

**MHKO120000352021**



**Reg. Civil Suit No.12/2021**

(CNR No.MHKO120000352021)

**ORDER BELOW EXH.63**

**01.** Defendant Nos.1 to 9 and 16 have filed this application under Order 7 Rule 11(d) of Code of Civil Procedure (hereinafter referred as “C.P.C.”) for rejection of the plaint on account of payment of deficit court fees and improper valuation.

**02.** Perused the application supported with affidavit. The plaintiff has filed her say below Exh.64. Heard both sides.

**03.** The objection of defendants is two fold. According to them, suit properties bearing Gat No.1274 and 1275 are used for non agricultural purpose. However, the plaintiff has treated them as agricultural properties and valued the suit and paid improper court fees.

**04.** I have gone through the plaint. The contents of the plaint needs to be considered for deciding the application under Order 7 Rule 11 of C.P.C. The description of agricultural properties mentioned in para 1(A) of the plaint supported with 7/12 extract filed below Exh.3 would show that the Gat No.1274 and 1275 are agricultural properties. However, according to the defendants, Mutation Entry No.8364 would show that Gat No.1275 was a non agricultural land

as per order of S.D.O., Gadhinglaj, which is mutated upon 7/12 extract. Thus one fact is crystal clear that Gat No.1275 is non agricultural land. There are number of share holders in the suit properties.

05. Now, I move to consider about the aspect of improper valuation and payment of deficit court fees. Ld. Adv. for the defendants Shri. R.D.Thakur relied upon ***Smt. Tarabai Bhausahab Deokar versus Jaywant Mahepati Balwadkar & Ors. [Writ Petition No.1659 of 2005]*** wherein Hon'ble Bombay High Court has observed that *"if the suit is filed for the possession of land, house and garden, then the court fees ought to be paid as per Section 6(v) of Bombay Court Fees Act."*

06. On the contrary, Ld. Adv. for the plaintiff relied upon ***Sardar Gurpreetsingh Gurnamsingh Pander vs. Sangeeta Bhagchand Bhavle and others*** wherein Hon'ble Bombay High Court has observed that *"when the suit is filed for the relief of declaration and perpetual injunction and the properties were treated as non agricultural land, then the court fees ought to be paid treating the suit properties as non agricultural land."*

07. I consider submissions of both sides and above case laws. The present suit is filed for the relief of partition and separate possession. The contentions of the plaint itself shows that there is house property of present plaintiff in Gat No.1275. However, she has merely sought the relief of declaration and perpetual injunction in respect of said house property mentioned in para No.1(B) of the

plaint. So far as the relief of declaration and perpetual injunction about suit property mentioned in para 1(B) of the plaint is concerned, the proper court fee is paid at the hands of plaintiff. But, the plaintiff has sought the share in agricultural properties, which is treated by her as agricultural properties mentioned in para 1(A) of the plaint. She has sought the specific share in the suit properties. As I mentioned supra Gat No.1275 is a non agricultural land by virtue of order of S.D.O., Gadhinglaj in the year 1986. Therefore, the valuation in respect of the non agricultural field of Gat No.1275 ought to be made. Rest of properties i.e. Gat No.264, 1017, 1274 are agricultural land. There is no any document filed by defendants to show that these three properties are non agricultural field. Therefore, the valuation of Gat No.1275 being a non agricultural land ought to be made at the hands of plaintiff. Hence, I found substance in the submission of Ld. Adv. Shri.R.D.Thakur about the improper valuation of Gat No.1275. Therefore, directions needs to be given to the plaintiff to make proper valuation of Gat No.1275 in consonance with the share claimed by her in the said property.

**08.** Needless to say that the plaint cannot be rejected at the first instance on the ground of non payment of court fees and incorrect valuation. The proviso of Order 7 Rule 11(b)(c) would come into picture only when the failure of plaintiff in compliance of valuation and payment of court fees. Therefore, directions needs to be issued to the plaintiff for correcting valuation and payment of proper court fees in respect of Gat No.1275. Therefore, I pass following order.

**ORDER**

- 1) The plaintiff is directed to make the proper valuation of Gat No.1275 in consonance with share claimed by her and pay the proper court fees in view of Section 6(viii) and (v) of Maharashtra Court Fees Act within one month from today.
  
- 2) The application is disposed off accordingly.

Date : 06/09/2024

**( V. V. Kulkarni )**  
Civil Judge Junior Division,  
Gargoti