

MHKO110017402017



Reg.Civil Suit No.115/1996
(CNR No.MHKO110017402017)

Order below Exh.111

01. The defendant No.1 has filed this application under Order 7 Rule 11(b)(c) of The Code of Civil Procedure for rejection of plaint.

02. The defendant No.1 has submitted that, the plaintiff has filed the suit for partition by metes and bounds and separate possession. The original plaintiff - Dhondubai Shankar Powar is died. She had claimed share in her ancestral properties from her father. Though she is woman, she has claimed her right in the properties of her father. Hence as per law, she has to pay appropriate court fees. The court fee stamp is not exempted to the deceased plaintiff. Hence unless and until the sufficient court fee stamp is not paid by the plaintiffs, the present suit is not tenable. Hence defendant No.1 prayed to reject the plaint.

03. On the other hand the plaintiffs have filed their say and submitted that, the application is false and misleading one, which is not maintainable in the eyes of law. The present application is filed to prolong the matter. The application is filed with malafide intention. The defendants have not taken the objection as to the court fee for 25 years. Hence prayed to reject the application.

04. Heard arguments of both sides. Considering all rival submissions of both sides, following points arose for my determination, to which I have given answers with the reasons stated below -

<u>Sr. No.</u>	<u>Points</u>	<u>Answers</u>
1)	Whether the deceased plaintiff being woman exempted from payment of court fees ?	Yes
2)	Whether the plaint is liable to be rejected under the Order VII Rule 11(b) and (c) of the Code of Civil Procedure, 1908 ?	No
3)	What Order ?	<i>The Application is Rejected.</i>

REASONS

AS TO POINT NO. 1 :-

05. The defendant No.1 has submitted that, the plaintiff has filed the suit for partition by metes and bounds and separate possession. The original plaintiff - Dhondubai Shankar Powar is died. She had claimed share in her ancestral properties from her father. Though she is woman, she has claimed her right in the properties of her father. Hence as per law, she has to pay appropriate court fees. The court fee stamp is not exempted to the deceased plaintiff. Hence unless and until the sufficient court fee stamp is not paid by the plaintiffs, the present suit is not tenable. The Ld. Counsel for the defendant No.1 has relied upon ***Amended G.N.R. & F.D.No.S.30/2000/673/CR-199/M-1, dated 23rd March, 2000 (M.G.Pt.IV-B, P.285).*** The Ld. Counsel for the defendant No.1 has further relied upon ***Shrinivas s/o. Ramnathji Kathod & Ors. v/ s. Savitribai w/o. Sureshchandra Kathod & Ors. (2012 BCI 972) BOMBAY HIGH COURT.***

06. On the other hand, the Ld. Counsel for the plaintiffs submitted that, as per the notification year 1994, the court fees was exempted to women. The amended notification of year 2000 has no

retrospective effect on the payment of court fees by women litigants. The deceased plaintiff was a lady and as the notification of 1994, she was exempted from payment of court fees in the present suit.

07. It is necessary to see notification of year 1994 and year 2000 regarding the exemption of court fees to the women litigants.

"REVENUE AND FORESTS DEPARTMENT

Mantrataya, Bombay 400 032, dated 1st October 1994

BOMBAY COURT FEES ACT, 1959.

No. STP. 1094/CR-859/M-1.---Whereas, the Government of Maharashtra has recently announced a policy with a view to promote the welfare of the women;

And whereas, the same welfare policy for women inter alia, provides for exemption of Court fees for women litigants in cases relating to maintenance, property right, violence and divorce;

And whereas, section 46 of the Bombay Court Fees Act, 1959 (Bom. XXXVI of 1959), empowers the State Government by notification in the Official Gazette to reduce or to permit any of the fees mentioned in the First and Second Schedules to that Act;

Now, therefore, in exercise of the powers conferred by section 46 of the Bombay Court Fees Act, 1959 (Bom. XXXVI of 1959), the Government of Maharashtra hereby remits the fees payable by women litigants on any of the complaints, applications, petitions. Memorandum of appeals or any other documents specified in the First and Second Schedules to the said Act, to be filled in any Civil, Family or Criminal Courts in respect of the cases relating to (a) maintenance, (b) property disputes, (c) violence and (d) divorce.

By order and in the name of the Governor of Maharashtra.

HARSHAWARDHAN GAJBHIYE

Deputy Secretary to Government"

The amending Notification reads as follows:-

"REVENUE AND FORESTS DEPARTMENT

Mantralaya, Bombay 400 032, dated 23rd March 2000

BOMBAY COURT FEES ACT, 1959.

No. S.30/2000/673/CR-199/M-1---in exercise of the powers conferred by section 46 of the Bombay Court Fees Act, 1959 (Bom. XXXVI of 1959), the Government of Maharashtra hereby amends the Government Notification, Revenue and Forests Department No. STP. 1094/CR-859/M-1 dated the 1st October 1994, as follows :-

In the said Notification, the following Explanation shall be added at the end, namely:-

" Explanation.-The expression "property disputes" shall mean property disputes arising out of and concerning matrimonial matters."

By order and in the name of the Governor of Maharashtra.

P.O. CHHATRE

Deputy Secretary to Government"

08. Considering the above notifications issued by the Maharashtra Government, by way of amendment the notification of year 2000 has explained that, the 'property disputes' shall mean property disputes arising out of or concerning matrimonial matters. Therefore court fee is exempted to woman in the disputes arose out of matrimonial matters relating to maintenance, violence and divorce. Only explanation is given in the notification of 2000. In notification of year 1994, there was no such explanation provided regarding exemption of court fees for women litigants in cases arising out of and concerning matrimonial matters. It is only provided in the notification of 1994 that, court fees to women litigants is exempted if disputes are relating to maintenance, property right, violence and divorce.

09. It is pertinent to note that, the notification dated 23/03/2000 has no retrospective effect and can not restrict or govern or control the exemption granted earlier by notification dated 01/10/1994 with regard to the payment of court fees by woman litigants. In notification of year 1994, it is nowhere mentioned that, exemption to court fees granted to women litigants if disputes are arising out matrimonial or concerned matters. Hence the ratio given the case of ***Shrinivas s/o. Ramnathji Kathod & Ors. v/s. Savitribai w/o. Sureshchandra Kathod & Ors. (2012 BCI 972)*** is not applicable to the present case.

10. As far as the Notification dated 23rd March 2000 is concerned, it would not apply retrospectively, meaning that the amending Notification will be effective from the date of the Notification. The result will be that from the date of the Notification, the term "property disputes" will be confined to the property disputes arising out of and concerning matrimonial matters only. Therefore I do not found any justifiable ground to reject the plaint. Hence the application is devoid of merits and deserves to be rejected. Hence, I

answer the point No.1 and 2 in the negative and in view of the point No.3, I pass the following order.

ORDER

The application is rejected with costs.

Date : 18/02/2021

(J. S. Gaikwad)
Civil Judge Junior Division,
Peth-Vadgaon

I affirm that, the contents of the P.D.F. file order are same, word to word, as per the original order.

Name of the Stenographer	Sou.K.S.Gaikwad
Name of the Court	J. S. Gaikwad, Civil Judge Junior Division, Peth Vadgaon
Date of Dictation	18/02/2021
Order signed by the P.O. on	20/02/2021
Order uploaded on	20/02/2021

