

**ORDER BELOW EXH.28 IN R.C.S.NO.262 OF 2012**

(Passed on 07.02.2013)

Defendant Nos. 1 to 5 have filed this application(Exh.28) under Order VII Rule 11 of the Code of Civil Procedure, 1908 for rejection of plaint for under valuation of the suit claim.

2. According to the defendants the suit properties are the residential/commercial properties. Therefore, the plaintiffs were duty bound to value the suit claim properly. Hence, it is prayed that the plaint be rejected for under valuation of the suit claim. This application has been opposed by the plaintiffs on the grounds that they have properly valued the suit claim and paid proper Court fee. They have further claimed that the issue of the Court fee can be the subject matter of trial of suit.

3. Learned Advocate Shri.R.T.Chavan for the defendants submitted that the plaintiffs' suit is for declaration, partition and separate possession of the suit properties. The plaintiffs have wrongly assessed the market value of their alleged 1/8<sup>th</sup> share in the suit properties as Rs.1000/- and paid Rs.200/- towards Court fee thereon for partition and separate possession of the suit properties to the extent of their alleged share therein. In fact, the plaintiffs ought to have assessed the suit claim according to the market value of the suit properties and paid requisite court fee thereon. According to the learned Advocate, the market value of the suit properties is much more than claimed by the plaintiffs. Placing reliance upon letter dated 10.10.2012 issued by the Sub Registrar, Class I, Niphad, the learned Advocate for the defendants submitted that, for the year 2012, the market value of the suit properties was as under:-

<u>City Survey Nos.</u>	<u>Market Value in Rupees</u>
1792	96,000/-
1793	81,600/-
1794	96,720/-
1795	16,080/-
1796	22,560/-
1797	73,440/-
1798	73,440/-
1799	38,880/-
1800	32,880/-
1801	3,74,400
1802	35,040/-
1803	32,400/-
<b>Total</b>	<b>9,72,840/-</b>

4. Per contra, learned Advocate Shri.S.G.Talekar for the plaintiffs submitted that the application is misconceived. The market value shown in the letter issued by the Sub Registrar, Niphad is based on government ready reckoner which is meant for the purpose of payment of proper stamp duty as per the provisions of the Bombay Stamp Act, 1958. Said ready reckoner cannot be the yardstick for determination of the market value of the suit properties for the purpose of assessment of Court fee under the provisions of the Bombay Court Fees Act, 1959. He has further submitted that the question with regard to court fee must be considered always in the light of allegations made in the plaint. He has further submitted that payment of insufficient court fee is not a bar to proceed with the suit. He further submitted that the point of payment of court fee can be considered at the time of trial of the suit. To support his submissions, the learned Advocate for the plaintiffs placed reliance upon:

- (1)Om Plastic Industries, Dhule Vs. MSFC, Mumbai, 2001(1)Mh LJ 560;
- (2)Shaikh Habibulla Vs. Md.Sultan Khan, AIR 2001 Cal.22;
- (3)Sardarsinha Gopalsinh Vs. Swarupsinh, 2012(6)Mh L J 704.

5. The Points for determination along with my findings thereon for the reasons to follow are as under -

**POINTS**

**FINDINGS**

1) Whether the plaintiffs have properly valued the present suit?

No.

2) What is the proper valuation of the suit?

Rs.9,72,840/-

3) What order?

As per final order.

### REASONS

#### As to Point Nos. 1 and 2 :

6. In Om Plastic Industries, Dhule and others Vs. M.S.F.C. Mumbai, 2001(1)Mh.L.J.560, it is held that the question of Court fees must be considered in the light of the allegations made in the plaint and its decision cannot be influenced either by the pleas in the written statement or by the final decision of the suit on merits. In Shaikh Habibulla Vs. Md.Sultan Khan, AIR 2001 Cal.22, the Honourable High Court of Calcutta held that payment of insufficient Court fee is not a bar to proceed with the suit. In Sardarsinha Gopalsinh Vs. Swarupsinh, 2012(6)Mh L J 704, it is held that when there was no evidence, on record, about the market value of the disputed house property, point of payment of proper Court fee and valuation can be determined at the time of trial of the suit. With respect, these rulings do not advance the cause of the plaintiffs, for the reasons discussed here-in-below.

