



Mr Suraj Raosaheb Mukre etc.01 Vs Babu Shamu
Pantkare etc.01

CNR - MHKO130001782024

ORDER BELOW EXH. 15 IN R.C.S.No. 26/2024

1. This is an application at the instance of Defendant no. 2 vide Order 7 Rule 11 read with section 151 of the Code of Civil Procedure for rejection of plaint mainly on the ground that the Plaintiff has not paid the proper Court fees and has undervalued the suit property. It is submitted that the Plaintiff has not valued the suit as per the provisions of Bombay Court Fees Act 1959. It is submitted that Plaintiff has prayed for declaration that the Sale Deed bearing no. 1706/2021 dated 24/08/2021 is illegal and not binding on him. In such circumstances it is submitted that the suit ought to have been valued as per the subject matter of the Sale Deed. Therefore the suit being under valued the plaint be rejected.

2. Plaintiff vide his Say at Exh. 17 has opposed the application mainly on the ground that the Sale Deed bearing no. 1706/2021 dated 24/08/2021 has been executed between Defendant no. 1 and Defendant no. 2 and therefore the Plaintiff has paid proper Court fees as per Bombay Court Fees Act, section 6iv(j). The suit is not barred by Order 7 Rule 11 of the Code of Civil Procedure. Hence the application be rejected.

3. Heard learned counsel. Perused the record. On perusal of record it reveals that Plaintiff has filed the suit for declaration that the Sale Deed executed between Defendant no. 1 and 2 bearing no. 1706/2021 dated 24/08/2021 is illegal and not binding on him. Plaintiff has also prayed for the relief against Defendant no. 2 to

restrain Defendant no. 2 from alienating the suit property and from disturbing his possession.

4. For deciding applicable Court fees in the declaratory suits there is distinction between the Plaintiff who seeks declaration of cancellation of Sale Deed and the Plaintiff who seeks avoidance of Sale Deed on the ground that he is not party to the Sale Deed. A Plaintiff who is party to the Sale Deed seeks avoidance of Sale Deed on the ground of fraud or mistake of fact, coercion, misrepresentation etc. In such a case the Court fee is computed on the consideration mentioned in the Sale Deed. But a person who is not party to the Sale Deed is completely unaware of the Sale Deed having been executed therefore section 6iv(ha) would be applicable only to the Plaintiff who is party to the Sale Deed seeking declaration of avoidance of Sale Deed. The Plaintiff who is not party to the Sale Deed seeking declaration of avoidance of Sale Deed would be governed by section 6iv(j) of the Bombay Court Fees Act.

5. In such circumstances certainly in the present case the Plaintiff is not party to the Sale Deed and therefore the Plaintiff has properly valued the subject matter of the suit property and paid proper Court fees and therefore application being devoid of merits is liable to be rejected. Accordingly I pass following order.

<u>ORDER</u>	
1.	Application is rejected.

Kagal
Date:- 05/11/2025

(A.B.Madake)
Civil Judge Junior Division,
Kagal.