

MHJN050017332023



-ORDER BELOW EXH.NO. 24 -
R.C.S. 188/2023
(Passed on 25/02/2025)

1] This is an application filed by the defendants no. 1, 3 and 4 for rejection of the plaint under Order 7 Rule 11 of the Code of Civil Procedure.

2] The defendants no. 1, 3 and 4 submitted that, the plaintiff has filed the suit for an injunction and declaration that, sale deeds nos. 1731 and 1732 be declared as null and void. The alleged sale deed no. 1731/2023 is for Rs. 11,06,000/- and sale deed no. 1732/2023 is for Rs. 11,20,000/-. As such, the total value of both these sale deeds is Rs. 22,26,000/-. In that situation, the court has no jurisdiction to decide the matter, which is valued more than 5,00,000/-. The plaintiff also requested that, the alleged sale deeds are not binding upon his rights and that the same may be declared as null and void. As such, the plaintiff has challenged the above-mentioned sale deeds. Therefore, it is required by the plaintiff that, he should have paid a Court fee on Rs. 22,26,000/-. However, the plaintiff has failed to provide the requisite court fee. Hence, the suit is not tenable. Further, the defendants submitted that, this court has no jurisdiction to open or close the road. Already, the plaintiff has filed the proceeding regarding the road before the Tahasildar, Partur. It is required that the plaintiff should have made the Tahasildar, Partur, or Circle Inspector or Talathi as a party in this suit. As such, without joinder of necessary party, the plaintiff has filed this suit, which is not tenable in the eyes of law. The suit is under value and wrongly filed in this court. Therefore, the suit is required to be rejected as per Order 7 Rule 11 of the Code of Civil Procedure. Hence, the defendants are requested to reject the plaint.

3] The plaintiff filed his say and contended that, he has not

challenged the above-mentioned sale deeds. Therefore, there is no question of payment of the court fees. In fact, the plaintiff sought the declaration that there is no road as mentioned in the sale deed. Further, the plaintiff requested for a permanent injunction. The plaintiff has not claimed any road or dispute regarding the road. So, there is no need to add Tahasildar or revenue authority as a party in this suit. They are not the necessary parties. This application is filed with the intent to prolong the matter. Hence, the plaintiff requested to reject the application.

4. Before proceeding further, it would be profitable to mention the provisions of **section 6 (iv) (ha), (j)** of The Maharashtra Court Fee Act-

(ha) In suits for declaration that any sale, or contract for sale or termination of contract for sale, of any movable or immovable property is void one-half of ad valorem fee leviable on the value of the property;

(j) In suits where declaration is sought, with or without injunction or other consequential relief and the subject-matter in dispute is not susceptible of monetary evaluation and which are not otherwise provided for by this Act ad valorem fee payable, as if the amount or value of the subject matter was one thousand rupees;

In all suits under clauses (a) to (i), the plaintiff shall state the amount at which he values the relief sought, with the reasons for the valuation;

4] After going through the pleading of the plaintiff, it reveals that, the plaintiff sought only the relief of declaration that there is no road over the suit properties of the plaintiff as mentioned in the sale deeds nos. 1731/23 and 1732/23 by the defendants no. 01 and 02. On perusal of the sale deeds it transpires that the plaintiff is not a party to the alleged sale deeds. The pleading of the plaintiff also shows that he has not challenged the sale deeds. Even he has not claimed any new road. The plaintiff just sought the declaration regarding non-existence of a road over his suit properties. Therefore, the suit of the plaintiff is

not come under the purview of provisions of Section 6 (iv) (ha) of the Maharashtra Court Fee Act. As such, the pleading of the clearly shows that he has paid the court fees as per the provisions of Section 6 (iv) (j) of Maharashtra Court Fee Act.

5] The Hon'ble Bombay High Court in the case of *Anant Chavan Vs. Manoj Kamble & Ors* held that

This Court is catena of decisions after adverting to the judgment of the Hon'ble Supreme Court in case of *Suhrid Singh @ Sardool Singh V. Randhir Singh*, (2010) 12 SCC 112 : AIR 2010 SC 2807, has held that the petitioners being not a party to the sale deed and if there is prayer for cancellation of such sale deed in the plaint, the plaintiff will have to pay the Court fees under section 6(iv)(j) and not under section 6 (iv)(ha) of the Bombay Court Fees Act, 1959. In my view, both the orders passed by the learned Trial Judge are contrary to the provisions of law laid down by this Court and are accordingly quashed and set aside. It is made clear that the plaintiff would be liable to pay the Court fees under section 6(iv)(j) of the Bombay Court Fees Act, 1959.

6] The Hon'ble Bombay High Court observed that, if the person is not a party to any document and he seeks relief regarding that document, he will have to pay the Court fees under Section 6(iv)(j) and not under Section 6 (iv)(ha) of the Bombay Court Fees Act, 1959. The record clearly shows that, the plaintiff is not a party to the alleged sale deeds. Therefore, he has paid the adequate court fees as per the provisions of the Bombay Court Fees Act, 1959. Further, the plaintiff is not claiming any road over the suit property. Moreover, the suit properties are located within the jurisdiction of this court and the case of the plaintiff came under the purview of provisions of Section 6 (iv)

(j) of the Maharashtra Court Fee Act, therefore, this Court has jurisdiction to try this suit. Hence, considering the settled position of law and all the above aspects, I have not found any substance in the application. Consequently, the application is liable to be rejected. Hence, I pass the following order -

ORDER

The application Exh. 24 is hereby rejected.

(Order is dictated and pronounced in open Court.)

Place : Partur
Date:- 25-02-2025

(Rahul B. Suryawanshi)
Jt. Civil Judge (Jr Div)
Partur

- : C E R T I F I C A T E : -

I affirm that the contents of this Pdf file order are same word as per original order.

Name of Junior Clerk :- Shantanu S. Kapale
Name of Judge :- Judicial Magistrate First Class
(Court No. 02), Partur.
Order dictated on :- Direct on Computer
Order signed by P.O. on :- 25.02.2025
Order uploaded on :- 01.03.2025

S/d
(Shantanu S. Kapale)
Junior Clerk