

MHNG150011712021



ORDER BELOW EXH. 25 IN RCS No. 36/2021

(Kamal and ors V/s. Rama)

01. This application has been filed by defendant under Section 114 and Order 47 of the Civil Procedure Code, 1908 for review of order passed below Exh. 17, which is passed by this Court.

02. Defendant submitted that he had preferred an application under Section 8 of the Maharashtra Court Fees Act, read with Order 7 Rule 10 and 11 of C.P.C. for an enquiry about valuation of the suit. It is the case of the defendant that on plain reading of the Plaint it was clear that the suit was undervalued and the Court fee paid was insufficient. Therefore, the defendant sought for an enquiry regarding the fee to be paid on the correct valuation. This Court vide Order dated 24.07.2024, has passed an Order thereby the application filed by the defendant was rejected on the ground that the Court fee has been properly paid. Thereafter, the defendant applied for certified copy of the order passed on 24.07.2024, and sought time before this Court to take appropriate steps. On bare perusal of the Order passed on 24.07.2024, it would be clear that the Order is passed

contrary to the statutory provision as well as the Judgments to that extent and in such circumstances the mistake is eminent and since there is an error apparent on the face of the record, the Order needs to be reviewed.

03. Defendant further submitted that he had categorically relied on the Judgment passed by the Hon'ble Bombay High Court in case of *Zuberahmed Maqbool Ansari v/s. Devkaran* (MANU/MH/1345/2021), wherein the Hon'ble Bombay High Court had categorically held that considering the scope and ambit of the Stamp Act, the market value of the property is a relevant consideration for valuation of the Court Fee to be levied. In such circumstances the error is apparent on the face of the record that the averments in the Plaint have not been taken into consideration and therefore, it was not only the mandatory provision of law, but also it was a duty of the Plaintiff to act fairly and value the suit at its correct value and pay Court Fee accordingly. The reliance on the Judgment of "Sunil .vs. Sadashiv" Single Judge of the Hon'ble Bombay High Court, wherein this Hon'ble Court has followed the view taken by Single Judge of the Honb'le Bombay High Court, wherein it has been held that if a declaration is being sought therefore, in such circumstances the Court Fee is to be paid to the extent of declaration sought. It would be apparent that the Plaint averments needs to be taken into consideration. In fact when the Division Bench of the Bombay High Court in the case of Zuberahmed has already taken a view considering the similar

averments in the said suit and has held that the valuation has to be as per the market value of the suit and therefore, the suit would be grossly under value. In view of the settled position of law that under Section 8 of the Court Fee Act, there is a duty cast to see that no party to the litigation is given any absolute right to put any valuation whatsoever, if any party manifestly and deliberately under values and under estimate the valuation on the estimation of relief, the Court is not to be a silent spectator thereto and has a clear jurisdiction to enquiry into the valuation of the Court Fee. It has also been held that issue of value of Court fee and the jurisdiction of the Court is directly interlinked and cannot be left entirely to the parties. Considering which if the Plaintiff's contention is accepted which shall leads to gross and deliberate under valuation of the reliefs claimed by the Plaintiff and which would lead to not only amounting to mischief, but also be a complete abuse of the due process established by law. In such circumstances it ought to have being held that the suit being one of cancellation of agreement therefore, the Court fee valuation ought to be on the basis of market value and not just paying amount for seeking a declaration that too on the basis of the amount on the date when the agreement was executed which is sought to be cancelled. Thus, the power of review of this Hon'ble Court be exercised since the mistake, error is apparent on the face of the record. The said error does not require any long drawn process of reasoning on the points where there may be conceivably to opinion as also the mandatory position of law and binding

Judgments have not been considered in its proper prospective.

04. Plaintiffs filed their say and objected this application that the statutory period of filing application has been lapse. There is no case of review. The substantial question of law involved. No single reason for review is seen to be established. This application has been filed to prolong the matter. Hence, they prayed for rejection of this application.

