


MHJN080002142019 	<b><u>ORDER BELOW EXH.42</u></b> <b>(Passed on 15/03/2024)</b>
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This is an application by defendant no.1 and 2 vide order 7 Rule 11 of The Code of Civil Procedure, 1908 (for short **The CPC**) to reject the plaint.

2. Heard advocate Shri. S. S. Raut for defendant no.1 & 2 and advocate Shri. R. R. Kulkarni for the plaintiff.

3. Defendants have submitted that, the plaintiff has filed suit for declaration as to non binding of sale deed, possession, declaration of ownership and injunction. The plaintiff has executed sale deed bearing no.1322/1979 in respect of block no.389 admeasuring 03 H 85 R (for short **the disputed land**) in favour of Nalini Rangrao Deshpande. Accordingly mutation entry no.92 came to be sanctioned. The plaintiff sought declaration as to non binding that sale deed.

4. Nalini Deshpande executed sale deed no.2330/1990 of 01 H 62 R area of block no.389 in favour of Mahavir Tated and defendant no.1. She has also executed sale deed bearing no.1129/1997 of 61 R area of block no.389 in favour of defendant no.4. Nalini has executed sale deed bearing no.5012/2001 of 81 R area of block no.389 in favour of defendant no.1. Nalini executed

sale deed bearing no.5013/2001 of 81 R area of block no.389 in favour of Sushilabai Shubhash Khicha.

5. After death of Mahavir name of defendant no.3 came to be mutated by mutation entry no.1813. Defendant no.3 and 4 executed partition and 2 H 23 R area came to the share of defendant no.2. Accordingly, mutation entry no.4223 came to be sanctioned. The plaintiff has not paid required court fees along with suit. The plaintiff executed sale deed in the year 1979 and he was having age of 21 years. 40 years already passed. The suit is out of limitation. Necessary parties have not joined. Therefore, they prayed to reject the plaint.

6. The plaintiff by filing say at Exh.46 has only denied all contentions raised by defendant no.1 and 2. He prayed to reject the application.

7. Order VII Rule 11 of the C.P.C provides grounds for rejection of plaint. It speaks as follows,

**11. Rejection of plaint** - 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 returned upon paper insufficiently stamped and the plaintiff on being required 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 sub-rule (2) of rule 9 ;
- g. Where the plaintiff fails to comply sub-rule (3) of rule 9.

[ Provided that the time fixed by the court for the correction of the valuation or supplying of the requisite stamp-paper 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-paper, 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.]

8. Perused record. It is seen that, the plaintiff has filed the suit for declaration of ownership and possession in respect of agricultural land situated at Ranjani bearing block no.389 ad-measuring about 03 H. 85 R. Order VII Rule 11(d) of the C.P.C provides that, the plaint shall be rejected where the suit appears from the statement in the plaint to be barred by any law. Hence, in order to decide whether the suit is barred by any law, it is the statement in the plaint which will have to be taken into consideration. Whether the suit

is barred by any law must be determined from the statements in the plaint and it is not open to decide the issue on the basis of any other material including the written statement.

9. To decide as to rejection of plaint, it is necessary to go through the plaint. The plaint shows that, the plaintiff has claimed declaration of ownership and possession of the disputed land. The first contention is about limitation. It is well settled that, the question of limitation is mixed question of fact and law. Further, as defendants raised the point of limitation, issue can be framed and can be decided at the end of trial. Further, parties have right to adduce evidence as to limitation. So issue of limitation can be decided after the trial.

10. Second contention is about nonjoinder of necessary parties as there were several transactions of sale about disputed land already taken place. Order I Rule 10 of The CPC provides the power to the court to add or delete, any party which ought to have joined or which is wrongly joined respectively. Order VII Rule 11 does not provide ground of necessary party on which the plaint can be rejected.

11. Third contention is about court fees. Defendants submitted that, the plaintiff has not paid necessary court fees in respect of sale deed when he sought declaration as to its non binding. In the present suit, the plaintiff has sought declaration that, he is owner of the disputed land. Para no.6 of the plaint shows that, there is mention about sale deed dated 03/05/1979 executed by the plaintiff in favour Nalinibai. The said para also shows that, the plaintiff contended that, the sale deed is illegal and not binding on him. It

means that, the plaintiff has also sought declaration about the sale deed.

12. From para no.6 of the plaint, it is clear that the plaintiff was executant of the sale deed dated 03/05/1979. It is clear that, the plaintiff was party to the sale deed. Section 6 of the Maharashtra Court Fees Act, 1959 provides for computation of fees payable in certain suits.

13. Section 6 (iv)(ha) provides that, in a suit 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 shall be leviable on the value of the property. Section 6 (iv)(j) provides that, in suits where declaration is sought, with or without injunction or other consequential relief and subject matter in dispute is not susceptible of monetary evaluation and which are not otherwise provided for by this Act, court fee shall be payable as if the amount or value of the subject matter was Rs.1,000/-.

14. The Hon'ble Bombay High Court in the case of Dilip Khushalchand (Srisrimal) Jain & oth. V/s Hardik Deepakbhai Ramani, writ petition no.8968 of 2018 decided on 05/05/2022, discussed various decisions including the decision given in prism (Supra) held in para no.24 & 26 as follows,

*24. From the above discussion in our judgment, section 6 (iv)(ha) would be applicable only to the plaintiff who is a party to the sale deed seeking declaration of avoidance of sale deed. It would not be*

*applicable to the plaintiffs who are not party to the instrument seeking declaration of avoidance of sale deed. Such plaintiff would be governed by section 6 (iv)(j) as it is not susceptible to monetary evaluation.*

25.

*26. In view of the above, answer to the reference is that the court fee payable in regard to a suit for declaration of the sale deed to which the plaintiff is not party to the sale deed binding on him and for consequential injunction would be governed by section 6 (iv)(j) of the Maharashtra Court Fees Act.*

15. In the case in hand, admittedly the plaintiff was party to sale deed dated 03/05/1979. Order VI Rule 11 (b & c) of the CPC provides the grounds on which the plaint shall be rejected. However, it provides that, the plaint shall be rejected when the plaintiff fails to do comply order of the court within fixed time by the court to correct the valuation and to supply to requisite stamp paper.

16. So, time can be given to the plaintiff to correct valuation of the suit and to pay requisite court fees. The plaintiff was party to the sale deed dated 03/05/1979. Therefore, in view of decision given in Dilip (Supra) the plaintiff is required to pay court fees as per section 6 (iv)(ha) of The Maharashtra Court Fees Act. On the grounds raised by defendants in the application, the plaint is not liable to be rejected. The application is meritless. Hence, it is

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rejected. Parties to take note and proceed further. The plaintiff to pay necessary court fees till next date.

Sd/-

Place : Ghansawangi.  
Date : 15/03/2024.

**(S. B. Shirsath)**  
Civil Judge Junior Division  
Ghansawangi.

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**CERTIFICATE**

I affirm that, the contents of this PDF are same words for words, as per the original judgment.

Name of Stenographer : A. R. Gadade

Name of Court : Civil Judge (J. D.), Ghansawangi.

Upload on date : 15/03/2024.

Sd/-

(A. R. Gadade)  
Stenographer Grade-3