

Regular Civil Suit No.43/2022
Meenakshi Vs. Lalchand**ORDER BELOW EXHIBIT - 18**(Passed on this 10th day of July,2023)

1] Present application is preferred by the defendant no.6 under Order 7 Rule 11 of Civil Procedure Code for rejection of plaint. It is contended that, the plaintiff has filed present suit for partition and possession of the suit property. The suit property was originally owned by Bapurao s/o Sakharam Varma. It was alleged that, Navalchand Laxman and Ramchandra was three son of Bapurao Varma jointly inherited entire property upon his death. The suit property was partition long back but at no point of time even a single document is placed on record to show that there was family partition was affected between Bapurao, Navalchand, Laxman and Ramchandra. More particularly in view of document i.e. 7/12 name of sons of Bapurao Varma is shown as joint owner.

2] It is further averred that, the name of Bapurao's son were mutated in the revenue record after death of Bapurao and his wife and the no document placed on record to show that the partition took place between Bapurao 's and his sons. It is further averred that, the suit is bad for non joinder of necessary parties. The law cannot be presumed merely on a single statement that, there was family partition was affected between legal heirs of Baburao but needs to be established prior dealing with the subject matter such as partition and separate possession of jointly family property. Therefore, the suit is not maintainable and needs to be dismissed.

3] On the other hand, the plaintiffs have filed their reply at Exh.32 and denied all the submissions of the defendant no.6. It is contended by the plaintiffs that, they are daughters of Navalchand Bapurao Varma and Navalchand died on 29/06/2011 and leaving behind him plaintiffs and defendant no.1 to 3 as his legal heirs. It is also contended that the suit properties are ancestral and joint Hindu Family properties. It is further contended that the suit properties were recorded in the name of Bapurao, Navalchand, inherited all the suit properties from his father Bapurao S/o Sakharam Varma and the plaintiffs being daughters of Navalchand.

4] It is further contended that, grand father of the plaintiff had already partition the suit properties in between his sons and grand sons. It is further contended that there is no dispute regarding nature of the suit property is the ancestral properties. It is contended that the defendants have not placed any document to show that, the suit properties are their self acquired properties. It is further contended that the defendant no.6 has filed the present application with malafide intention to delay the proceedings. Therefore, the plaintiffs have requested to reject the application with costs.

5] I heard learned advocate Shri. Pankaj Gupta for the defendant no.6 and learned advocate Shri. U.T. Akone for the plaintiff. Considering their submissions following points are arise for my consideration. Those points are given along with my finding as under:-

: POINTS OF DETERMINATION :

Sr. No.	Points	Findings
1.	Whether suit is bad for non joinder of necessary party?	...In negative.
2.	Whether suit is required to be valued on market value?	...In negative.
3.	What order?Application is dismissed

: REASONS :**As to Point No.1 and 2 :-**

6] The learned advocate Shri. Pankaj Gupta argued that, all co-owners not added as necessary parties. The suit properties are ancestral properties. All the co-sharer are the necessary parties in the present suit. The suit properties are is under acquisition proceeding for the purpose of Metro Region Zone. Therefore, the valuation of the suit shall be done on the basis of market value. Once land come under Metro Region Zone then valuation cannot be done as per revenue assessment. He placed his reliance upon *Moreshwar Yadaorao Mahajan Vs. Vyankatesh Sitaram Bhedi (D) through Legal Heirs and others*, reported in *SC. MANU/SC/1251/2022, dated 27/09/2022.*

7] Per contra, learned advocate Shri. Karmarkar for the plaintiffs argued that, the plaintiff has properly valued suit and properly paid court fee as per Section 6 (V) of Maharashtra Court Fee Act. There is no such rule that, if the land comes under Metro Reason Zone then it ought to be as per market value. He placed his reliance upon – *Radhabai wd/o Mahadeo Thakur Vs. Gajanan Shriram Akone and others* reported in *2010 (1) Mh.L.J.873*. Further he argued that, the plaintiff has arrayed proper

parties. The suit properties were belongs to Navalchand and all the legal heirs of Navalchand are brought on record. Therefore, moreover, brothers of Navalchand have no concerned with the suit properties. Revenue record are standing in the names of Navalchand for long time. Therefore, there is no question arise to add other co-sharers who have no title interest in the suit properties.