05. Perused the record. Heard Ld. Advocate for both sides. Studied Section 114, Order 47 and Order 16 of the CPC.

06. Defendant filed application (Exh. 17) for rejection of plaint on the ground of payment of deficit Court and also for want of pecuniary jurisdiction. That application has been rejected by this Court by passing thorough order on 24/07/2024. Thereafter, this application is seen to be filed for review of said order. Therefore, provisions which are dealing with procedure of review are required to be dealt here.

07. The provision for review is in Section 114 & Order 47 of the CPC. Right under Section 114 of CPC is substantive right and the order 47 of CPC will provide the details of the procedure.

08. According to section 114 of CPC, any person aggrieved by a decree or order from which an appeal is allowed

but not filed, or a decree or order from which no appeal is allowed, can file a review petition in the same court which passed such decree or order on the following grounds:

- Where a decree or order is passed which is appealable under the CPC and no appeal is preferred;
- Where a decree or order is passed which is not appealable under the CPC; and
- Where a decision is given on a reference from a Small Causes Court.

09. As per Order 47 Rule 1 of the CPC, in following circumstance, the application for review can be allowed :

- When new and important evidence is discovered by the applicant and he/she was not in knowledge or due to negligence not able to provide the evidence when the decree was passed.
- Power of review is available only when there is an error apparent on the face of the record and not on the erroneous decision. An error apparent on the face of the record, can't be defined precisely and it has to be decided judicially on the facts of each case.
- Any other sufficient grounds which is analogous to those specified in these rules.

10. Ld Advocate for defendant argued that the Court has not considered the scope of judgment of *Zuberahmed Maqbool Ansari V/s. Devkaran* (Cited supra) properly. He further

submitted that the Court has to enquire the question of valuation of suit property under Section 8 of Maharashtra Court Fees Act but it is not done so, there is error on the face of record in the order passed below Exh. 17.

11. In reply, Ld. Advocate of plaintiffs argued that the order passed by the Court is proper one.

12. In view of this submission, it is necessary to see whether there is ground to review the order passed below Exh. 17. This suit is for declaration that the plaintiff is owner of suit property i.e. Old survey No. 108 admeasuring 4.35HR situated at Kanholibara Tq. Hingna Dist. Nagpur and also for declaration that the sale deed dated 17/02/1992, which was executed by the husband of plaintiff No. 1 and father of other plaintiffs, is not null and void and not binding to the plaintiffs and also for perpetual injunction.

13. 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 singed 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.

14. 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.

15. 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. Ld. Advocate for defendant also submitted that the valuation of suit for the purpose of jurisdiction and for the purpose of payment of Court fees should have been on the basis of value of subject matter in view of Section 6 (iv) (d) of Act. In support of said submission, defendant placed their reliance upon the case of ***Zuberahmed Maqbook Ansari V/s. Devkran and Co. Pvt. Ltd. And ors*** (cited supra). In said case, it is observed that when the suit for declaration of title of the suit property, its valuation is required to be done as per Section 6 (iv) (d) of Maharashtra Court Fees Act. Therefore, 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:

*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;***"

16. 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 subparagraph (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”

17. 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 can be gathered that the plaintiffs have already paid proper Court fees.

18. It is needless to mention here that in case of *Zuberahmed Maqbook Ansari V/s. Devkran and Co. Pvt. Ltd. And ors* (cited supra), the value of suit has been calculated on the basis of value of subject matter. But in said case, the subject matter is the a Gala/ shop and not the agricultural property. As

discussed earlier, the valuation of the suit property in case when the suit property is revenue assessable is required to be done on the basis of assessment. If it is done on the basis of revenue assessment in the present suit, then, it can be easily gather that the proper Court fees is seen to be paid by the plaintiffs.

19. 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 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.

20. So far as valuation of suit for the purpose of jurisdiction, 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 analogy 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.

21. All above discussion is also seen to be made at the time of deciding application of rejection of plaint i.e. Exh. 17. There is no apparent error seen in said order. Therefore, this application is seen to be filed without merit. In result, application deserves to be rejected. Therefore, following order is passed.

ORDER

- (i) The application is rejected.
- (iii) Costs in cause.

(V. H. Khedkar)

Date:- 22/07/2025.

Civil Judge J.D. Hingna.