

**ORDER BELOW EXH.32**

This application is filed by the defendant for rejection of the plaint as per Order 7 Rule 11 of C.P.C. Plaintiff filed say overleaf to the application and resisted it.

Heard Adv. Shri. Pudke for the plaintiff. None appeared on behalf of the defendants to argue the matter. Hence application is proceeded without the arguments of the defendants.

The suit is filed for removal of the encroachment, declaration and injunction. The suit is valued for removal of the encroachment, injunction and declaration separately and court fee paid Rs.440/- on the valuation of Rs.3,000/-. As per the defendant, the suit is required to be valued as per Section 6 (v) of Maharashtra Court Fees Act, as it is suit for possession of landed property on the basis of market value of the suit property.

I have gone carefully through the contents of the plaint. The prayer clause shows that plaintiff prayed for decree of declaration for the removal of the encroachment and injunction. It is submitted by the advocate for the plaintiff that there is no provision for the valuation of the suit for the encroachment He further submitted that he has prayed for declaration and therefore the prayer for declaration for encroachment is nowhere specifically mentioned in the Maharashtra Court Fees Act. He valued the suit as per Section 6 (j) of Maharashtra Court Fees Act and accordingly he paid the sufficient court fees on the suit.

I have carefully gone through the provisions of Section 6(j) and 6(v). As per Section 6(j) of the Maharashtra Court Fees Act,

in suits where declaration as such with or without injunction or other consequential relief and the subject matter in dispute is not susceptible to monetary valuation and which are not otherwise provided for.

As per Section 6(v) of the Maharashtra Court Fees Act, in suits for possession and on lands, houses and gardens, according to the value of the subject matter and such value should be deemed to be where the subject is house or garden according to the market value of the house or garden and where the subject matter is land sum equal to survey assessment is mentioned therein in clause (a)(b) (c) of section.

The present suit is filed for the removal of the encroachment this itself includes the prayer for the possession. In such circumstances, as per Section 6(v) of the Maharashtra Court Fees Act, the suit is required to be valued for the possession also and therefore the plaintiff is required to correct the valuation as per Section 6(v) as regards the area mentioned in the prayer clause of the encroachment. Hence as plaintiff failed to value the suit as per Section 6(v) for removal of encroachment and possession, it is required to be directed to the plaintiff to correct the valuation and deposit the deficit court fee stamp on its valuation. Hence I passed the following order.

### **ORDER**

- 1) Application is partly allowed.
- 2) Plaintiff is directed to correct the valuation of the suit as per Section 6(v) for the removal of encroachment and deposit the necessary court fee stamp on or before next date.

- 3) Failure to value the suit as mentioned above. The plaint will be rejected as per Order 6 Rule 17 of C.P.C.

Kamptee  
Date : 02/12/2024.

(Mohan R. Kamat )  
Civil Judge, Junior Division,  
Kamptee.