

MHNG140004822015



RCS NO.37/2015
Durga VS Somesh

ORDER PASSED BELOW EXH.89
(PASSED ON 14/07/2025)

The defendant no. 5 and 6 moved this application under Order VII Rule 11(b) read with order VII Rule 10.

2) Defendant no. 5 and 6 contended that the plaintiff has filed this suit for declaration and permanent injunction. By way of amendment the plaintiff sought the relief that sale-deed executed and registered on 16.06.2021 at Sr. No. 1024/2021 in respect of field No. 130 Mouza Amli, Tah. Parseoni, Dist. Nagpur by the defendant No. 1 to 4 in favour of defendant No. 5 and 6 is not binding on them. The defendants further contended that the plaintiff has not prayed for the cancellation of sale-deed inspite of the same prayed for declaration that the sale deed is not binding upon them for avoiding the payment of court fee. The plaintiffs are liable to pay court fees on amount of sale-deed valued at Rs.9,50,000/- as per the provisions of The Bombay Court Fees Act. On this count the defendant prayed that issued

direction to the plaintiff to pay the requisite court fees and on failure to do so plaint be rejected.

2) The plaintiff filed her say at Exh. 91 and strongly opposed the application which submits that the plaintiff has prayed the required relief and has paid the proper court fee for the same. The defendant cannot direct the plaintiff to claim the particular relief. As per the choice prayed for rejection of application.

3) Heard learned Advocate for the defendant and learned Advocate for the plaintiffs, he relied upon the judgment of Hon'ble Bombay High Court in *Dilip Khushalchand Jain VS Hardik Deepakbhai Ramani* in which the Hon'ble High Court held that section 6(iv)(ha) would be applicable to the plaintiff who is the party to the sale deed seeking declaration for avoidance of sale deed. It would not be applicable to the plaintiff who are not party to the instrument seeking declaration for avoidance of sale deed. Such plaintiff will be governed by section 6(iv)(j) of Maharashtra Court Fees Act.

4) On perusal of record it shows that initially the plaintiff has filed the suit for declaration and permanent injunction. Thereafter, carried out amendment and sought relief that sale deed executed by defendant No. 1 to 4 in favour of defendant No. 5 and 6 not binding upon them. Now, in this sale deed the plaintiffs are not an executing party of sale deed. Hon'ble Bombay High court in the above

mentioned authority held that in suit for declaration of sale-deed to which the plaintiff is not a party to the sale-deed binding on him and for consequential injunction would be governed by section 6 (iv)(j) of Maharashtra Court Fees Act. In view of the above legal principle the plaintiff need not to pay court fee on valuation of the sale deed as per section 6(iv)(ha) of Maharashtra Court Fees Act. Hence, I pass the following order

ORDER

1. Application Exh.89 is hereby rejected.

Parseoni
Dated :- 14/07/2025

(G.O. Wankhade)
Civil Judge Junior Division,
Parseoni