

ORDER BELOW EXH. 17 in RCS No. 36/2021

(Kamal V/s. Rama)

01. This application has been filed defendant under Order 7 Rule 11 (b & c) of CPC.

02. Defendant submitted that, the plaintiff has filed the present suit purporting to be the suit for declaration & permanent injunction and also for cancellation of sale deed. The plaintiff are seeking a declaration that they are the owner of the suit property and also seeking relief of Injunction with seeking declaration for cancellation of sale deed of the defendant. Needless to state such declaration of plaintiff is not permissible in the eyes of law. Upon prima-facie reading of the plaint makes it clear that the present suit is filed by plaintiff for grant of relief of seeking declaration, permanent injunction and cancellation of sale deed against the defendant in respect of the property, claiming absolute rights in the property and based on the same, he has claimed various other reliefs. As it is appear from the bare reading of the plaint, the plaintiffs have valued the suit at Rs. 20000/- on the basis of the sale deed. The plaintiffs have undervalued the valuation of the suit intentionally and paid Court Fees of Rs. 3030/- only which is insufficient. It is submitted that under Section 6 (d) and (g) of Maharashtra Courts Fee act, when the plaintiffs are claiming the relief of as an owner and a declaration of so called ownership and

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possession over the suit property, therefore it is necessary that for such declarations, the court fees must be paid according to valuation of suit property on Market Value of the said property, which needless to state here that as much higher than the suit valued then the plaintiffs, in as much as, it is the matter of record that way back in the month February 1992, the defendant has purchased the property for an consideration amount of Rs 20,000/-.

03. Defendant further submitted that the plaintiff is seeking the relief, which needless to state is in the form of declaring him to be owner by seeking cancellation of the sale deed executed in favour of defendant by the husband & father of the plaintiffs herein. The valuation of the present suit based on the reliefs, as claimed by the plaintiffs, is grossly improper and undervalued. The proper valuation of the suit, clearly will take away the jurisdiction of this Court and consequently this Hon'ble Court will not be in position to grant any relief in the present matter. Be that as it may, it is submitted that considering the provisions relating to the computation of fees payable in the suits as provided under Section 6 of the Maharashtra Court Fees Act, it is a fit case to come to the conclusion that the valuation of the present suit as made by the plaintiffs, is wrong. Therefore, it is a fit case, in which the enquiry under Section 8 of the said Act needs to be made and consequently upon ascertaining the proper valuation this Court may be pleased to

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call upon the plaintiffs to correct the valuation, pay necessary court fee, which the plaintiffs wants to evade and upon failure to do so, reject the plaint and also return the plaint for presenting it to proper Court.

04. The plaintiffs filed their say at Exh. 19 and objected this application by submitting that they have not undervalued the valuation of the Suit intentionally and paid court fees of Rs. 3,030/- only which is insufficient. As per the averments in the plaint, it has been pleaded that the entire suit property is in cultivating possession of the Plaintiffs. On 12th February, 2012, late Maroti S/o Gunaji Chaudhari executed said Sale-Deed in favour of the Defendant, without consent from the Plaintiffs. The execution was done by playing fraud. On that basis, the present suit came to be filed seeking a declaration that the Sale-Deed is null and void and that the plaintiffs is, in fact, the lawful owner and possessor of the suit field. A decree for a permanent injunction seeking to protect their possession and from creating any third-party rights is also sought. The averments in the plaint clear indicates that the plaintiffs are specifically seeking cancellation of the sale deed dated 17/02/1992. The sale consideration amount of the said sale deed was of Rs. 20,000/-. Therefore, the plaintiffs have valued their suit upto Rs. 20,000/- and hence, they have calculated court fee of Rs. 3,030/- on said valuation is proper. Plaintiffs have paid appropriate court fees. In case any additional court

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fees is required to be by the plaintiffs then the plaintiffs is ready to pay the same as and when directed by the Court directed. Hence, they prayed for rejection of this application.

05. Heard Ld. Advocate for both side. Perused the application, say filed thereon and plaint. Studied Order 7 Rule 11 of the CPC.

06. Following points arise for my determination, to which I have recorded my finding with reasons given their below:

Sr. No.	Points	Findings
1.	Whether the suit is properly valued for the purpose of payment of Court fees and for the purpose of jurisdiction ?	Yes.
2.	What order?	As per final order

REASONS

Point Nos. 01 and 02 :-

07. This is application for rejection of plaint under 7 Rule 11 of the CPC, therefore, here it necessary to re-narrate relevant rule as follows:-

11. *Rejection of plaint:-* Plaint shall be rejected in the following cases
- (a) -----
- (b) where the relief claimed is under valued, and the plaintiff, on being required by the Court to so correct the valuation within a time to be fixed by the

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Court, fails to do so,

(c) Where the relief claimed is properly valued, but the plaint is written upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp-paper within a time to be fixed by the Court, fails to do so,

(d) to (g)-----

07. This application is seen to be moved under Order 7 Rule 11 (b & c) of the CPC. Therefore, it is necessary to see whether the suit is properly valued for the purpose of payment of Court fees as well as for the purpose of jurisdiction.

