6(iv)(ha) of the Maharashtra Court Fee Act. Thus, I have no impediment hurdle, obstacle or legal embargo to hold that the suit is properly valued.

AS TO POINT NO. 2:

11] It is the claim of defendants that in view of the challenge to the sale deed at Exh. 148 which is of ₹ 10,40,000/-, this Court has no pecuniary jurisdiction to try the instant suit. On the other hand the

plaintiffs have resisted the claim of defendants relying upon ***S.Rm.Ar.S.Sp.Sathappa Chettiyar V/s. S.Rm.Ar.Rm. Ramnathan Chettiyar, AIR 1958 (SC) 245*** wherein the Hon'ble Apex Court of the land was pleased to rule that the computation of court fees in the suit fall under section 7(iv) of the Court Fee Act depends upon the valuation that plaintiff makes in respect of his claim. Once the plaintiff exercises his option and valued his claim for the purpose of court fees that determines the value for jurisdiction. The value for the court fee and the value for jurisdiction must no doubt be the same in such case. But, is it the value for court fees settled by plaintiffs i.e. primary importance. It is from this value, the value for jurisdiction must be determined. The result is that the amount at which plaintiff has valued the relief sought for the purpose of court fees that determines the value for jurisdiction in the suit and not vice versa.

12] Further, the plaintiffs relied on ***Sadhu Mahadu Jagdale V/s. Taty Sadhu Jagdale and others, 1972, Mh.LJ 935*** wherein the Hon'ble Parent High Court was pleased to rule that a suit for partition and separate possession of a share in joint family property is governed by paragraph (vii) of the Section 6 of Bombay Court Fee Act and is a suit other than those governed by paragraph (v) (vi) and (x) of Section 6. In the suit for partition and separate possession the value determination for the purpose of court fee and the value for the purpose of jurisdiction shall be the same.

13] Having been infiltrated with the supra guiding authorities and in view of Rule 8 of the Maharashtra Suit Valuation Act, 1887 it

remained no more res-integra that this Court has jurisdiction to try and entertain the suit on the valuation made by plaintiffs in the plaint, irrespective of the consideration amount mentioned in the sale deed to which the plaintiffs were not the parties. Hence, I answer point no. 2 also in affirmative.

14] Concluding the order, I must say that the suit is 10 years old, the plaintiffs have finally argued the suit, the defendants and their Counsel have heard the entire argument of the plaintiffs and when the defendants have been called upon to argue the suit, the defendants have made an application for adjournment and then moved this application. It is worth to mention that till the final hearing defendants have had never ever raised the issue of jurisdiction and the court fee. The written statements of the defendants are completely mum and silent over the valuation. In fact, the defendants have admitted the valuation in the written statement. Resultantly, moving such an application at the stage of final hearing appears to be an attempt to cause further delay in the trial when the trial itself has been delayed for more than 10 years. Hence, defendants deserves to pay heavy costs for causing delay. Hence, I reckon to pass following order;

:: ORDER ::

- 01.** Application stand rejected with costs of ₹ 2,000/-

Place : Ambajogai.
Date : 05/03/2024.

Sd/-
(Z. Z. Khan)
Jt. Civil Judge (Junior Division),
Ambajogai (MHBI06-2196)

:: Certificate of Stenographer ::

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

Dictated On : 05/03/2024.

Transcribed On : 05/03/2024.

Checked & Signed On : 05/03/2024.

Date : 05/03/2024.

Place : Ambajogai.

Sd/-

(Akash Kabne)

Stenographer (Grade – 3)

Jt. C.J.J.D. & J.M.F.C., Ambajogai.