8] Considered submissions of both sides. I gone through the pleading of the plaintiff, it appears that, the plaintiff has filed suit for partition and injunction in respect of agricultural land survey no.70,122, 541 and 549 which are situated at village Nayakund. Further it appears that, partition was done previously by the grand father of among three sons of Navalchand, Chhagan and Ramchandra. In **Moreshar Yadaorao Mahajan (cited supra)** the hon'ble Supreme Court held and observed that, a “necessary party” is a person who ought to have been joined as a party and in whose absence no effective decree could be passed at all by the court. It has been held that if a “necessary party” is not impleaded, the suit itself is liable to be dismissed. On perusal of 7/12th extract, it appears that, the suit properties were standing in the name of Navalchand. Subsequently, name of Raju Varma and Ravindra Varma are came to be recorded in the 7/12th extract. Prima facie, I do not find interest may involved by other co-sharer as alleged by the defendants. Apart from that, if it will found that, they are also necessary party, then the plaintiff must face consequences for want of necessary party. This objection cannot be considered at this stage and it is beyond scope of Order 7 Rule 11 of Civil Procedure Code.

9] Now, I perused the relief sought by the plaintiffs in which the plaintiff sought relief in respect of relinquishment deed is not binding upon them and also claim partition and separate possession of 1/6th share in the suit properties. Generally nature of suit is appears to be declaration and partition.

10] Now, I perused the relevant rule 6 (v) of Maharashtra Court Fees Act which is reproduced as under:

“(v) In suits for the possession of land, houses and gardens—according to the value of the subject-matter; and such value shall be deemed to be, where the subject-matter is a house or garden—according to the market value of the house or garden and where the subject-matter is land, and—

*(a) where the land is held on settlement for a period not exceeding thirty years and pays the full assessment to Government—a sum equal to *[forty times] the survey assessment;*

(b) where the land is held on a permanent settlement, or on a settlement for any period exceeding thirty years, and pays the full assessment to Government—a sum equal to “[eighty times] the survey assessment; and.

(c) where the whole or any part of the annual survey assessment is remitted— a sum computed under sub-paragraph (a) or sub- paragraph (b), as the case may be, in addition to [eighty times] the assessment or, the portion of assessment so remitted;

11] On perusal of said rule, it appears that, there is no distinction made regarding if the agricultural land fall under Metro Region Zone and non Metro Region Zone. The basic requirement is that the land must be

agricultural land which is subject to the assessment and liable for revenue thereon. Therefore, in my considered view objection raised by the defendant no.6 is not sustainable in the eyes of law. The plaintiff has properly valued suit and paid court fees thereon.

12] In Radhabai wd/o Mahadeo Thakur (cited supra), the hon'ble High Court Bombay held that, Court fee shall pay in accordance with section 6(v) of Maharashtra Court fees Act for partition of agricultural land which is subjected to assessment. Considered above discussion and ruling , I am of the view that, the present application is devoid of merits and liable to be dismissed. Hence, I answer of point no.1 and 2 are given in negative .

As to Point No.3:-

13] In view of finding of point no.1 and 2, I am come to conclusion that, the application is devoid of merit. Hence, I proceed to pass following order:-

ORDER

1. Application Exh.18 is dismissed.
2. No order as to costs.

Parseoni.
Date:10/07/2023

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

Argument heard on	19/06/2023
Order passed on	10/07/2023
Transcription ready on	11/07/2023
Order checked and signed on	11/07/2023

CERTIFICATE

I affirm that the contents of this P.D.F. file of order are word to word, as per original order.

Name of Stenographer - M.Y. Mushtaque