



Sajeda Karimoddin  
vs  
Sk.Maksud & ors.

**ORDER BELOW EXHIBIT NO. 34 IN**  
**REG. CIVIL SUIT NO.51/2021**

The defendant No. 1 has filed the instant application under Order VII, Rule 11(b),(c) and (d) of the Code of Civil Procedure, 1908.

**02.** By this application, the defendant No.1 has contended that, the present suit is filed for partition and separate possession. The plaintiff has challenged the sale deed bearing registration no. 1638/2020. It is contented that, plaintiff is seeking the relief of avoidance of sale deed dated 02/11/2020 executed by defendant no. 1 in favour of defendant no. 8 to 13. The value of the sale deed is of Rs.26,00,000/- and therefore, plaintiff ought to have valued suit on consideration amount of sale deed as per section 6 (iv) (ha) of Bombay Court Fees Act, 1959. However, she has not valued suit properly and proper court fees are not paid. It is further contended that suit is bad for non-joining of all properties in the suit. Thus, defendant no.1 prayed to reject the plaint.

**03.** The plaintiff has resisted the instant application by filing say at Exhibit No.35. She has denied all the contentions made in the instant application. The sum and substance of her resistance is that, she has properly valued the suit and proper court fees are given. Therefore, she prayed for rejection of the instant application.

04. Heard both the sides at sufficient length.

05. Considering rival contentions of both the sides, the following points arise for my determination and I have recorded my findings thereon with reasons stated below.

<u>SR.NO.</u>	<u>POINTS</u>		<u>FINDINGS</u>
01)	Whether the suit is properly valued and proper court fees are paid ?	...	<u>YES.</u>
02)	Whether statement made in the plaint is barred by any law ?	...	<u>NO</u>
03)	What order ?	...	<u>AS PER FINAL ORDER.</u>

**-: REASONS :-**

**AS TO POINT NO. 1 :-**

06. In the present suit, the plaintiff has sought the relief of partition and separate possession of suit property. By filing this application, the defendant no. 1 has prayed to reject the plaint on the ground of under valuation of suit. The plaintiff has opposed the same on the ground that, she is not party to the alleged sale deed, besides, she has not claimed any relief in respect of said sale deed and therefore, she is not bound to value suit claim as per section 6(iv)(ha) of the Bombay Court Fees Act.

07. I have considered the aforesaid contentions of the respective parties. It is required to mention here that, in the case of *Dilip Jain and ors. Vs. Hardik Ramani and ors. Writ Petition no.*

*8968/2018 decided on 05/05/2022.*, Hon'ble Bombay High Court considering the provision of Sections 6(iv)(j) and 6(iv)(ha), expounded the following legal position.

*24. section 6(iv)(ha) would be applicable only to the plaintiff who is a party to the sale deed seeking declaration of avoidance of sale deed. It would not be applicable to the plaintiffs who are not party to the instrument seeking declaration of avoidance of sale deed. Such plaintiff would be governed by section 6(iv)(j) as it is not susceptible to monetary evaluation.*

08. Thus, in view of the aforesaid exposition of law as laid down by the Hon'ble Bombay High Court in the case of *Dilip Jain and ors. Vs. Hardik Ramani and ors.*, it is ample clear that in case, the plaintiff is not party to the instrument and if he is seeking avoidance of it, the suit will have to be governed by the provisions of Section 6(iv)(j) of the Bombay Court Fees Act.

09. In view of the aforesaid, the present case is required to be considered. In this case, plaintiff is seeking relief of partition and separate possession. She has pleaded in the plaint that the alleged sale deed in respect of suit property was executed without her consent and therefore, it is not required to seek relief in respect of said sale deed. The plaint discloses that there is no prayer about alleged sale deed. Besides, the plaintiff is not party to the said sale deed. As plaintiff is not party to the sale deed in question, she is not bound to pay court fees on price of sale deed. Thus, the plaintiff has properly valued suit and given requisite court fees.

10. Considering the ratio laid down in above judgment I found

that, plaintiff is properly valued the suit as per section (v) of the Court Fees Act. Hence, I answered point No.1 in “affirmative”.

**AS TO POINT NO.2 :-**

11. The defendant no. 1 further raised ground for rejection of plaint that the plaintiff has not included all the properties in the suit. The defendant has not given details of the properties alleged to be not added in the plaint. In such circumstances, merely on statement of defendant in application, it cannot be said that all properties are not included in the suit. Moreover, the present suit being for partition, properties which alleged to be not added in the suit, can be added at any stage of the suit. Therefore, I am of the considered view that the ground raised by defendant no.1 is not sustainable for rejection of the plaint. Hence, I answered point no.02 in the negative.

**AS TO POINT NO.3 :-**

12. Considering above all aspects, I found that, application is devoid of merits and liable to be rejected. Hence, in answer to point No.3, I proceed to pass the following order:-

**:-ORDER:-**

01.	Application (Exhibit No.34) is rejected.
02.	Cost of the application is cost in cause.

**(Dictated and pronounced in open Court)**

Date: 08/07/2024.  
Kinwat

**(P.M.Mane)**  
Civil Judge, Junior Division,  
Kinwat

Certificate

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

Name of the Stenographer : S.M.Chitmalwar  
Court Name : Court of C.J.J.D., Kinwat  
Date : 08/07/2024  
Order signed by  
the Presiding Officer on : 08/07/2024  
Order uploaded on : 08/07/2024

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