



CNR:MHKO140000482021

ORDER BELOW EXH.27 IN RCS No.07/2021
[Passed on: 29.05.2024]

This is an application filed by the defendant no.1 for rejection of plaint under Order 7 Rule 11 of the Code of Civil Procedure, 1908 and thereby prayed to reject the plaint on the ground of improper valuation.

Contentions of the Defendant no.1

1. The defendant no.1 submitted that, the present suit is filed for partition, separate possession of property in city survey no. 664, 719, 720, 726. He has also filed a counter claim and thereby claimed his separate share in the suit property. The valuation of the subject matter is shown as Rs.2,14,220/- and valuation to the extent of plaintiffs 2/3rd share is shown as Rs.1,44,450/-. It is submitted that, the subject matter of the present suit is wrongly valued for the purpose of jurisdiction. The valuation of CTS no.664 adm.75.4 Sq.mtr. is 10,03,052/-. The valuation of CTS no. 719 adm. 38.5 Sq.mtr is Rs. 4,25,855/-, The valuation of CTS no. 720 adm. 101.1 Sq.mtr is Rs. 98,067/-, The Valuation of CTD no. 726 adm. 155.5 Sq.mtr is Rs. 15,30,626/-. It is submitted that, The valuation certificate of aforesaid properties are issued by the Sub-Registrar Chandgad. Total valuation of the subject matter of the present suit is Rs. 30,57,600/-.The plaintiffs have not paid proper court fees and valuation is not properly mentioned in the plaint. Hence, the plaint is liable to be rejected.

2. The learned advocate for the plaintiffs filed say and raised strong objection. It is submitted that, the contentions of the applications are false. The defendant has not filed extracts of the house property situated in Gawthan area. The defendant has not given details about the house, cattle house situated in CTS no.664, 720, 719, and 726 before the Sub-Registrar. Construction in the aforesaid property is near about 40 to 80 years old. Moreover, the construction is not on the entire land of aforesaid CTS numbers. The valuation submitted by the defendant is false and it is obtained without showing the age of building. Hence, those certificate cannot be taken into consideration. The court fees is paid as per construction, building situated in the aforesaid CTS numbers at the time of institution of the suit. The Value of property shown in the plaint is correct and proper Court fees is paid by the plaintiffs. It is also submitted that, CTS no. 719, 720 are open space and the valuation shown in the valuation certificate is incorrect as per today's market value. In CTS no.726, open area is adm. 31 Sqr.mtr, in CTS no.719 open space is 6 Sqr.mtr, but in the valuation certificate entire area is shown. The valuation of the subject matter shown in the present application is incorrect. So, it is necessary to frame issue on the point of Court fees and it is to be decided on merit. The defendant no.1 has filed valuation certificate after 3 years of the filing of the suit and hence that cannot be considered. Hence, application is liable to be rejected.

Issues/points for determination:

3. Perused the record. Heard Shri S. V. Todkar the learned advocate for defendant and Shri A. P. Dewan, learned advocate for plaintiffs. Following are the points for determination along with my finding and reasons thereon-

Sr. No.	POINTS	FINDINGS
1	Whether Plaintiffs have properly valued the subject matter for the purpose fo jurisdiction and paid sufficient Court fees?	No
2	Whether plaint is liable to be rejected?	One months time it granted for compliance
3	What order?	As per Final Order

REASONS

As to Point no. 1 and 2

4. The defendant mainly prayed for rejection of plaint on the ground that, the suit is undervalued and insufficient court fee stamp. The learned advocate for the defendant argued that, they have filed valuation certificate of the suit property which shows that the plaintiff has not properly valued the suit property. Though the present application is filed for rejection of plaint, but the learned advocate for the defendant argued that, this court has no jurisdiction to try and entertain the present suit, as the valuation of the subject matter exceeds the pecuniary jurisdiction of this Court. He has referred the valuation certificates filed on record. On the other side, the learned advocate for the plaintiffs argued that, the valuation certificate filed on record are of the current year and the valuation which is mentioned in the certificate is incorrect. He prayed to reject the application.
5. I have perused the record. It appears that, the plaintiffs have filed present suit for partition, separate possession. It also appears that

the defendant no.1 appeared and filed his written statement alongwith counter claim. The defendant no.1 in the present matter mainly prayed to reject the plaint on the ground of insufficient court fees and improper valuation of the suit property for the purpose of jurisdiction.