08. Upon perusal of plaint, this suit is seen to be filed for declaration that the plaintiff is owner and possessor of the suit property as well as declaration that sale deed dated 17/02/1992 is not binding upon the plaintiffs and also for injunction. It is alleged by the plaintiffs that Late Maroti Chaudhari was the husband of plaintiff No. 1 and father of other plaintiffs. It is further alleged that the suit property is ancestral property and so, Late Maroti Chaudhari has no right to execute the sale deed of it. It is further alleged that Late Maroti signed the document against the security of loan, which was taken from defendant so, document of sale deed date 17/02/1992 is not binding upon them.

09. The plaintiffs paid court fees by making valuation of suit property on the value of Rs. 20,000/- and also paid court fees for same.

Discussion as to the valuation of suit for the purpose of payment of Court fees:-

10. First relief, which is sought by plaintiffs, is of declaration that they are the owner and possessor of the suit property. As per defendant, plaintiffs have to pay Court fees for the relief of declaration of ownership as per Section 6 (iv) (d) of Maharashtra Court Fees Act. In support of said contention, defendant placed their reliance upon the case of *Zuberahmed Maqbook Ansari V/s. Devkran and Co. Pvt. Ltd. And ors* (MANU/MH/1345/2021). Since defendant himself relied upon Section 6 (iv) (d) of Maharashtra Court Fees Act, it is necessary to reproduce said section here i.e. as follows:

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 immoveable 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 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 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 one-third of such ad valorem fee, subject to the minimum fee specified above:

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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;

11. As per said section, the plaintiffs have to pay court fees of one fourth amount of ad valorem fee leviable for a suit for possession on the basis of title of the subject-matter and if any, any consequential relief other than possession is sought, the amount of fee shall be one-half of ad valorem fee. Now it is necessary to what is the valuation of court fees for the relief of possession. For that purpose, the reference of Section 6 (v) of Maharashtra Court Fees Act is required to be given here i.e. as follows:

*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 subparagraph (b), as the case may be, in addition to eighty times the assessment or, the portion of assessment so remitted;(vi)In suits to enforce a right of pre-emption—according to the value (computed in accordance with paragraph (v) of this section) of the land, house or garden in respect of which the right is claimed;

12. In the present matter, the suit property is agricultural land and revenue assessable property. Conjoint reading of above mentioned Section 6 (iv) (d) and Section 5 (v) of Maharashtra Court Fees Act shows that the valuation of suit for the purpose of payment of Court fees is required to be done the basis of revenue assessment for relief of ownership and also for consequential relief. One 7/12 extract of suit property is on record. It shows the assessment of suit property is Rs. 01. Therefore, if we valued the suit by any way for the relief of ownership and also for consequential relief on the basis of revenue assessment, it is seen that the plaintiffs have already paid proper Court fees.

13 So far as another relief i.e. of declaration that the sale deed dated 17/02/1992 is not binding upon the plaintiffs share out of the suit property, is concerned, the plaintiffs are claiming that the suit property is ancestral property and they are having by birth right so, their predecessor has no right to sale it so, it is not binding upon them. They are not party to said sale deed. They are just seeking declaration that said sale deed is not binding upon the plaintiffs. It is seen from the

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observations given by Hon'ble Bombay High Court in case of **Sunil V/s. Sadashiv and ors** (2022) 09) Bom CK 0057), which is cited by plaintiffs, that if the plaintiffs are seeking declaration that deed is not binding upo the plaintiffs and if they are not party to deed, they have to pay Court fees as per Section 6 (iv) (j) of Maharashtra Court Act by making valuation of the suit property of Rs. 1000/-. Therefore, the Court fees for said relief is also seen to be properly paid.

Discussion as to the valuation of suit for the purpose of jurisdiction:-


14. Conjoint reading of above mentioned Section 6 (iv) (d) and Section 5 (v) of Maharashtra Court Fees Act shows that the valuation of suit for the purpose of payment of Court fees is required to be done the basis of revenue assessment for relief of ownership and also for consequential relief. The same anology is required to be adopted for the valuation of the suit for the purpose of jurisdiction. As per rule 2 of the Maharashtra Suits Valuation (Determination of value of land for jurisdictional purpose) Rule 1983, the valuation of suit for the relief of possession is also required to be done the basis of revenue assessment and it is 200 time of revenue assessment. So also, this suit is seen to be covered within pecuniary jurisdiction of this Court. In result, application deserves to be rejected. Hence, Point No. 1 is answered in negative. Resultantly, following order is passed.

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-:: ORDER ::-

1. Application is rejected.
2. No order as to costs.

Date: 24/07/2024


(V. H. Khedkar)
(CJJD, Hingna)