

Order below Exh. 55

1. This application is filed by defendant no. 2 u/r. 7 order 11 of the Code of Civil Procedure (hereinafter be referred as C.P.C.)

2. It is submitted by the defendant no. 2 that, the plaintiff has challenged the legality of sale deed dated 22/12/2014. The said sale deed is a registered one. It has been executed for consideration of Rs. 13,30,000/- but the plaintiff has not correctly valued the suit. The plaintiff should have to pay the court fee on the amount of consideration that is Rs. 13,30,000/- but he doesn't so. As well, the plaintiff has filed the previous suit bearing R.C.S. No. 288/2013. The said suit is withdrawn by plaintiff and thereafter the present suit is filed. The cause of action shown in this suit is different from the cause of action of the suit bearing R.C.S. No. 288/2013. The cause of action enumerated in this suit is ambiguous and incomplete. The plaintiff doesn't have not any cause of action to file this suit. And therefore, the plaint is liable to reject under order rule 7 order 11 of the C.P.C.

3. The plaintiff has filed his written say vide Exh. 57 and thereby challenged this application. It is averred by the plaintiff that, he has correctly valued the suit and paid right amount of court fee. It is further averred that, the plaintiff has cause of action to file this suit. And the said cause of action has been enumerated in the plaint. And therefore, this application deserves to them.

4. I heard arguments of both sides. The ld. Advocate Mr. M. D. Jadhav for the defendant no. 2 argued that, the plaintiff is seeking for

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cancellation of sale deed. And therefore, as per Sec. 6 H A of the court fees act, the plaintiff is liable to pay the court fee on the half of value of the suit property. The value of the suit property is Rs. 13,30,000/-. But the plaintiff hasn't valued the suit by taking into consideration the amount of consideration of the sale deed. It is further argued that, the plaintiff has withdrawn a suit bearing no. R.C.S. No. 288/2013. The cause of action of this suit must be the same as enumerated in the previous suit. But, the plaintiff has filed this suit with a different cause of action. Therefore, the plaintiff hasn't any cause of action to file this suit.

5. The ld. Adv. Shri. S. V. Dixit for the plaintiff argued that, the plaintiff is not seeking for cancellation of sale deed but the plaintiff is seeking for declaration that the said sale deed is not binding upon his share and therefore, he is not obliged to pay the court fee by taking into consideration the amount of consideration of the said sale deed. It is further argued that, the plaintiff has mentioned the cause of action in the plaint at exh.1. The cause of action enumerated therein is real one and hence, the suit cannot be rejected on that ground also.

6. The preliminary issues framed by me with findings thereon are as below:-

Sr. No.	Issues	Findings
1	How much the value of suit is?	Rs.13,30,000/-
2	Whether the suit is liable to reject as per order 7 rule 11 of the C.P.C.?	No
3	What order?	The application is rejected.

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REASONS

AS TO THE ISSUE NO. 1

7. It is averred by the plaintiff that, the defendant no. 1 has executed sale deed dated 22/12/2014 in favour of the defendant no. 2 in respect of the suit property is Gat No. 182, 243, 249 253 and 257. And therefore, first of all we have to fix the value of this suit properties. For this purpose, the defendant no. 2 is relied upon the copy of sale deed filed by the plaintiff. I perused the said copy. I found that, the defendant no. 1 has sold out this suit property in consideration of Rs. 13,30,000/- to the defendant no. 2. There is no any documentary evidence in this suit to show any different amount of value of this suit properties. Under such a situation I found that, value of above mentioned suit properties in aggregate is Rs.13,30,000/- only.

AS TO THE ISSUE NO. 2

8. The defendant no. 1 is seeking for rejection of the suit on following two grounds.

1. The suit is incorrectly valued and the plaintiff has paid insufficient court fees.
2. The suit doesn't disclose cause of action.

I perused the Judgment of Hon'ble Lordship S.V. Shukre delivered in a Rev. Application between common piru Choudhari Vs. Birubai Chendu Redhivale and others. The Hon'ble Lordship has held as under-

"So it is clear that, the plaintiff is seeking for declaration that, the disputed sale deed is not binding upon him. He is not bound to

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pay the court fee as provided by Sec. 6, 4 clause H A of the Bombay Court Fees Act."

9. In the present suit also the plaintiff is not seeking for cancellation of the sale deed dated 22/12/2014. The plaintiff is not party to the said sale deed. He is just seeking for the declaration that, the said sale deed is not binding upon his share in the suit property. He has filed the suit for partition and hence, the plaintiff is just praying for declaration that, the sale deed executed by defendant no. 1 in favour of defendant no. 2 is not binding upon his share . He is averring his right in the suit properties. And therefore, he is contending that the said sale deed is not binding upon his share in the suit properties. And in such a situation the plaintiffs are not bound to pay court fees on the half amount of the valuation of the suit properties. And therefore, though the valuation of the suit property is 13,30,000/-, the plaintiff is not bound to pay the court fees on value of the suit property. The plaintiff has correctly vauced the suit, and the sufficient court fee amount is paid by him. And therefore, the suit can not be rejected on that ground.

10. This is the suit for partition, declaration and perpetual injunction. I perused the pleading in the plaint. The plaintiff has disclosed the clear cause of action. No doubt the plaintiff has withdrawn a suit bearing no. R.C.S. 288/2011. But merely on that ground, the plaintiff cannot be forced to plead the same cause of action which averred by him in that suit.

11. On 22/12/2014 the defendant no. 1 has executed a sale deed in favour of the defendant no. 2. And therefore, the plaintiff has filed this suit for partition and declaration that, the said sale deed is not

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binding upon his share. The averments averred in this plaint clearly disclose the cause of action. And hence, the suit cannot be rejected on that ground also.

12. And hence, considering all these aspect, pleading and law of presidents pronounced by the Hon'ble Lordship, I found that, the suit is not liable to reject as per order 7 rule 11 of the C.P.C. And therefore, I decide the issue no. 2 in negative.

AS TO THE ISSUE NO. 3

13. The suit is correctly valued. The plaintiffs have paid a right amount of court fees. The plaint also discloses cause of action. And hence, this application deserves to reject. And therefore, in answer to issue no. 3 I pass the following order.

ORDER

- 1.** The application is rejected.
- 2.** No order as to the costs.

Saswad
Date: 05/04/2018

(A. R. Dinde)
Civil Judge Junior Division
Saswad

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CERTIFICATE

I affirm that the contents of this P.D.F. file Judgment are same word for word as per original Judgment.

Name of Steno : M. D. Shirode, Stenographer (L.G.)

Court Name : Shri. Amit R. Dinde
Civil Judge Jr. Division, Saswad.

Date of Judgment : 05/04/2018

Judgment signed by presiding officer on : 05/04/2018

Judgment uploaded on : 04/08/2018