


<p>MHKO050033912021</p> 	<p><u>Order below Exh. 26 in RCS No.223/2021</u> <u>Nilam Ajit Vhatkar Vs.</u> <u>Sarita Sharad Maske and 8 others</u> <u>CNR No. MHKO050033912021</u></p>
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The instant application is filed under Order VII Rule 11 of the Civil Procedure Code by the defendant no.1.

2. **Shorn of unnecessary details brief facts leading to the filing of instant application are as follows :-**

The plaintiffs have filed the instant suit seeking relief of partition, declaration that sale deeds executed by the defendant no.1 namely Registered document no.5362/2008, 5363/2008, sale deed no.4209/2010, 4210/2010, correction application no.1071/2010 and sale deed dated 6013/2015 is not binding upon them.

3. The relief sought by the plaintiffs regarding declaration that the sale deeds executed by defendant no.1 in favour of other defendants as null and void and not binding upon plaintiffs is assailed by the defendant no.1 in the instant application.

4. According to defendant no.1, it was necessary for the plaintiffs to properly value the suit as per the Bombay Court Fees Act as the plaintiffs have sought declaration that the sale deeds executed in favour of defendants be declared null and void. According to the defendant no.1, the plaintiffs ought to have valued and computed Court Fees as per section 6(iv)(ha) of the Bombay Court Fees Act. However, the plaintiffs have not done so. According to the defendant

no.1, the valuation done by the plaintiffs under section 6(iv)(j) of the Bombay Court Fees Act, is illegal, incorrect and therefore, as per provision of Order VII Rule 11(b)(c), plaint is liable to be rejected.

5. According to the defendant no.1, if valuation is done in accordance to section 6(iv)(ha) of the Bombay Court Fees Act then, the plaintiffs are liable to pay appropriate Court Fees and therefore, question of valuation needs to be decided at first. In sum and substance, the defendant no.1 prays for rejection of plaint under Order VII Rule 11 on account of incorrect and insufficient valuation as required by the Bombay Court Fees Act.

6. After filing of the instant application, the plaintiffs have filed reply below Exh.29. It is the contention of the plaintiffs that the suit is properly valued. The plaintiffs are only seeking relief that sale-deeds executed in favour of defendants are not binding on their ownership in the suit property and therefore according to the plaintiffs valuation is done as per section 6(iv)(j) of Bombay Court Fees Act and for the said formal declaration, appropriate stamp is annexed along with the plaint. Thus, it is submitted by the plaintiffs that suit is properly and sufficiently valued and hence, plaint cannot be rejected under Order VII Rule 11 of Civil Procedure Code

7. I have heard learned counsel Mr. V. M. Shinde appearing for defendant no.1 as well as Mr. S. G. Shinde appearing for the plaintiffs. Learned counsel Mr. V. M. Shinde submitted in consonance with his application. He submitted that once the

plaintiffs have sought relief of declaration that sale deeds are null and void and not binding, then the suit has to be valued under section 6(iv)(ha) of the Bombay Court Fees Act. He submits that the plaint discloses that Court fees is calculated as per section 6(iv)(j) of the Bombay Court Fees Act where as valuation ought to have been done under section 6(iv)(ha) of Bombay Court Fees Act. To bolster his stand he has placed his reliance upon following judgments :-

A] Prism Reality, Pune Vs. Govind Yashwant Khalade and Ors. reported in 2015(2) Mh.L.J.472.

B] Shri. Sushil Baburao Jadhav & ors. Vs. Shri. Ashok Pandurang Jadhav in Writ Petition no.1224/2014 [Hon'ble Bombay High Court]

8. Per contra leaned counsel Mr. S. G. Shinde vehemently opposed the instant application on the ground that the suit is property valued. He submits that the plaintiffs are seeking relief of declaration only to the extent that the sale deeds are not binding upon the plaintiffs. Thus, as the plaintiffs have not sought relief of cancellation of the entire sale deeds, Court Fees need not be calculated as per section 6(iv)(ha) of Bombay Court Fees Act. Learned counsel Mr. S. G. Shinde has placed his reliance on following judgment :-

A] Ravindra Narayan Rajarshi & Ors. Vs Smt. Rohini Ganpatrao Heblkar in Civil Revision Application no.339/2016. [Hon'ble Bombay High Court]

9. Perused the record. Before proceeding ahead, it would be just and proper to reproduce Order VII Rule 11 of the Civil Procedure Code. Order VII Rule 11 of the e Civil Procedure Code reads 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 under-valued, and the plaintiff, on being required by the Court to so 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;

[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.]

10. Now reverting to the hub of the matter, the real bone of contention between the parties inter se dispute is whether the relief

sought by the plaintiffs seeking declaration of cancellation of sale deeds as not binding upon them falls under the ambit of section 6(iv)(ha) of Bombay Court Fees Act or under section 6(iv)(j) of Bombay Court Fees Act as computed by the plaintiffs. For the said purpose it would be just and proper to look into the relevant prayer clause of the plaint.

