

Regular Civil Suit No.37/2017  
Manjulabai Vs. Ganpat

**ORDER BELOW EXHIBIT - 74**

(Passed on this 21<sup>st</sup> day of June,2022)

1. Present application is filed by the defendant for review of order below Exh.68 dated 26/11/2021. It is submitted that the defendant no.8 has filed an application under Order 7 Rule 11 of Civil Procedure Code for non payment of Court Fee. Said application was came to be rejected. It submitted that the Court has overlooked objection regarding non payment of proper Court fee on relief sought by the plaintiff. It is submitted that the Court has not properly considered Court fee which is required to be paid for declaration, possession of the suit property. The plaintiff has valued relief of declaration for sum of Rs. 1000/- only. However, Court fee is required to be paid on the market value. The Court has wrongly decided valuation of the property which could have done only after inquiry under Section 8 of said valuation Act. Further it is also submitted that there is apparent error on the face of record regarding non payment of proper Court fee for relief of declaration and possession which is required to be paid on market value. Therefore, requested to review order below Exh.68 and direction may be given to the plaintiff for proper valuation and Court fee.

2. On the other hand, plaintiff has strongly opposed this application. It is contended that the Court has rightly passed order, there is no reason to review said order. The application is completely devoid of merit and without any sufficient ground.

3. Learned advocate Shri. R.T. Anthony for defendant no.8 argued that there is apparent error on the face of record. That the Court has not considered proper valuation, Court fee is required to be paid separately on each relief. Further he argued that the market value of suit property is more

than 6 to 8 lacs. The Court has committed error while giving finding that the valuation of property is not more than Rs.2 lacs. He placed his reliance upon Section 18 of Maharashtra Court Fees Act 1959 and also placed his reliance upon the judgment of Hon'ble Bombay High Court in In G.V. Iyengar and other Vs. A.R. Sampathkumar and other, reported in Mh.LJ. 2008 (3) 621

4. On the other hand, advocate Shri. M.D. Paliwal for the plaintiff argued that the defendant has not made out case to review the order even defendant has to satisfy essential ingredients of Order 47 rule 1 of CPC. The defendant did not show that the order is suffering from any mistake or error apparent on the face of record or any sufficient reason. However, he argued that this Court has properly considered submissions and appreciated proper valuation shown by the plaintiff.

5. Considering submission of both sides following points arise for my determination and I have given my finding to each point as under:-

S.N.	Points	Findings
1	Whether defendant has shown mistake and error apparent on the face of record or sufficient reason to review the order?	...Negative.
2	What order?	...As per final order.

### **REASONS**

6] Now on going through order below Exh.68 it does not show that the defendant has brought to notice Section 18 of Maharashtra Court Fees Act 1959 at the time of dealing with said application below exhibit 68. On the contrary the defendant has brought to notice Section 18 of Maharashtra Court Fees Act at the time of review application only. Therefore, defendant cannot take aid of Section 18 of Maharashtra Court Fees Act at the time of review order. Apart from the learned advocate for the defendant advocate has placed his reliance upon section 6(d) of Maharashtra Court Fees Act.

Now let us see said provision which is given as under;

6(d) In suits for declaration in respect of ownership, or nature of tenancy, title, tenure, right, lease, freedom or exemption from, or non-liability to, attachment with or without sale or other attributes, of immovable property, such as a declaration that certain land is personal property of the Ruler of any former Indian State or public trust property or property of any class or community—one fourth of ad valorem fee leviable for a suit for possession on the basis of title of the subject-matter, subject to a minimum fee of 1 [one hundred rupees] :

Provided that if the question is of attachment with or without sale the amount of fee shall be the ad valorem fee according to the value of the property sought to be protected from attachment with or without sale or the fee of 2 [sixty rupees], whichever is less :

Provided further that, where the defendant is or claims under or through a limited owner, the amount of fee shall be 3 [one-third] of such ad valorem fee, subject to the minimum fee specified above :

Provided also that, in any of the cases falling under this clause except its first proviso, when in addition any consequential relief other than possession is sought the amount of fee shall be one-half of ad valorem fee and when the consequential reliefs also sought include a relief for possession the amount of fee shall be the full ad valorem fee ;

7. Considering said provision, I am of the view that the plaintiff has paid proper Court fee on market value as per disputed sale deed, which

I have already discussed in the order below Exh.68. The Court has ample power to see proper suit valuation. Therefore, if there is no valuation can be ascertained then separate inquiry is require to be done. But in the present case in hand, the plaintiff has challenged the sale deed and claimed  $\frac{1}{2}$  share in the joint property. The plaintiff is only liable to pay to the extent of  $\frac{1}{2}$  share only. On the contrary sale deed of suit property is of ad-measuring area of 851.65 sq feet and market value was shown sum of Rs.167000/- in the year 2016. It is not case of the plaintiff that, she is owner of entire property which is 158.3 sq. meter. Considering all these facts and circumstances.

8. In G.V. Iyengar and other Vs. A.R. Sampathkumar and other, reported in Mh.LJ. 2008 (3) 621– The Hon'ble Bombay High Court held that if relief of possession and declaration of ownership is sought by the party then Court fee is require to be pay as per section 6 (d) of Maharashtra Court Fee Act, 1959. Mere relief of declaration about possession is not permissible. But relief of possession has to be prayed separately. In my considered view this ruling is not helpful to the defendant. But it is against the defendant. because I have already stated for the plaintiff has paid full ad-velorem fees as per market value which is liable to pay at the time of filing of suit as per Section 6 (d) of Maharashtra Court Fees Act.

9. I am of the view that the plaintiff has already shown the market value of the suit property at the time of filing suit and the market value is ascertainable. Therefore, independent inquiry is not require to be done. The defendant did not shown any error apparent on the face of record. The plaintiff has paid Court Fee more than his  $\frac{1}{2}$  share in the suit property on each relief. which I found properly valued. There is no substance in the application. The defendant is failed to show order below Exh.68 is suffering from any mistake or passed without any sufficient ground. All the submissions already have been considered at the time of passing order

below Exh.68. There is no necessity to reopen the grounds agitated at the time of passing order below exhibit 68. Hence, I answer of point no.1 is given in negative.

**As to Point No.2:-**

Considering answer of Point No.1, I am come to conclusion that the application Exh.74 is devoid of merit and liable to be reject. Hence, I proceed to pass the following order:-

**ORDER**

1. Application Exh.74 is hereby rejected.
2. No orders as to costs.

Parseoni.  
Date:21/06/2022

(O.J. Kulkarni)  
Civil Judge Jr.Dn., Parseoni,

