

C.N.R. No. :- MHKO130001352018



ORDER BELOW EXH. 23 IN R.C.S. NO. 95/2018

The present application is filed by the defendant Nos. 2 and 3 under Order VII Rule 11 of the Code of Civil Procedure, 1908, (hereinafter referred to as 'C.P.C' 1908 for the sake of the brevity and convenience).

02. **The brief contents of the application are as under :-**

The plaintiff has filed the suit against defendants for the purpose of partition, separate possession and declaration. However, the suit properties which are the subject matter of the suit are not properly valued particularly suit property bearing No.1(B-1) city survey No. 730 and 1(B-2) city survey No. 733. The said suit properties are the house properties and shed. The plaintiff has mentioned in para No.8 of the plaint that the suit property bearing No. 1-B is valuation of Rs.50,000/- in which plaintiff has 1/3rd share. Similarly, suit property bearing B-2 is valuation of Rs.30,000/- in which plaintiff has 1/3rd share. However, valuation of the said suit properties are more than Rs.5,00,000/- and the plaintiff has deliberately avoided to properly value the suit properties in order to avoid payment of sufficient Court Fees. Therefore, plaintiff should take out the valuation of the said suit properties as per ready reckoner in order to present the proper stamp.

The plaintiff has deliberately not valued the suit properties properly, so that the said suit comes under the jurisdiction of this court. Hence, the plaint should be rejected on this ground.

03. Plaintiff has filed his say at the overleaf of the application and stated that the said application is false and misleading and filed in order to prolong the adjudication of the interim application below Exh.5. The plaintiff avers that the valuation done by him is proper and according to the law. Hence, the said application should be rejected.

04. Heard learned advocate for both sides. Perused the application and say. In view of rival contentions from both the parties, the following points arise for my consideration for which findings are recorded along with the reasons as follows :-

Sr. No.	Points	Findings
01.	Whether the plaint should be rejected on the ground that the suit properties are not properly valued ?	No.
02.	What order ?	Application is rejected.

REASONS

AS TO POINT NO.1 AND 2 :-

05. The learned advocate for defendant Nos. 2 and 3 Mr. Hanchanale reiterated contents of the application in his argument and stated that the plaintiff is unnecessarily using mechanism of the Court

and avoided to pay proper Court Fees.

06. The learned advocate for the plaintiff Mr. A.J.Desai argued that the suit properties are properly valued as per the share claimed by her. He also placed reliance on the assessment extract provided by Grampanchayat with respect to the house properties at Exhibit no. 25, Serial No. 07 and states that the suit properties are valued as per given valuation in the extract. He also submitted that if the Court comes to the conclusion that the court fess paid by plaintiff is insufficient, then she is ready to pay the deficit Court fees

07. On perusal of the plaint the present suit is filed for partition and declaration of the suit properties. The suit properties are agricultural properties and house properties. The present application pertains to suit property bearing No.1-(B- 1 and 2) as described in the plaint in plaint para No.1. The suit property bearing No.1 (B-1) is city survey No. 730 having area of 741 square meters. The suit property bearing No.1(B-2) is city survey No. 733 having area of 20 square meters.

08. As per settled position of law, the valuation of the suit

properties for the purpose of Court fees and jurisdiction of the Court is different. The Court Fees is calculated as per the Maharashtra Court Fees Act, 1959. The valuation for the purpose of jurisdiction of the Court is provided in the Suit Valuation Act, 1887. However, the Suit Valuation Act, 1887 is brought into force by notification bearing G. N., L. and J. D., No. CCS-2768/5528(39) – II / X, dated 11th October, 1983, (M. G. Pt. IV-A, p. 932).

