

Regular Civil Suit No. 38/2018
CNR:MHNS13-000250-2018

Order Passed Below Exh. 21
Pramod Vs. Gaurav and others

Read the application, say filed by the plaintiff. Perused the record. Heard learned Adv. Shri. R. T. Chavan for defendant no. 1 and learned Adv. Shri. M. A. Pawar for the plaintiff.

2] This is a suit for the relief of declaration and perpetual injunction wherein the present application under Order VII Rule 11 of the Code of Civil Procedure is filed. It is submitted by defendant no. 1 that, he has purchased the suit property for the consideration of Rs. 17,10,000/-. The plaintiff is praying for declaration regarding the same suit property. The valuation of the suit property is Rs. 17,10,000/- and the plaintiff has not affixed the sufficient Court fee stamp in the present suit. Hence, he prayed for issuance of directions to the plaintiff to properly value the suit within stipulated period or to dismiss the suit, if the plaintiff fails to do so.

3] The learned advocate for the plaintiff resisted the application by filing say. He submitted that, the application is false and illegal. The sale deed is illegal and the plaintiff is not party to the same. Hence, the present application is not tenable and lastly he prayed to reject the application.

4] As per the contention of defendant no. 1, valuation of the suit property is Rs. 17,10,000/- and the plaintiff has not affixed the sufficient Court fee stamp in the present suit. However, as per the contention of the sale deed is illegal and the plaintiff is not party to the same.

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5] On the perusal of pleading of the plaintiff, it appears that, it is the contention of the plaintiff that, his father Ramchandra Narayan Zankar demised on 22/11/1973. Ramchandara Zankar purchased the suit property on 12/11/1956. Further it is the contention of the plaintiff that, sale deed dated 22/05/2017 is not executed by his father and the said sale deed dated 22/05/2017 is *void-ab-initio*. This suit is presented for the relief of declaration and perpetual injunction. The plaintiff's submission is that, he is in possession of the suit property. It is settled principle of law that, if a person is a non-executant of the deed, is in possession of said property and sues for a declaration that, the deed is null or void and does not bind him on his share, he has to merely pay a fixed Court fee as per Article 17(iii) of second Schedule of the Act. In the present matter, the plaintiff is not the executant of the sale deed dated 22/05/2017 and he is claiming that, the sale deed dated 22/05/2017 is illegal and *ab-initio* and the same is not binding upon him and defendants no. 2 to 10. Therefore, considering all these facts and provisions of law, the plaintiff is not liable to pay *ad-valorem* Court fee on the consideration of Rs. 17,10,000/- stated in the sale deed dated 22/05/2017. In the result, following order is passed,

ORDER

1] Application (Exh. 21) stands rejected.

Date : 06/10/2018

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(S. N. Hurgat)
Joint Civil Judge Junior Division,
Pimpalgaon (B)

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