11. Perusal of the prayer clause C in paragraph 14 of the plaint reads as follows :-

" प्रतिवादी नं.१ ने आपले लाभात रजि.दस्त नं.५३६२/२००८, ५३६३/२००८, मुदत खरेदीपत्र व दस्त नं.४२०९/१०, दस्त नं.४२१०/२०१० चे खरेदीपत्र व दुरुस्ती लेख १०७१/२०१० व प्रतिवादी नं.१, प्रतिवादी नं.२ यांना दिलेला दस्त नं.६०१३/२०१५ चा वादीचे हक्कावर बंधनकारक नाही. हे खरेदीपत्र चुकीचे व बेकायदेशीर असून ते वादींवर बंधनकारक नाही असे हक्कजापन व्हावे "

12. Thus, a bare perusal of the prayer clause shows that the plaintiffs have sought relief that the alleged sale deeds executed in favour of defendants be declared null and void and not binding upon rights of the plaintiffs. Thus, though the plaintiffs have come up with the case that sale deeds are not binding upon them however, under the ambit of such declaration, the plaintiffs are actually seeking cancellation of the sale deeds. The relief sought by the plaintiffs stating that the sale deeds are not binding upon them cannot be granted unless the sale deeds are canceled by declaring them null and void. Thus, at the very instance it is seen that the plaintiffs are seeking cancellation of sale deeds though not worded in the same sense.

13. In view of Judgment of Hon'ble Bombay High Court in *Prism Reality Vs. Govind*, (cited *supra*) it is been specifically observed by the Hon'ble Bombay High Court that when sale deed allegedly executed is sought to be challenged and accordingly a declaration is sought then provision of section 6(iv)(ha) of of Bombay Court Fees Act would be applicable even in the case where plaintiffs are not the executants or parties to the said sale deeds. The Hon'ble Bombay High Court has also further held that when plaintiffs have questioned the sale deed as being sham and bogus, the plaintiffs cannot be exempted from the rigours of section 6(iv) (ha) of Bombay Court Fees Act.

14. At this juncture, learned counsel for the plaintiffs has pressed into service decision of Hon'ble Bombay High Court in case of *Ravindra Narayan Rajarshi* (cited *supra*). However, the facts of the instant case are completely different than the facts for consideration before the Hon'ble High Court. In the said suit, after filing of the suit, the defendants executed sale deeds in favour of other defendants and it was accordingly held that the said act was done by the defendants during the pendency of the suit. Accordingly, it was held that as the suit was for specific performance, it was properly valued as per section 6(iv)(j) of the Bombay Court Fees Act. In the instant suit, it is not the case that the sale deeds are executed after filing of the suit. On the contrary the sale deeds are executed in the year 2008, 2010 and 2015 respectively. Moreover, the suit filed by the plaintiffs is not for specific performance of contract but, it is filed for seeking partition and relief of declaration that sale deeds

executed by the defendant no.1 are not binding upon plaintiffs. Thus, in my considered view, the ruling cited *supra* is not applicable to the facts of the instant case.

15. Accordingly, the ruling cited *supra* i.e. in case of **Prism Reality Vs. Govind**, is squarely applicable to the case at hand. The plaintiffs in the instant suit have sought declaration of the sale deeds being null and void and thus, even if the plaintiffs are not a party to the said sale deeds, the plaintiffs are liable to calculate the court fees in view of provision of section 6(iv)(ha) of Bombay Court Fees Act. Admittedly the plaintiffs have not valued the plaint accordingly and thus, the plaint is directly hit by provisions of Order VII Rule 11(b) (c) of Civil Procedure Code. In view of the same, I proceed to pass following order :-

ORDER

1. The application stands allowed
2. The plaintiffs are directed to properly compute court fees in terms of section 6(iv)(ha) of Bombay Court Fees Act.
3. The plaintiffs are directed to comply with the order within period of two months from today.
4. Needless to mention here that necessary order under Order VII Rule 11 will be passed by this Court upon failure of Plaintiffs to supply requisite court fees within two months from today and upon failure of plaintiffs to comply with the instant order.
5. In case, if after annexing necessary additional court fees, it is found that the suit would be barred before this Court for

want of pecuniary jurisdiction, necessary steps shall be taken in relation to the same after compliance of this order.

6. Parties to take note.

Date- 07/10/2022
Ichalkaranji

(S. A. Ingley)
2nd Jt. Civil Judge Junior Division,
Ichalkaranji

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

I affirm that the contents of this P.D.F. file Judgment/ Orders are same, word to word, as per the original Judgment / Order.

Name of stenographer	R. D. Jadhav
Name of Court	Shri. S. A. Ingley 2 nd Jt. Civil Judge Jr. Div., Ichalkaranji.
Date of Dictation	07/10/2022
Order signed by P.O. on	07/10/2022
Order uploaded on	07/10/2022