#### Assessment of proper valuation of suit for jurisdiction purpose:

7. According to the provisions contained in Section 2 of the **Maharashtra Suits Valuation (Determination of Value of Land For Jurisdictional Purposes) Rules, 1983**, in suits for possession of land, houses and gardens, mentioned in paragraph (v) in Section 6 of the Bombay Court Fees Act, 1959, for the purposes of jurisdiction, the value of the property shall be determined, thus, (a) where the subject-matter is a house or garden, according to the market value of the house or garden, as the case may be; and (b) where the subject matter is land, a sum equal to two hundred times of the assessment payable in respect of the land.

8. It may be noted that section 6(iii) of the Bombay Court Fees Act provides that in suits for moveable property other than money, where the subject-matter has a market-value, the amount of fee payable shall be computed according to such value *at the date of presenting the plaint* (emphasis supplied). It is, therefore, crystal clear that the amount of fee payable shall be computed according to the value of the subject matter at the date of presenting the plaint and not any other previous date.

9. It is pertinent to note that the subject-matter of the present suit is not assessable to land revenue as it is a non-agricultural land/residential area land meant for the construction of houses or gardens. At this juncture, recourse to section 6 (iv)(v) of the Bombay Court Fees Act may be of some help, in which it is provided that in suits for possession of lands, houses and gardens, the value of the subject-matter shall be deemed to be the market value of the house or garden and where the subject matter is land assessable to land revenue, then as per the assessment to the Government.

10. Either suo motu or upon an application, as provided by Section 8 of the said Act, the Court is vested with power to form an opinion as to whether the subject-matter of a suit has been wrongly valued by the plaintiff and if that opinion is formed, the Court is authorized to determine the correct valuation.

11. In the instant case, on careful perusal of the plaint and prayer clause thereof, it is evident that the plaintiffs have claimed partition and separate possession of the suit properties to the extent of their 1/8<sup>th</sup> share therein. According to the plaintiffs, the market value of the suit properties is Rs.1,000/-. This claim is positively rebutted by the authentic documentary evidence on record in the form of the letter issued by the Sub Registrar, Niphad in respect of the suit properties referred to above. In the said letter dated 30.10.2012, the market value of all the suit properties is assessed as Rs.9,72,840/- for the year 2012. No doubt the said market value is for the purpose of collection of revenue on the transactions entered into between the parties and registered in the office of Sub Registrar, but that does not mean that the said valuation of the suit properties cannot be taken into consideration for determining the valuation of the subject matter for the purpose of jurisdiction of the Court and for the purpose of payment of Court fee. No material has been placed on record to show that the market value determined by the government for the purpose of assessment of proper stamp duty, cannot be treated to be the correct valuation of the properties, for assessment of valuation of the subject matter for the purpose of jurisdiction. Hence, Point No. 1 is answered in the negative and Point No.2 is answered accordingly.

**As to Point No.3:**

12. The pecuniary jurisdiction of this Court is Rs.5,00,000/- whereas the valuation of the suit for the purpose of jurisdiction is Rs.9,72,840/-. Thus, the present suit is beyond the pecuniary jurisdiction of this Court. As such, the suit will have to be returned to the plaintiffs for being presented to the Court of Hon'ble Civil Judge Senior Division, Niphad for disposal according to law on correction of the valuation of the suit and payment of requisite Court fee or rejected in the event of default on the part of the plaintiffs as provided by Order VII Rule 11(b) of the Code of Civil Procedure, 1908. Hence, in answer to Point Nos.3, the following order is passed -

**ORDER**

- (1) Application Exh.28 is allowed.
- (2) The plaintiff shall correct the valuation of the suit as observed in Para 12 of the order and pay requisite Court fee accordingly on or before 27.02.2013, in default whereof, the plaint shall stand rejected in terms of the provisions contained in Order VII Rule 11(b) of the Code of Civil Procedure, 1908.
- (3) In the event of compliance or non-compliance of order, requisite orders as regards return of plaint for being presented to proper Court or rejection of plaint, as the case may be, will follow.
- (4) Costs in cause.

Date:07.02.2013  
Place:Pimpalgaon(B).

(B.U.Choudhari)  
Joint Civil Judge Junior Division,  
**Pimpalgaon(Baswant)**