

**ORDER (BELOW EXH.23)**

(Passed on 05.02.2025)

Defendant No.1 has filed this application under Order VII Rule 11(a)(b)(d) read with Section 151 of the Code of Civil Procedure (for short 'CPC' for convenience) for rejection of plaint.

2. It is contended that the plaintiffs have filed this suit during the lifetime of their father. Defendant No.1 is Karta of the family and properties are joint family properties. Therefore, nobody can claim partition or filed a suit for partition without consent of Karta of family. The plaintiffs have filed this suit without consent of defendant No.1. Hence, the suit is not maintainable. There is no cause of action to file the suit. The plaintiffs are seeking relief of declaration that Gift-deed dated 05.12.2022, which has been executed by defendant No.1 in favour of defendants No.3 and 4 is null and void and not binding on them. The market value of suit property is Rs.11,80,000/- as shown in Gift-deed dated 05.12.2022. The plaintiffs are seeking consequential relief, but they have not paid court fees over said amount. Therefore, the relief claimed is undervalued. This Court has no pecuniary jurisdiction to try, entertain and decide the suit of the plaintiffs. The suit of the plaintiffs is barred by limitation. Hence, prayed to reject the plaint.

3. The plaintiffs have filed their reply at Exh.26 and denied the contentions of the defendants in toto. It is contention of the plaintiffs that they have challenged entire Gift-deed dated 05.12.2022 and claiming relief of declaration that said Gift-deed is null and void and not binding on them. The application is not tenable. The defendant has no right, title and interest to move present application. The plaintiffs have paid court fees in view of Section 6(iv)(j) of the Maharashtra Court Fees Act as the plaintiffs were not party to alleged Gift-deed. The plaintiffs have properly valued the suit. The plaintiffs have filed the suit within limitation. Hence, prayed to reject the application.

4. On the basis of rival contentions of the parties, 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(a)(b)(d) of the Code of Civil Procedure ?	...No.
2	What order ?	...The application is rejected.

REASONS

AS TO POINT NO.1:-

5. Heard both sides. They have submitted as per contents in the application and reply. The learned Advocate for the defendant has submitted that the plaintiffs have paid court fees as per Section 6(iv)(j)

of the Maharashtra Court Fees Act, but they have to pay court fees in view of Section 6(iv)(d) of the Maharashtra Court Fees Act as they are claiming relief of declaration that Gift-deed dated 05.12.2022 is null and void and not binding on their share. In support of his submission he has placed his reliance on the case of **Pushparaj Surajprasad Modh Vs. Sayyad Altaf Sayyad Wazir and Others – 2000(4) Mh.L.J.492**. In this case, the Hon'ble Bombay High Court has held that *“as the plaintiff filed suit for declaration and mandatory injunction, the suit will be governed by sub-clause(d) of clause (iv) of Section 6 of the Bombay Court Fees Act, read with Article 1 of Schedule I of the Act and the court fee will have to be fixed on the basis of valuation done on that basis.”*

6. The learned Advocate for the defendant has also submitted that there is no cause of action to file the suit and the suit is barred by limitation. The learned Advocate for the plaintiffs has submitted that the suit is properly valued, there is cause of action to file the suit, the plaintiffs were not party to alleged Gift-deed and therefore they have paid court fees as per Section 6(iv)(j) of the Maharashtra Court Fees Act. He has also submitted that the suit is well within limitation.

7. 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.

