

MHND270008912020	RCS No.99/2020
	Komal V/s. Maroti and Others

ORDER BELOW EXH.88

This is an application filed by defendant No.10 and 11 under Order 7 Rule 10 and 11 of C.P.C. for rejection of plaint on the count of non payment of requisite court fees.

2) Perused application and say of plaintiff (Exh.90). Heard Ld. Advocate for both the parties.

3) It is submitted by defendants that the plaintiffs suit is for declaration regarding sale-deeds executed by defendant No.1 and 2 in favour of defendant No.9 bearing registration No.365/2008 is not binding and null and void, consequently the sale-deed executed by defendant No.9 in favour of defendant No.10 and 11 also claimed to be not binding on her. However the plaintiffs valued her suit for the purpose of jurisdiction at Rs.1000/- and affix court fees of Rs. 200/- to the plaint. However, sale-deeds alleged to be challenged are of total consideration of Rs.25,50,000/-. Therefore, as per provisions of section 6 of Maharashtra Court Fees Act the plaintiff ought to pay full advelorem court fees for declaration and avoidance of sale-deed but they have paid just Rs.200/-. Hence, the suit is not maintainable and deserves to be rejected under Order 7 Rule 11 of C.P.C.

4) On the contrary plaintiff submitted that this application is only for the purpose of prolonging the matter. The main relief of plaintiff is partition and separate possession. They also claim that the sale-deeds

executed by defendants are not binding on her rights. Therefore, she has properly valued her suit.

5) Ld. Advocate for the defendant submitted that the plaintiff claimed declaration that the sale-deeds total worth of Rs.25,50,000/- to be null and void as such they are seeking avoidance of the sale-deed. Hence, as per Section 6(iv)(ha) of the Maharashtra Court Fees Act the plaintiff ought to have pay the court fees upon total valuation of the consideration amount of sale-deeds.

6) Ld. Advocate for the plaintiff submitted that the plaintiff is not party to the sale-deeds, she just sought declaration about the non binding of those sale-deeds on her right. Therefore, she has not sought cancellation of sale-deeds, consequently she has not paid the court fees as per Section 6(iv)(ha) of the Maharashtra Court Fees Act, the said section is not applicable for her reliefs.

7) Ld. Advocate for the defendants relied upon following authorities; **M/s. Prism Reality through its proprietor V/s Mr. Govind Yaswant Khalade and Ors reorted in 2015(4) Mh.LJ 472 and Abdul Gaffar Abdul Samad V/s Niranjan Kumar Ramnath Prasad reported in AIR 2005 Bombay 259.** Ld. Advocate for the plaintiff on the other hand relied upon **Dilip Khushalchand (Srisrimal) Jain and others V/s Hardik Deepakbhai Ramani and others writ petition No.8968 of 2018 dated 08th March 2022.** I have gone through the authorities cited by defendants in **M/s. Prism Reality through its proprietor V/s Mr. Govind Yaswant Khalade and Ors,** (Supra0 wherein, Hon'ble Bombay High Court held that, if plaintiff seek declaration in respect of sale-deed as null and void and not binding on him, and then the plaintiff has to pay court fees as per Section 6(iv)(ha) of Maharashtra Court Fees Act. I have also gone through the authority cited by the plaintiff in **Dilip Khushalchand (Srisrimal) Jain and others V/s**

Hardik Deepakbhai Ramani and others (supra) which is decided on 08th March 2022, wherein the issue before Hon'ble High Court was “what is the court fees is payable in regard to the suit for declaration that sale-deed, to which the plaintiffs are not party is void and not binding on the plaintiffs and for consequently relief of injunction ?” In said matter Hon'ble High Court distinguish the decision in the M/s. Prism Reality through its proprietor V/s Mr. Govind Yaswant Khalade and Ors and held that when the plaintiffs claim declaration regarding sale-deed is not binding on their rights and if the plaintiff is not party to the said document of sale-deed Section 6(iv)(ha) of the Maharashtra Court Fees Act is not applicable.

8) In the present matter plaintiff suit is for partition and separate possession wherein she claimed declaration that certain sale-deeds executed by defendants in favour of other defendants are not binding on her right and those are voidabab. Accordingly, she valued her suit for the purpose of jurisdiction and court fees at Rs.1000/- and paid court fees paid Rs.200/-. taking consideration the legal position held in Dilip Khushalchand (Srisrimal) Jain and others V/s Hardik Deepakbhai Ramani and others (supra) and considering the nature of suit and reliefs claimed, I am of the view that the present application is not maintainable. Hence, I pass following order :

ORDER

a)	Application is hereby rejected.
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Pronounce in open court.

Date. 06.11.2023

Sd/-
(S. B. Dhembare)
Civil Judge Junior Division,
Mudkhed, Dist. Nanded

CERTIFICATE

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

Name of the stenographer	:	Ashok A. Totre.
Court Name	:	J.M.F.C. Mudkhed
Date	:	06/11/2023
Judgment signed by the		
Presiding Officer on	:	06/11/2023
Judgment Uploaded on	:	06/11/2023