

ORDER BELOW EXH.13
(Passed on 27/04/2021)

1. This is an application filed by defendant no.to 3, 6&71 under order 7 Rule 11 of the Civil Procedure Code for rejection of plaint.

2. According to defendants, in the plaint, the plaintiff claimed relief no. 'e' for declaration that the sale deed executed by defendant no.1 to 8 in favor of the defendant no. 17 to 20 is not binding on the share of the plaintiff. According to defendant the plaintiff has not paid proper stamp fees on the said relief of declaration. Therefore the plaint is liable to be rejected.

3. The plaintiffs filed their say at Exh.29 and raised objection to the present application. They stated that they valued the relief of declaration for RS.1000/- and paid proper stamp thereon. The defendant no. 1to 8 and their legal representatives executed sale deed in relation with the suit property in favor of defendant no.17 to 20. The plaintiff is neither executant nor given consent to the said sale deed. Therefore the plaintiff is claiming relief of said declaration. The plaintiff has properly valued all reliefs claimed by him and therefore the application is liable to be rejected.

4. In view of the rival contentions of the parties, the following points arise for my consideration, and I, record my finding thereon for reasons thereto are as under.

POINTS FOR DETERMINATION

Sr. No.	Points	Findings
1)	Whether the plaint is liable to reject on the ground mentioned u/O VII, R-11 (b) &(c) of Civil Procedure Code?	No
2)	What order?	As per final order

REASONS

5. perused application and say. Heard ld. Advocates for both parties.

As to point no. 1 :-

6. The Ld. Advocate for the defendant argued that the plaintiff is claiming relief of declaration that sale deed executed by the defendant no. 1 to 8 in favor of the defendant no. 17 to 20 is not binding on the share of the plaintiff. The plaintiff valued said relief for Rs.1000/-. This is not proper valuation and the plaintiff has paid insufficient stamp on the said relief. In support of this argument he relied on the decision of the Hon'ble Suprem Court in the case of **J.Vasanthi &ors. V/s. N. Ramani Kanthammal, 2017 CJ(SC) 769**. The Ld. advocate for the defendant draw the attention towards the paragraph no. 18 and 20 of the cited judgment, wherein it is observed that though the prayer is couched in the form of seeking declaration that the document is not valid and not binding, the relief in substance indirectly amounts to seeking for cancellation of the sale deed.

7. Relying upon this observation, the Ld. Advocate for the defendant argued that though the plaintiff is claiming relief of declaration that the sale deed is not binding on his share, the relief in substance indirectly amounts to cancellation of the sale deed. Here it is worthy to note that the plaintiff is not executant to the disputed sale deed, therefore he cannot be the person who can claim relief of cancellation. The plaintiff merely claiming relief that the sale deed executed by the defendant no. 1 to 8 in favor of the defendant no.17 to 20 is not binding on his share. This relief claimed by the plaintiff is not amounting to cancellation of sale deed. Further the plaintiff is not challenging validity of the sale deed. Therefore it cannot be said that the plaintiff is claiming relief of cancellation of the sale deed.

8. The Ld. Advocate for defendant draw the attention towards paragraph no. 20 of the cited judgment. Wherein the Hon'ble Supreme Court referred the judgment in case of **Suhrid Singh alias Sardool Singh v. Randhir singh & others, (2010) 12 SCC112**, wherein the Hon. Punjab High Court summarized the prayers of cancellation and declaration. The Hon. High Court observed that if non-executant, is in possession and sues for declaration that the deed is null or void and does not bind him or his share, he has to merely pay a fixed court fee of Rs. 19.50 under Article 17 (iii) of the Second Schedule of the Act. But if non-executant, is not in possession and sues for declaration that the deed is invalid with consequential relief of possession, he has to pay an ad

valorem court fee as provided under Section 7(iv) (c) of the Act. Which provides that in suit for a declaratory decree with consequential relief, the court fee shall be computed according to the amount at which the relief sought is valued in the plaint.

9. Considering the observation in cited judgment, it is necessary to note that in the present suit the plaintiffs are not claiming relief of declaration that the sale deed are void and invalid. They are merely claiming declaration that the sale deeds are not binding on their share. Therefore in my humble view the observation on which defendants relied is not applicable to the present matter. Further reliefs claimed in cited judgment and present suit are not same. Therefore, with due respect, it can be said that the decision in cited judgment not applicable to the present suit.

10. On the contrary the Ld. Advocate for the plaintiff argued that the plaintiff is not executant of the sale deed. He neither claiming cancellation of deed nor declaration that it is void deed. Further the suit is for partition and the plaintiff has made the valuation of the suit lands on 200 times of the revenue assessment of the suit land. Therefore he has properly valued the relief of declaration. In support of this contention he relied upon the decision of the Hon'ble Bombay High Court in the case of **Anjanabai Bahirat vs. Bajirao Talekar 2018 CLU 1936**. Wherein the suit is for partition and declaration. The plaintiff made the valuation of the suit lands on 200 times of the revenue assessment of the suit land and relief of declaration in respect of sale deeds being not binding on their share, the suit is valued under section 6(vi) (j) of Maharashtra Court Fees Act. In the cited judgment the Hon'ble High Court held the valuation proper. Here it is worth to mention that the reliefs claimed in cited judgment and the present suit are same. Hence the decision in cited judgment is applicable to the present matter.

11. In present suit the plaintiff is claiming reliefs of partition, declaration and injunction. In paragraph no.12 of the plaint the plaintiff averred that he has made the valuation of the suit lands on 200 times of the revenue assessment of the suit land and relief of declaration valued for Rs. 1000/-. Considering the valuation made by the plaintiff for relief of declaration it reveals

that he has valued the relief of declaration in accordance section 6(vi) (j) of Maharashtra Court Fees Act. Therefore considering the valuation made by the plaintiff in the plaint, in view of decision of Hon'ble Bombay High Court in the case of Anjanabai Bahirat, it can be conclude that the plaintiff has properly valued the reliefs claimed by him. Further the record shows that plaintiff has paid sufficient stamp thereon. Therefore considering above mentioned reason it can be concluded that the plaint is not liable to be rejected on the ground mention under order VII, R-11(b) & (c) of Code of Civil Procedure, 1908. Hence I answer point no. 1 in negative.

As to Point NO.2:

12. Considering the finding given on the point no.1 and reasons mentioned thereon, the present application deserves to be rejected. Accordingly in answer to point no. 2 I pass following order :

ORDER

- 1.The application is rejected.
2. Parties to bear own cost

Place : Bhor
Date 27/04/2022

(H.U.U. Patil)
C.J.J.D,Bhor.

I affirm that the contents of this P.D.F. File Order/Judgment are same, word to word, as per the original Judgment.

Name of the Stenographer : V.G.Fulari

Name of Court : H.U.U. Patil-C.J.J.D., Bhor.

Date of Dictation : 27/04/2022

Judgment signed by the P.O. On : 27/04/2022

Judgment uploaded on : 28/04/2022.