



ORDER BELOW EXH.44

1. The defendant no.1 to 3 have filed this application under Order 7 Rule 11 (b)(c) of the Civil Procedure Code for rejection of plaint on account of insufficient payment of court fees. In short, defendants allege in this application that, the suit is for cancellation of partition deed, partition and injunction. It is further alleged that, suit is under valued and court fees on cancellation of partition deed is required to be paid by the plaintiffs and hence the plaintiffs may be directed to pay requisite court fees stamps.

2. The plaintiffs have filed say below Exh.46 in response to present application. It is submitted by plaintiffs in their say that, just to prolong the matter present application is filed. The suit properties are ancestral properties. The partition deed has been got executed behind back of plaintiffs. The suit properties are agricultural fields and accordingly requisite court fees stamps has been paid on the share of plaintiffs etc.

3. I have heard both the sides. I have perused all the pleadings, documents and citations filed on record.



4. The plaint discloses that the suit is filed for partition, cancellation of partition deed no.6202/2020 dated 25/12/2020 and for perpetual injunction. The plaint further discloses that suit properties at Serial no.1A to 1G are landed properties, whereas suit property at Serial no.1H is the house property bearing house no.184 situated at village Devali, Tal. Purandar.

5. If the valuation clause in paragraph no.12 of the plaint is perused, it is seen that plaintiffs have valued the suit for partition at Rs.2000/-, for injunction at Rs.1000/- and for cancellation of partition deed at Rs.1000/- and in all paid Rs.800/- as court fees. The said valuation clause further discloses that the valuation is made on the land assessment of the suit properties.

6. Learned counsel for defendants argued that, there is no valuation made by plaintiffs with respect to house property at Serial no.1H of the plaint. I find substance in this submission. Because, the plaintiffs have not valued the suit for the purpose of house property. As per Rule 2 (a) of the Maharashtra Suits Valuation (determination of value of land for jurisdictional purposes) Rules, 1983 where the subject matter is a house, the value of the property shall be determined according to the market value of the house. This is not done by plaintiffs.



7. The Learned counsel for defendants argued that, the partition deed is having valuation of crores of rupees. Therefore, he further submitted that, since cancellation of partition deed is claimed, therefore, plaintiffs are required to pay court fees as per Section 6 (iv) (ha) of the Maharashtra Court Fees Act. The counsel for plaintiffs objected this contention by arguing that plaintiffs are women and hence they need not to pay any court fees.

8. The counsel for defendants lost sight of the fact that as per Rule 2 (b) of the Maharashtra Suits Valuation (determination of value of land for jurisdictional purposes) Rules, 1983 where the subject matter is land, a sum equal to two hundred times of the assessment payable in respect of the land is to be paid as court fees. The main agitation made by defendants in their application is regarding valuation of partition deed. During arguments it was pointed out by counsel for defendants that the suit is not valued for the purpose of house property. If the partition deed is perused, it prima facie appears that, it has been got executed between defendant no.1 to 3 and plaintiffs are not signatory to the said registered partition deed. In the plaint, the plaintiffs are seeking relief of cancellation of such partition deed and 1/7th share each in the suit properties with perpetual injunction. Therefore, I am of



the considered view that plaintiffs are required to pay court fees on the partition deed as per Section 6(iv)(j) of the Maharashtra Court Fees Act, which is already valued and paid by plaintiffs. So far as the house property is concerned, plaintiffs are required to pay court fees as per the market value of the house property as discussed above.

9. The counsel for plaintiffs relied upon two citations i.e. **(1) Manjula M. Thakkar Vs. Shivshakti Enterprises, reported in 1998 (5) Bom. C.R. 265, and (2) Mrs. Jyoti Doshi Vs. M/s. Hindustan Mills, reported in AIR 2000 Bom.474.** I have perused the citations. In the case of Manjula Thakkar, amending notification dated 23/03/2000 is not discussed since the citation is of the year 1998. In the case of Jyoti Doshi, in paragraph no.19 clause (vii) it is held that, “Needless to state that the matters filed on and after 23 March, 2000 will be governed under the notification of that date.” In this citation, the notification dated 23/03/2000 provides explanation as “The expression 'property disputes' shall mean property disputes arising out of and concerning matrimonial matters.” If the plaint is perused it appears that the suit properties are ancestral properties of plaintiffs and defendants. As such, present dispute does not come under matrimonial matters. Hence, with respect, I say that both



these citations are not applicable to the present case.

10. Counsel for defendants also relied upon three citations i.e. (1) **Sanjay Shendkar Vs. Narayan Zendge**, (2) **Abdul Sattar Vs. Shri Vaibhav**, and (3) **Prism Reality Vs. Govind Khalade**. I have perused all these citations. In these citations, sale-deeds are challenged and in the present suit partition deed is challenged. In the case of Sanjay Shendkar, para 2 shows that suit was filed for declaration and perpetual injunction. In the case of Abdul Sattar, the suit was appearing to be filed for declaration for sale-deed got executed by playing fraud. In the case of Prism, the suit was for declaration in respect of development agreement and sale-deed. However, present suit is for partition, perpetual injunction and cancellation of partition deed which is for agricultural lands. With respect, I say that all these citations are not applicable to the present suit in view of nature of relief claimed in the present suit.

11. Hence, I am of the considered view that following order would meet the ends of justice.

ORDER

1. Application Exh. 44 is hereby partly allowed.



2. The plaintiffs are directed to pay requisite court fees stamps on the market value of the house property bearing house no.184 situated at village Devali, Tal. Purandar described in paragraph no.1H of the plaint, to the extent of their shares, within a period of fifteen days from today.
3. If the compliance is not made within fifteen days, necessary order would be passed.
4. No order as to costs.

Date:-23/09/2022

(Md. Taher Bilal)
Civil Judge J.D., Saswad.



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 : S. S. Gupte, Stenographer, (Grade III)

Court Name : Shri. Md. Taher Bilal
Civil Judge Jr. Division, Saswad.

Date of Order : 23/09/2022

Judgment signed by presiding officer on : 23/09/2022

Judgment uploaded on : 26/09/2022