

MHNG080001842023



RCS No.7/2023
Suman Vs. Vilas
Exh.8

ORDER (BELOW EXH.8)
(Passed on 07.09.2023)

The defendants have filed this application under Order VII Rule 11(c)(f) of the Code of Civil Procedure (for short 'the C.P.C.') for rejection of the plaint.

2] It is contention of the defendants that the plaintiffs have filed this suit for declaration, cancellation of sale deed and permanent injunction against the defendants. The defendants have received suit summons, but the plaintiffs have not supplied documents along with suit summons in view of Order VII Rule 9 of the C.P.C. The plaintiffs are also duty bound to produce copies of documents on plain paper within seven days from the date of order of admission along with service of summons to deliver the same to the defendants in view of Order VII Rule 14 of the C.P.C. The plaintiff valued the suit for Rs.1,16,850/- only and paid advalorem court fees of Rs.6,500/-. The plaintiffs have failed to pay court fee stamp on relief of permanent injunction. Therefore, the suit of the plaintiffs is liable to be rejected under order VII Rule 11(c) of the C.P.C. No prejudice would be caused to the plaintiff if the plaint is rejected for non-compliance of mandatory provisions. Hence, prayed to allow the application.

3] The plaintiffs filed their say on the application itself. It is contended that already all documents and plaint copy along with injunction application is supplied. The application is without any merit.

Hence, prayed to reject the same with heavy costs of Rs.10,000/-.

4] The following points arise for my determination and I record my findings thereon for the reasons stated below :-

Sr. No.	POINTS	FINDINGS
1	Whether the plaint is liable to be rejected under Order VII Rule 11 (c) (f) of the Code of Civil Procedure ?	...No.
2	What order ?	...The application is rejected.

REASONS

AS TO POINT NO.1:-

5] The learned Advocate for the defendants submitted that the plaintiffs did not supply documents to them along with suit summons and also not paid court fee on the relief of injunction. Therefore, the suit of the plaintiffs is liable to be rejected under Order VII Rule 11(c)(f) of the C.P.C. On the other hand, the learned Advocate for the plaintiffs submitted that already whole documents are supplied to the defendants and prayed to reject the application.

6] It is settled position of law that the consideration of application for rejection of plaint should not be on the basis of allegations made by the defendant in his written statement or on the basis of the allegations made in the application for rejection of the plaint. The Court has to consider only the plaint as a whole, and in case,

the entire plaint comes under the situations covered by Order VII Rule 11 (a) to (f) of the C.P.C., the same has to be rejected. Therefore, to decide whether the plaint is liable to be rejected or not, only plaint averments are necessary for consideration.

7] Perused the record. The plaintiff filed purshis at Exh.10 stating that they have given all the documents to the defendants. Said purshis bears endorsement 'copy received' from the side of the defendants. It shows that the defendants have received all documents from the plaintiffs and thereafter they have filed their written statement on record at Exh.11. Therefore, there is no substance in the submission of learned Advocate for the defendants.

8] It is submission of the learned Advocate for the defendants that the plaintiffs did not pay court fee on the relief of injunction. Perused the plaint. The plaintiffs have filed this suit for declaration, cancellation of sale deed and perpetual injunction against the defendants. The plaintiffs valued the suit for Rs.1,16,850/- and paid court fees of Rs.6,630/-. Perusal of sale deed dated 13/08/2014 shows that the plaintiffs are party to the same. The sale consideration is shown as Rs.1,16,850/-. The plaintiffs are claiming reliefs of declaration that said sale deed is null and void and perpetual injunction and cancellation of sale deed. Therefore, in view of Section 6(iv)(ha) of the Maharashtra Court Fees Act, the plaintiffs have to pay one half of advalorem fee leviable on the value of the property. The sale consideration is Rs.1,16,850/-. Perusal of plaint shows that the plaintiffs have paid total court fees of Rs.6,630/-, which includes court fees for the reliefs of declaration and injunction. Therefore, there is no substance in the submission of the learned Advocate for the defendants. Thus, the

application of the defendants is devoid of merit and deserves to be rejected. Hence, I answer point No.1 in the negative and in answer to point No.2, I pass following order.

ORDER

1. Application (Exh.8) is rejected.
2. Costs in main cause.

Date : 07/09/2023

(R.R. Sherekar)
2nd Joint Civil Judge Junior Division,
Kamptee, Dist. Nagpur.