

Order below Exh. 59

01] Defendant no. 2 has filed present application, under Order 7 Rule 11 of the Code of Civil Procedure, 1908, for the rejection of the plaint.

02] Defendant no. 2 submitted that, as per the amendment below Exh. 34, defendant nos. 2 to 5 has been impleaded in this suit. Defendant no. 2 has purchased the suit property from defendant nos. 1 and 3 to 5, vide registered sale deed dtd. 16.08.2014, for the valuable consideration of Rs. 10,67,000/-. As such, plaintiff ought to have been valued the suit, as per the sale consideration amount of sale-deed and have to pay appropriate court fees on it. However, plaintiff has failed and neglected to value the suit properly and to pay sufficient court fee on it.

03] Defendant further submitted that, the sale-deed on which basis, he has been impleaded in the array of defendants, the said sale-deed is valued at Rs.10,67,000/-. Therefore, the valuation of the suit goes beyond the pecuniary jurisdiction of this court. As such, this court has no jurisdiction to try and decide the present suit. For the said reasons, the defendant has prayed to reject the plaint.

04] Plaintiff has strongly resisted the application mainly on the ground that, the application is not legal one. Defendant has filed this application with an intention to increase multiplicity of litigation. Defendant alienated the suit property, by disobeying the order of status-quo, which was passed by this court. After completion of

evidence of the plaintiff, the defendants have filed this application with an intention to prolong the hearing of the suit. For the said reasons, the plaintiff prayed to reject the application.

05] Defendant no. 1 filed his say and submitted that, the sale consideration amount of sale-deed is Rs.10,67,000/-, as such, plaintiff ought to have pay the court-fees on the said value. Plaintiff failed to pay appropriate court-fees. Therefore, plaint be rejected under order 7 Rule 11 of The Code of Civil Procedure.

06] Read contents of application. Heard learned advocates for both the parties.

07] In order to determine the pecuniary jurisdiction of the court and in order to determine the valuation of the subject-matter of the suit averments made in the plaint and the reliefs claimed by the plaintiff have to be taken into account. Perusal of the contents of plaint reflects that, the plaintiff has filed suit for declaration of ownership on the basis of will deed dtd. 18.09.1993. Further, the plaintiff has claimed ancillary relief of perpetual injunction. The substantive relief is of declaration. Plaintiff has valued the suit to the tune of Rs. 1000/- for the purpose of jurisdiction and court fees.

08] It appears that, the subject-matter of the present suit is the agricultural land bearing no.161, which is assessed to the land revenue to the tune of Rs. 04.13 paise.

09] Further it appears that defendant no. 2 is subsequent purchaser. He purchased the suit property for the valuable consideration of Rs.10,67,000/-. For the said reason, defendant contending that, both, for the purpose of pecuniary jurisdiction and for

the purpose of court-fees, the suit ought to have been valued at Rs.10,67,00/- and shall have to pay appropriate court-fees on that amount. It is further contended by the defendant that, this court has no pecuniary jurisdiction to try and decide the present suit, as the valuation of the subject-matter of the present suit is more than the pecuniary jurisdiction of this court. Defendants contended that, plaintiff ought to have valued the subject-matter of the suit as per the market value of it.

10] As against this, plaintiff valued the subject-matter of the suit for both the purpose i.e. for jurisdiction and for computation of court fees, on the basis of survey assessment.

11] In order to decide the question relating to the valuation of the suit claim, it is necessary to note relevant provisions of The Bombay Court-fees Act, 1959.

Section 6 (iv) (d) Suit for ownership etc. of immovable

property:- In suit 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 immovable property 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 for a suit for possession on the basis of title of the subject-matter, subject to a minimum fee of [Two hundred rupees]

12] **Section 6 (v) suit for possession of land, house and**

gardens:- 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--

(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.

13] The Maharashtra suits valuation (determination of value of land for jurisdictional purpose) Rules, 1983, Rule 2 contemplated that, in suit for the possession of land, houses and gardens mentioned in paragraph (v) in section 6 of the Bombay Court Fees Act, 1959 for the purpose of jurisdiction, the value of the property shall be determined as follows, namely:-

(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;

(b) Where the subject-matter is land – a sum equal to two hundred times of the assessment payable in respect of the land.

14] From the aforesaid legal provisions, it is made clear that, when the suit for declaration of the ownership claimed in respect of the land assessed to survey assessment, than the valuation of the subject-matter has to be computed on the basis of survey assessment payable in respect of the said land. Plaintiff has claimed declaration on the basis of will-deed. The subject-matter of present suit is agricultural land assessed to land revenue. Plaintiff has to valued the suit for jurisdiction and court-fees on the basis of value of subject-

matter. As per the provisions of section 6 (v) of the Bombay Court Fees Act, when the subject-matter of the suit is land, the value of such subject-matter deemed to be a sum equal to eighty times of the survey assessment. Thus the survey assessment of the land determines the value for the jurisdiction. In the light of aforesaid legal provisions, I scrutinized the averments made in the plaint, than it appears that, plaintiff has valued the suit land on the basis of its assessment. The valuation of subject-matter was properly made and as per valuation of the subject-matter, suit is instituted in competent court and this court has ample pecuniary jurisdiction to try and decide the suit. For the said reasons, I find no substance in the contention of the defendant that, suit is under valued and the valuation of the subject-matter exceeds the pecuniary jurisdiction of this court. Thus the application is appears to be devoid of merits and liable to be rejected. Hence, I proceed to pass following order :-

ORDER

- 1] The application Exh.59 is hereby rejected.
- 2] Parties to proceed further with the suit.
- 3] Costs in Cause of the suit.

Place : Kalwan
Date : 19.01.2016

(S. N. Naik)
Civil Judge J. D., Kalwan