09. As per Section 4 of the Suit Valuation Act, 1887, where a suit mentioned in the Clause (c), (d), (e), (g), (i), or (j) of paragraph (iv) or paragraph (vii) in section 6 or Article 3, 5, 6 or 7 in Schedule I or clause (f) of Article 23 in Schedule -II to the Bombay Court Fees Act, 1959 relates to land or an interest in land of which the value has been determined by rules under the last forgoing section, the amount at which for purposes of jurisdiction the relief sought in the suit is valued shall not exceed the value of the land or interest as determined by this Act. Section 8 provides that where in suits other than those referred to in paragraph (v), (vi) and (x) and clause (d) of paragraph (xi) in Section 6 of the Maharashtra Court fees Act, 1959, the Court fees are payable ad-valorem under the Maharashtra Court fees Act, 1959 the value as determinable for the computation of the Court fees and the

value for purposes of jurisdiction shall be the same.

10. As per Maharashtra Court Fees Act, 1959 Section 6 (vii), in suits for partition, separate possession of a share of joint family property or of joint property, or to enforce a right to a share in any property on the ground that it is joint family property or joint property whether or not the plaintiff is in actual or constructive possession of the property of which he claims to be a co-parcener or co-owner according to the value of the share in respect of which the suit is instituted. As per the explanation of section 6(vii) if the property in which a share is claimed consists of or includes any land assessed to land revenue for the purpose of agricultural, the value of such land shall be deemed to be the value as determined under paragraph (v) of this Section. As per paragraph (v) - the valuation of the house or garden if it is subject matter of the suit shall be according to the market value of this house or garden.

Thus, what is understood from the above provisions that for the jurisdiction in the suit for partition valuation is same as provided for Court fees.

11. It is well settled proposition of law, that while considering the application under O.VII, r. 11 regarding rejection of plaint, the

averments in the plaint has to be considered. In the present application defendants have not explained that from perusal of the plaint as to how the valuation mentioned by the plaintiff is wrong. Also, as per the contention of the defendant Nos. 2 and 3, the suit properties are not valued as per market value as mentioned in the ready reckoner. However, there is no material before the Court regarding market value of the suit properties except the Gram Panchayat Extracts below Exh. 25 serial no. 07 and Exh. 15, serial no. 01 which also pertains to the property bearing no. 195 and it does not pertain to the suit properties at Serial No 1-B-1 and 2. On the other hand, the plaintiff avers that suit has been properly valued. Thus, as per rival contentions of both the parties regarding valuation of the suit for stamp and court fees, contentious issue can be said to arise between parties and at this stage it would be very difficult to adjudicate upon the market value of the suit property without having any sufficient material before the Court. Also, the plaintiff seems to be ready to pay court fees if the suit is properly valued. Hence, it may be appropriate to frame issues and provide opportunity to both parties to lead evidence with respect to the proper valuation of the suit.

12. With respect to the contention of the defendants that suit is

not properly valued for the purpose of jurisdiction, the defendants have not provided any concrete material on record from which Court can come to the conclusion that the subject matter of the suit being outside of pecuniary jurisdiction of the Court, hence, it is liable to be returned. Moreover, considering the present suit is for partition the suit has to be valued for the purpose of court fees and jurisdiction on the basis of share of plaintiff i.e. 1/3 share. Hence, prima facie also if the suit properties are the outside the pecuniary jurisdiction of the court, then what needs to be seen is whether the share claimed by plaintiff is more than the pecuniary jurisdiction of the Court. This can also be adjudicated in the course of trial or issues under Order XIV of C.P.C, 1908. Hence, I do not consider it appropriate to reject the suit on this ground. Both parties are at liberty to lead the evidence during the course of trial after the appropriate issues are framed with respect to the same. In view of the above discussion point No.1 is answered in the negative and to answer point No.2 following order is passed :-

ORDER

- 1) The application is rejected.
- 2) No order as to costs.

Date : 24/02/2020
Place : Kagal

(Katkar Vijaya N.S.)
Jt. Civil Judge, Jr.Dn., Kagal.

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

Name of the Stenographer :- S. V. Kamble

Name of Court :- Katkar Vijaya N. S. C.J.J. D.
and J.M.F.C. Kagal.

Date of Dictation/typed :- 24/02/2020

Judgment/order signed by the P.O. on :- 29/02/2020

Judgment/order uploaded on :- 29/02/2020