6. Before proceeding further, it is necessary to see whether the subject matter of the suit property is properly valued and whether the sufficient court fees is paid. It is settled position of law that, while dealing with an application for rejection of plaint, the Court has to consider the averments in the plaint only. On perusal of the contents of the plaint, it appears that, the suit is filed for partition and separate possession. The plaintiffs have prayed for 2/3rd share in the suit properties. The suit properties are- Agricultural land Situated at Adkur, Tal Chandagad Dist. Kolhapur, in Gat no. 593, 1091, Land CTS no. 29/2, House property CTS no. 664, 720, 719 and 726. So, the subject matter of the present suit is agricultural land, house property and open space. The plaintiffs have pleaded about valuation and court fees in plaint para 18. The plaintiffs have pleaded that, the total valuation of the subject matter for the purpose of jurisdiction is to Rs. 215081/- and they claim 2/3rd share in the suit property. So, to the extent of their share, they have valued it to Rs. 1,50,000/- for the purpose of Court fees and Paid Rs. 7430/- as Court fees. According to plaintiffs the aforesaid valuation and Court fess are proper and sufficient.

7. On the other side, the defendant no.1 submitted that as per valuation certificate issued by the Sub-Registrar Chandgad, the valuation of the subject matter is more that, 30,00,000/- and it is beyond the pecuniary jurisdiction. As discussed above while deciding the issue of rejection of plaint, the averments made is plaint are to be considered. But in the present matter, the defendant no.1 is raising the

objection on the basis of valuation certificates, which are filed on record. Hence, those certificates are considered for deciding present application. The defendant has filed on record the valuation certificate of Land CTS no.664, total area admeasuring 75.4 Sqr.mtr, including construction area is 59.2 Sqr.mtr. Its valuation is shown as Rs. 10,03,051.6/-. The defendant has also filed on record valuation certificate of land CTS no.726, Total area admeasuring 155.5 Sqr.mtr. Including Construction area is 124.44 Sqr.mtr. Its valuation is shown as Rs. 15,30,625,72/-. But on perusal of plaint, it appears that, in CTS no.726, admeasuring area shown is 31 Sqr.mtr only. But aforesaid valuation certificate of CTS no. 726 is of entire area. So, at this stage it cannot be said that, total valuation of Land CTS no.726 is Rs. 15,30,625,72/-. For other properties except CTS 664, the valuation is below five lakh.

8. So far as valuation certificate of Land CTS no.664 is concerned, the total area admeasuring in plaint and in the certificate is same i.e. 75.4 Sqr.mtr, including construction area is 59.2 Sqr.mtr and its valuation is shown as Rs. 10,03,051.6/-. On perusal of plaint it appears that, CTS no. 664 adm. 75.4 Sqr.mtr. is the house property including open land. According to plaintiffs, its valuation as per market value is Rs. 75400/-. On the Contrary, according to defendant, its valuation is Rs. 10,03,051.6/- as per valuation certificate issued by the Sub-Registrar. According to plaintiffs, the valuation certificate is recent one and not issued during the period when suit is instituted. It seen that, the said certificate is issued on 20.06.2023 and valid upto 31.03.2024. However present suit is filed in the year 2021. Admittedly, the land CTS no.664 is house and open land. As per valuation certificate its valuation is more than ten lakhs. However, the plaintiffs have given any specification as to on what basis they have valued the

said land CTS no.664 to RS. 75,400/-. They have not filed any certificate or document alongwith the plaint to show that, the valuation mentioned in the plaint is correct. Therefore, in order to disbelieve or rebut the contention of defendants, the plaintiffs ought to have file on record the documents to show that, Valuation of CTS no. 664 as mentioned in plaint is correct. But nothing is filed on record. Moreover, the plaintiffs have claimed 2/3rd share in the suit property. So to the extent of their share prim facie it appears that, valuation is $10,03,051.6 \times \frac{2}{3} = 6,68,700$. Considering the aforesaid facts, and certificate filed on record by the defendant no.1, I am of the view that, the plaintiffs have not properly valued the subject matter for the purpose of jurisdiction.

9. Now the question is whether plant is liable to be rejected on the ground of improper valuation and payment insufficient court fees?-

10. **Order 7 Rule 11 of the of the Civil Procedure Code**, provides that, the plaint is liable to be rejected in the following cases:

a) -----

b) Where the relief claimed is undervalued, 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 on 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).....

e).....

11. As discussed above, the plaintiffs have not properly valued the the subject matter. But as per clause (b) it is necessary to grant time to

correct the valuation and on failure to correct it, the plaint shall be liable to be rejected. Moreover, in the present matter the plaintiffs have stated that, the valuation certificate filed on record by the defendant is false and incorrect. In support of this contention, an opportunity is given to the plaintiffs to file documentary evidence, if any. If the plaintiffs failed either to correct the valuation or to fail to file reliable documentary evidence, the further consequential order will be passed. Accordingly I answer point no.1 in negative and one months time is granted. To answer point no.3 I, pass following order.

ORDER

1. The plaintiffs to correct the valuation of the subject matter and pay proper Court fees within 1 months.
2. In alternative Plaintiffs are at liberty to file valuation certificates of the suit properties of the year 2021 when suit was instituted to show that, they have properly valued the subject matter.
3. On failure to comply the aforesaid order further consequential order will be passed.

Date:29/05/2024

[Waman D. Jadhav]
Joint Civil Judge Junior Division,
Chandgad, District Kolhapur
[Judge Code- MH3143]