

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

COMMON ORDER BELOW EXH – 182 OF PLAINTIFF
AND EXH. 190 WHICH IS SAY CUM APPLICATION OF DEFENDANT.

By virtue of application below Exh. 182, the plaintiff has prayed for amendment of the plaint which has already been directed by this Court vide order below Exh. 175 on 04/09/2024. Plaintiff was ordered to correct the valuation of house property as per the amendment made by plaintiff in the plaint vide order below Exh. 100. Resultantly, through this application plaintiff has prayed for amendment in the plaint in order to correct the valuation of the suit in context to the house property which has been introduced by way of amendment.

02. Per contra, defendant resisted the application retaliating that the plaintiff under the garb of order of this Court is going to fill the lacuna in the plaint by proposed amendment where not only the plaintiff has prayed correction in valuation of house property but also, prayed for correction in valuation of the agricultural land too. That the plaintiff cannot be allowed to make amendment in valuation of agricultural land which has already been decided by this Court. Resultantly, defendant not only has prayed for rejection of application of amendment in plaint but also, the defendant has counterly prayed for rejection of the plaint.

03. Having heard the rival submissions at the length, I am in total agreement with the submissions of Ld. Counsel for defendant that, the issue as to amendment in valuation of the suit has already been

decided by this Court vide order below Exh. 159 dated 05/03/2024 which has been confirmed by Hon'ble Parent High Court on 09/08/2024. Therefore, now plaintiff cannot touch that issue regarding the valuation of agricultural land. The plaintiff has limited scope to amend the plaint only in order to correct the valuation of house property as directed through order below Exh. 175.

04. Coming to the claim of defendant that, the plaint is to be rejected on count that, the plaintiff failed to correct the valuation of suit property despite the order of this Court. In this context, I am to state that, vide order below Exh. 181 dated 24/09/2024 the Court has extended the time to comply the order below Exh. 175 by virtue of Section 148 of C.P.C. Resultantly, the plaintiff through this application has prayed for amendment to correct the valuation of the suit. However, the plaintiff has exaggerated to pray for correction of valuation of agricultural land too which cannot be permitted.

05. However, the plaintiff has every right to amend the plaint in order to pay Court Fee over the valuation of suit house as ordered in order below Exh. 175. There is nothing to infer from the contents of plaint and from the conduct of plaintiff to infer that the plaintiff failed to pay the Court Fee even after order of the Court directing him to pay the Court Fee. Therefore, I am of view that, the suit which is ready for final disposal, where the plaintiff has argued the suit finally, it is defendant to argue the suit and to submit his all grievances at final stage. The suit being extremely old, therefore, moving such interlocutory applications without merits are not affordable.

06. Indeed, having been infiltrated with the contents of plaint and interlocutory orders passed below Exh. 100, 159, 175 and 181, I found that the claim of plaintiff to reject the plaint has no place to stand in fact, it is devoid of merits. Hence, at no stretch of imagination or under no provision of C.P.C. at this stage, the suit of plaintiff can be rejected under Order 7 Rule 11(b) of C.P.C. The Hon'ble Apex Court recently in case of ***Bharatbushan Gupta V/s. Pratap Narayan Warma, Civil Appeal no. 4577 of 2022, arising out of S.L.P. (C) no. 9780 of 2019 decided on 16th June-2022*** was pleased to rule that market value of the property does not become decisive of valuation merely because litigation involves immovable property.

07. So far as concerned to the payment of Court Fee, it is the claim of defendant that the current valuation of the house property is 66,000/-. However, as per the valuation made by plaintiff in proposed amendment as per ready reckoner, the valuation of the suit at the time of institution of suit was ₹ 44,000/-. The plaintiff is praying to pay Court Fee as per valuation of house property at the time of institution of suit. However, defendant has prayed that, the Court Fee to be paid as per the valuation on the day of passing of order below Exh. 100.

08. Having heard the rival submissions, I am of candid view that, though the plaintiff is ordered to correct the valuation in house property as per the valuation of suit property at the time of amendment in plaint when the house property is added in the suit. Hence, plaintiff is entitled to pay the Court Fee on the day of inclusion of property in the suit. With these observations, I reckon to pass following order;

:: ORDER ::

- 01.** Application of plaintiff at Exh. 182 is partly allowed.
- 02.** Plaintiff to amend the plaint only to the context of house property as directed by this Court vide order below Exh. 175.
- 03.** The claim of defendant for rejection of plaint stand rejected.
- 04.** Defendant to argue the suit finally rather the Court shall assume that the defendant has nothing to argue.
- 05.** Suit being 10 years old, hence in view of the directions of Hon'ble Parent High Court to dispose off old cases expeditiously, it be kept for final argument of defendant and for amendment of plaint on the same day.

Place : Ambajogai.
Date : 07/10/2024.

(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 : 07/10/2024.

Transcribed On : 07/10/2024.

Checked & Signed On : 08/10/2024.

Date : 08/10/2024.

Place : Ambajogai.

Sd/-
(Akash Kabne)
Stenographer (Grade – 3)
Jt. C.J.J.D. & J.M.F.C., Ambajogai.