

ORDER BELOW EXHIBIT 39
(Passed on this day of 17th August, 2017)

The plaintiff has filed present suit for permanent injunction. Defendants have appeared in the present suit and defendant Nos. 1 to 3 have filed their written statement along with counter claim against the present plaintiff vide Exh.39. The plaintiff has filed present application under Order 7 rule 11 of the Code of Civil Procedure by which the plaintiff contended that, the counter claim filed by defendant Nos.1 to 3 is not tenable as the counter claim is not property valued. The plaintiff further contended that, declaration in respect of sale deed dated 16.05.2011 is sought by defendant Nos.1 to 3 and as per Section 6(v) of the Bombay Court Fees Act defendant Nos.1 to 3 sought to have paid the market value of the alleged sale deed. Hence, the plaintiff prayed to reject it.

02. Defendant Nos.1 to 3 filed their reply below Exh.46 and opposed the present application contending that, the counter claim has been property and legally valued and proper court fee has been paid by defendants. They contended that, the counter claim is simplicitor injunction and declaration, hence, a nominal court fee required to be paid for which defendants are ready.

03. Heard Learned Advocates for the respective parties at length.

04. The learned counsel Shri. V.D. Muley, for plaintiff argued that, the counter claim of defendant Nos.1 to 3 is not maintainable. He argued that, as per counter claim, defendants want to pass decree in their favour for cancellation of sale deed and hence, defendants ought to have filed court fee as per Section 6 (v) of the Bombay Court Fee Act and they ought to have paid the court fee on the market value of the sale deed.

05. On the other hand, the Learned counsel Shri. M.C. Khangare, for defendants argued that as there is no bar to any proceeding to claim the relief of cancellation. He specifically argued that, defendant Nos.1 to 3 were not the party to alleged sale deed and they have not executant, hence, there is no necessity to pay court fee on market value of alleged sale deed in respect of relief of cancellation of sale deed. Hence, the counter claim is well maintainable in the eyes of law.

06. Considering the rival submissions, at the outset, it is to be noted that, defendant Nos.1 to 3 filed counter claim for declaration to declare that, the alleged sale deed dated 16.05.2011 executed by defendant No.5 in favour of the plaintiff is non-est, illegal and is not according to law and the same be cancelled. Defendant Nos.1 to 3 also want to declare that, the plaintiff has no right, title or interest in suit property. It is pertinent to note that, after perusal of counter claim, defendant Nos.1 to 3 pleaded that, alleged sale deed executed by defendant No.5 in favour of plaintiff is not binding on them. From the counter claim it is clear that, defendant Nos.1 to 3 mainly want the relief of declaration and permanent injunction. It is also pertinent to mention that, defendant Nos.1 to 3 are the master of their counter claim. It is significant to note that, defendant Nos.1 to 3 were not the party to alleged sale deed. In Writ Petition No.1075/2016 *Niraj S/o Narendra Walle ..Vs.. Smt. Vijaya W/o Narendra Walle and others* the Hon'ble Bombay High Court of Judicature at Bombay, bench at Nagpur held that, one half ad-valorem court fee is not required if parties to suit are admittedly not executant of the sale deed and they have not prayed for decree for possession. Considering the proposition laid down in the judgment given in the case of *Niraj S/o Narendra Walle ..Vs..Smt. Vijaya W/o Narendra Walle and others (supra)*, the case in hand, admittedly defendant Nos.1 to 3 are not party to alleged sale deed and they are not prayed for decree for possession. Hence, defendant Nos.1 to 3 are not liable to pay the ad valorem court fee as

per Section 6(iv)(ha) of the Maharashtra Court Fees Act.

07. Moreover, defendant Nos.1 to 3 have already paid court fee of Rs.200/-, so considering the factual and legal position, the defendant Nos.1 to 3 are liable to pay court fee of Rs.200/- for declaration as per law . Hence, I pass following order as under:

-: ORDER :-

- i) The original defendant Nos.1 to 3 in counter claim are hereby directed to deposit the requisite court fee of Rs.200/- for the relief of declaration within 15 days from the date of this order.
- ii) Matter be proceeded further.
- iii) Accordingly, parties to take note.

Saoner.

Date -17.08.2017.

{V.V. Joshi}

2nd Jt. Civil Judge Junior Division,

Saoner, Dist. Nagpur.

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R.C.S. No. 70/2014.
Ashok Vs. Mukunda and ors.

C E R T I F I C A T E

I affirm that the contents of the this PDF file order are same word to word, as per the original Order.

Name of the Stenographer :- S. S. Borikar (Lr. Gd)