8. It is the submission of the learned Advocate for the defendant that there is no cause of action to file the suit. Therefore, I have perused the plaint to see whether there is any cause of action to file the suit or not. The plaintiffs have filed this suit for declaration that Gift-deed dated 05/12/2022 is void, bogus and not binding on them, for partition, separate possession along with permanent injunction. It is contended that the plaintiffs are sons of defendant No.1, defendant No.2 is brother of the plaintiffs and defendants No.3 and 4 are sons of defendant No.2. Defendant No.1 is owner of field Survey No.13/1 admeasuring 0.50 HR situated at Mandal-Tarodi, Tal. Kamptee, Dist. Nagpur (here-in-after referred as 'suit property' for the sake of convenience). The suit property is ancestral property. It belongs to Late Mahadeo Krishnaji Dawale. He was having four sons namely Deorao, Dhanraj (defendant No.1), Namdeo and Ramaji. The suit property was nearly about 5 Acres which has been divided into his four sons. Defendant No.1, being one of his legal heirs, got share in the said property. Therefore, defendant No.1 is not full and absolute owner of the suit property. The plaintiffs have recently received notice from Tahsildar, Kamptee on 08.08.2023, which has been issued for mutation of names of defendants No.3 and 4. The plaintiffs were surprised when they have made enquiry why and how defendants No.1 to 4 got role in suit property and why and how defendant No.1 created document in favour of defendants No.3 and 4. Defendant No.2 has made signature on the same as witness. The defendants did not inform the plaintiffs about execution of Gift-deed though they were well aware that defendant No.1 is not full owner of suit property. Defendant No.1 has executed Gift-deed in favour of defendants No.3 and 4 on 05.12.2022.

The defendants tried to grab share of the plaintiffs in suit property. Defendant No.1 is not having any right to execute Gift-deed as he was not full and absolute owner of the same. The plaintiffs have equal share in suit property. Defendant No.1 has not obtained permission from the plaintiffs, therefore Gift-deed is not binding on the plaintiffs. The plaintiffs issued notice to the defendants on 05.09.2023 and requested them to cancel said Gift-deed, but they did not listen and threatened to kill the plaintiffs. No partition took place between the plaintiffs and the defendants. The plaintiffs and defendants No.1 and 2 are having equal right in the suit property being ancestral property. Suit property is not self-acquired property of defendant No.1. Defendant No.1 has cheated the plaintiffs and defendants No.2 to 4. Therefore, the plaintiffs are constrained to file this suit.

9. Though it is the contention of the defendant that there is no cause of action to file the suit, but perusal of plaint para No.15 clearly shows cause of action to file the present suit. The very pleading raised in the plaint discloses cause of action to file the present suit. Therefore, it would be improper to hold that the suit does not disclose cause of action. Hence, there is no substance in the submission of the learned Advocate for the defendant that there is no cause of action to file the suit.

10. It is the submission of the learned Advocate for the defendant that the suit of the plaintiff is barred by limitation, but he did not mention under which Article of the Limitation Act, the suit of the plaintiff is barred. Mere contention that the suit is barred by limitation will not suffice. The defendant ought to have mention specific provision which bars the suit. In the case of **Altaf Fakir Baig and**

Others Vs. Goel Ganga Deve. (Ind) Pvt. Ltd. 2023(4) Mh.L.J. 658, the Hon'ble Bombay High Court has held that "*issue of limitation is mixed question of law and fact and requires adducing evidence, if question of limitation relates to merits of case. Unless averments in plaint does not persuade to believe that an illusory cause of action was created by clever drafting requiring Court to exercise its drastic power under Order VII Rule 11 of CPC to reject claim, plaint cannot be rejected*". In the present suit it is the contention of the defendant that the suit is barred by limitation and thus, the question of limitation relates to merits of the case and therefore, this question needs evidence to decide whether the suit is within limitation or not. Thus, there is no substance in the submission of the learned Advocate for the defendant.

11. The learned Advocate for the defendant has submitted that this Court has no pecuniary jurisdiction to try and decide this suit. But here I want to mention that if after deciding present application if Court comes to conclusion that this Court has no pecuniary jurisdiction to try and decide this suit, then in that situation the suit can be transferred in the Court of Civil Judge Senior Division for deciding the same according to law. Therefore, at this stage, there is no substance in the submission of the learned Advocate for the defendant that this Court has no pecuniary jurisdiction to try and decide this suit.

