

ORDER BELOW EXH.27 IN R.C.S.No.641/2014 :-

1. Perused the application filed by plaintiff for rejection of the counter claim of defendant no.1 under Order 7 Rule 11 of Civil Procedure Code for non-payment of Court fees. The plaintiff has contended that he has filed the present suit for declaration and injunction. Defendant No.1 has also filed counterclaim for declaration and injunction. The dispute involved in the present counterclaim is not arising out of matrimonial relationship. Further, plaintiff and defendant no.1 are not the members of joint family property. Therefore, the defendant no.1 in the counterclaim is not exempted from payment of court fees for the counterclaim. Hence, prayed for rejection of the plaint.

2. Defendant No.1 by filing say over leaf the application objected on the ground that the dispute involved has arisen out of matrimonial relationship, hence, as per notification 1994 and 2000, the defendant no.1 is exempted from payment of Court fees for the counterclaim. Hence prayed for rejection of the application with costs.

3. Heard both the sides. Following points arise for my determination to which I have recorded my findings for the reasons to follow thereon.

POINTSFINDINGS

- | | | |
|---|--|-----------------------|
| 1 | Whether the defendant no.1 (plaintiff of the counter claim) is exempted from payment of Court fees ? | ..In the affirmative. |
| 2 | What order ? | ..As per final order. |

-REASONS-

4. The plaintiff has contended that since the dispute involved is not related or arising out of matrimonial dispute, the defendant no.1

is not exempted from payment of Court fees as per the notification issued by the Government of Maharashtra dt.01.10.1994 and 23.03.2000. In this regard, I have gone through the counterclaim filed by the defendant no.1. The defendant no.1 has contended that she is the legally wedded wife of the deceased Ramhari Baji Waman. Further, she has contended that plaintiff is the son of Koushalyabai, who was the illegitimate child of Ramhari and Janabai. At the time of the death of Ramhari Waman, Gat No.107 & Gat No.105 and the suit properties were the separate properties owned and possessed by Ramhari. After the death of Ramhari, the said properties are owned and possessed by defendant no.1 as the legal heir of deceased Ramhari. The plaintiff has no right or interest in the said properties. The plaintiff himself has mentioned in para no.3 of the plaint that, during the life time of Ramhari Waman his wife i.e. defendant no.1 was allotted some properties except the suit properties in partition.

5. As per notification dt.01.10.1994 of Government of Maharashtra, women litigants are exempted from payment of Court fees payable on any of the plaint, applications, petitions, memorandum of appeal, or any other documents specified in the First and Second schedule of the Bombay Court Fees Act to be filed in any Civil, Family or Criminal Courts in respect of the cases relating to maintenance, property disputes, violence and divorce. Thereafter, explanation was added to the said notification by another notification dated 23.03.2000. According to which, the expression 'property disputes' shall mean property disputes arising out of or concerning matrimonial matters. Now, a woman would not be required to pay Court Fees in the matter filed by her in respect of maintenance, violence, divorce and property disputes arising out of matrimonial matters.

6. In the present suit in hand, the plaintiff has asserted that the

defendant no.1 is the second wife of late Ramhari Waman and the plaintiffs' mother i.e. deceased Kaushalyabai was the legally wedded wife of late Ramhari Waman. However, the defendant no.1 in the counterclaim has come with a specific case that she is the legally wedded wife of late Ramhari Waman. The properties in the counterclaim in respect of which she has claimed declaration and injunction are the properties which are claimed to have been devolved upon her as the legal heir of deceased Ramhari Waman. Therefore, it can safely be concluded that the said property dispute has arisen out of the matrimonial relationship of defendant no.1 with her deceased husband Ramhari Waman. This dispute is certainly a property dispute arising out of matrimonial matter. The defendant no.1 has claimed ownership and possession of properties as legal heir of her deceased husband Ramhari. Therefore, whether the plaintiff and defendant no.1 are members of joint family or not is immaterial. Hence, in view of above notification dt.01.10.1994 and the explanation dt. 23.03.2000, defendant no.1 being a woman litigant is exempted from payment of Court fees. Hence, I answer on point no.1 in the affirmative and thus the application deserves to be rejected. Hence, order.

-ORDER-

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

Date :-09/06/2016

Sd/-
(**Smt. D. S. Chothe**)
2nd Jt. Civil Judge,(Jr.Division).,
Paranda.