

R.C.S. No. 28/2023
Bharat Nile -Vs- Shivaji Nile + 1
CNR No.MHBU07-000449-2023

ORDER BELOW EXH.10

[Passed on 23.01.2025]

1. This is an application filed by the defendant No. 2 under Order 7 Rule 11 R/w. 151 of CPC. Perused the application and say filed by Ld. Counsel for the plaintiff. Heard Ld. Counsel for the defendant and Ld. Counsel for the plaintiff.

2. It is the contention of the defendant No. 2 that the plaintiff filed this suit for declaration and permanent injunction which is beyond the scope of law. The valuation of the said suit for jurisdiction and court fee is shown at Rs. 6,600/- and 1520/- respectively. The court fee shown by the plaintiff in the plaint is by way of land revenue and court fee was shown to be paid as mentioned above. Defendant No. 2 further submitted that this is not the suit for partition and separate possession of the suit property and criteria of valuation of the suit property adopted by the plaintiff is not applicable to the present suit. The valuation of the suit property in the case of the relief of the declaration has to be calculated as per the provision of Section 6 of Maharashtra Court Fee Act. This suit is not liable to be proceeded further until and unless requisite court fee stamp in accordance with the provision of Maharashtra Court Fee Act has to be paid as per the provision of order 7 rule 11 of the C.P.C. The plaint is liable to be rejected on account of non payment of requisite court fee stamp. So also the plaintiff has not specified and properly explained the cause of action which is shown to be

accrued in para No. 6 of the plaint with any kind of supporting documents and filing of the suit by the defendant No. 2 cannot be ground for cause of action. Therefore, defendant No. 2 prayed for rejection of the plaint under order 7 rule 11 of C.P.C.

3. Ld. Counsel for the plaintiff strongly opposed the application and submitted that the present application is not maintainable. Ld. Counsel for the plaintiff further submitted that it can be seen from the recital of the plaint that present suit is for the declaration and injunction. The plaintiff nowhere claimed the declaration of ownership from the court. Therefore, provision of section 6 of Maharashtra Court Fee act will not be applicable. The plaintiff has paid the court fee for injunction as per the land revenue. Plaintiff further contented that the issue of the court fee is between the court and the plaintiff. The defendant has nothing to do with court fee. Therefore, application of the defendant is misconceived and liable to be rejected with costs. Hence, Ld counsel for the plaintiff prayed for rejection of the application.

4. It appears from the plaint that present suit filed by the plaintiff is for declaration and permanent injunction. Plaintiff averred in para no. 5 of the plaint that the present suit are required to be filed for declaration and permanent injunction against the defendant as the defendant has no right to either claimed ownership over the suit field or to disturb the peaceful possession of the plaintiff. To decide the application it has to be seen what is the provision of Order 7 Rule 11 of the C.P.C. Order 7 Rule 11 of the C.P.C. read 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 written 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-papers 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 papers, 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.)

5. Perusal of order 7 rule 11 of C.P.C. clearly stated that the relief claimed is undervalued and plaintiff, on being required by the court to correct valuation within a time to be

fixed by the court, fails to do so, the plaint shall be rejected on above mentioned ground. In the instant case the plaintiff sought the declaration that defendant have a no right to either claim over the ownership over the suit field or to disturb the peaceful possession of the plaintiff. In other word the plaintiff sought the relief of declaration that he will be owner of the suit property. Therefore, it can be said that plaintiff filed the present suit for declaration that he will be owner of the suit property.

6. Section 6 of the Maharashtra Court fee Act provides that one fourth of advelorum fee leviable for suit for declaration of ownership has to be paid in case of relief of declaration sought by the plaintiff in the suit. Therefore, plaintiff is required to pay the fees for the declaration of ownership of the suit property in the light of relief sought by the plaintiff for declaration in the plaint.

7. So far as the cause of action in the instant suit are concerned, the plaint is at very primary stage and it cannot be said that the cause of action mentioned in the plaint has not been accrued or the cause of action mentioned in the plaint are not the proper cause of action. The question of cause of action will be decided after the both party adduced the evidence. In the light of the provision of Order 7 Rule 11 of C.P.C. the plaintiff will be given an opportunity to make the valuation correctly and pay the court fee accordingly. It will be just and proper to give liberty to the defendant to take a step in case of failure of the plaintiff to pay the requisite court fee for the ownership. In view of above reason, I am not

inclined to allow this application and proceed to pass following order.

ORDER

1. Application is rejected.
2. Plaintiff is directed to pay the requisite court fee for declaration of ownership as per the provision of section 6 of Maharashtra Court fee Act within one month from the date of this order.
3. Liberty is granted to the defendant to take a step in case of failure of the plaintiff to pay the requisite court fee.

Date : 23.01.2024.

[N. D. Meshram]
Civil Judge Jr. Dn. Shegaon,
Dist. Buldana.

I, *P. K. Ingle*, Stenographer of C.J.J.D. & J.M.F.C. Court No.1, Shegaon affirm that the contents of this P.D.F. file order is correct word to word as per the Original Order.