12. The learned Advocate for the defendant has submitted that the plaintiff has not properly valued the suit and the plaintiffs have to pay court fees as per Section 6(iv)(d) of the Maharashtra Court Fees Act. In support of his submission he has placed his reliance on the case of **Pushparaj Vs. Sayyad Altaf** (cited supra). In that case, the plaintiffs had filed suit for declaration that they are owners of suit land and for

mandatory injunction and therefore, the Hon'ble Bombay High Court has held that if the suit is filed for declaration of ownership and injunction it will be governed by Section 6(iv)(d) of the Maharashtra Court Fees Act. But in the present suit, the plaintiffs have filed suit for partition, separate possession, declaration and injunction. The plaintiffs are not claiming ownership over the suit property. As per the plaintiffs, the suit property is ancestral property and they have equal 1/4th share each in the suit property along with defendants No.1 and 2. Therefore, in my view, Section 6(iv)(d) of the Maharashtra Court Fees Act will not apply in the present suit. Therefore, with utmost respects I submits that the citation relied on by the learned Advocate for the defendant is not helpful for the defendant because facts of the cited case are altogether different from the facts of the case in hand.

13. It the contention of the learned Advocate for the plaintiffs that as the plaintiffs were not party to the Gift-deed, they have paid Court fees as per Section 6(iv)(j) of the Maharashtra Court Fees Act. It is the contention of the plaintiffs that they are having 1/4th share each in the suit property and as they are not parties to the alleged Gift-deed, they are not entitled for payment of court fee on Gift-deed. The plaintiffs have paid Court fees of Rs.290/- for their 1/4th share and possession, they have paid court fees of Rs.200/- for the relief of injunction and Rs.200/- for the relief of declaration. Thus, the plaintiffs have paid total court fees of Rs.690/-. The main relief in this suit is partition and separate possession of the suit property and reliefs of declaration and injunction are consequential reliefs, which are based on main relief of partition and separate possession.

14. It is the contention of the plaintiffs that suit property is

ancestral property and they have equal 1/4th share each in the suit property and no partition took place between them and defendants No.1 and 2. If the suit property is ancestral property of the parties and no partition took place between them, then in that situation the plaintiffs definitely have equal undivided share in the suit property. The plaintiffs ought to have prove their contentions by adducing cogent and reliable evidence during trial and only after proving that suit property is their ancestral property and they have equal 1/4th share each in the suit property along with defendants No.1 and 2, the plaintiffs will be entitled for the main relief of partition and separate possession of their 1/4th share each in the suit property and consequently they will be entitled for the relief of declaration that alleged Gift-deed is null and void and not binding on them and for the relief of injunction. Therefore, in my view, the plaintiffs have properly valued the suit in view of Section 6(iv)(j) of the Maharashtra Court Fees Act, which provides that in suits where declaration is sought, with or without injunction or other consequential relief and the subject-matter in dispute is not susceptible of monetary evaluation and which are not otherwise provided for by this Act *ad valorem* fee payable, as if the amount or value of the subject-matter was one thousand rupees.

15. It is an admitted fact that the plaintiffs were not party to alleged Gift-deed. Therefore, I am of the view that though the market value of the suit property shown in alleged Gift-deed is Rs.11,80,000/-, however, there are no recitals in respect of consideration amount. Therefore, I am of the considered view that the plaintiffs have properly valued the suit and paid proper court fees for the reliefs claimed in the suit. Therefore, the plaintiffs are not required to pay *ad valorem* court fees on the amount of Rs.11,80,000/- as shown in alleged Gift-deed.

Thus, there is no substance at all in the submissions of the learned Advocate for the defendant. Therefore, the application deserves to be rejected. Looking to the nature of the suit, it will be just and proper to direct both the parties to bear their own costs. Hence, I answer point No.1 in the negative and in answer to point No.2, I pass following order.

ORDER

1. Application (Exh.23) is rejected.
2. Parties to bear their own costs.

Date : 05/02/2025

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

ENDORSEMENT

Case argued on	:	05.02.2025
Order dictated on	:	05.02.2025
Transcription ready on	:	05.02.2025
Order checked and signed on	:	05.02.2025

CERTIFICATE

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

Name of Steno :- **Vrushabh Wanjari**