

ORDER BELOW EXH. 41 IN RCS NO. 88 of 2017.

(Amol Boradi Vs. Ramdas Boradi)

1] Defendant nos. 4, 6, & 7 moved this application under Order-VII, Rule-11 (d) of the Code of Civil Procedure, 1908.

2] According to defendants, the suit is not properly valued as per the relevant provisions of law. Plaintiffs have not paid adequate and proper court fee stamp. Plaintiffs are seeking relief of possession. Defendants lastly prayed that the suit be dismissed for want of proper court fee stamp.

3] Plaintiffs opposed the application by filing say vide Exh. 46. According to them, the application is not tenable. They have properly valued the suit as per Section- 6 (V) and 6 (VII) of the Maharashtra court Fees Act. Plaintiffs have paid court fee of Rs. 1,550/-. They lastly prayed to reject the application.

4] Heard both the sides at length. Perused record. Following points arise for my consideration and I have given my findings with reasons as follows -

Sr. no.	Points	Findings
1.	Whether the suit is properly valued ?	...No.
2.	What order ?	...Application is allowed.

REASONS

As to point no.1 :-

5] The suit for partition, separate possession and declaration in respect of four block numbers situated at village Bhivadi, Tal. Purandar Dist. Pune, more particularly described in plaint para no. 1, is pending.

Plaintiffs are claiming through propositus Mahadeo Maruti Borade, who expired on 26/05/1992. Plaintiffs are seeking declaration that, the power of attorney deed and the sale deeds dt. 23/10/2009 and 07/03/2014 executed by defendant no. 4 as power of attorney of defendant no. 1 in favour of defendant no. 3, 6 & 7 is not binding on their share.

6] It is well settled law that, defences raised by defendant is irrelevant while considering application under Order-VII, Rule-11 of the CPC. It is only plaint and averments made in the plaint needs to be taken into consideration. Plaintiffs are seeking relief of partition and separate possession of her 1/5 th share in the suit properties. Plaintiffs valued the suit for partition and separate possession 200 times of land revenue which comes to Rs. 2,748/-. They did not value the suit on relief of declaration. Plaintiffs have paid court fee stamp of Rs. 400/- in total.

7] Plaintiffs are seeking relief of declaration in respect of two sale deeds and one power of attorney deed. They are seeking declaration that, said power of attorney deed and two sale deeds are not binding on them. Admittedly, plaintiffs are not parties to said sale deeds.

8] On perusal of certified copy of sale deed bearing no. 3768/2009 dt. 21/10/2009, it appears that, defendant no. 5 being power of attorney of defendant no. 1 with consent of defendant no. 2 and 3, executed said sale deed in respect of land Gat no. 668 for consideration of Rs. 1,50,000/- in favour of defendant no. 4. On perusal of sale deed bearing no. 1544/2014 dt. 07/03/2014, it appears that, defendant no. 1 executed said sale deed of land Gat no. 687 in favour of defendant no. 6 & 7 for consideration of Rs. 1,80,000/-.

9] The suit for partition and separate possession of a share of

joint family property is to be valued as per section-6 (VII) of the Maharashtra Court Fees Act. Explanation appended to said provision provides that, if the property in which a share is claimed includes land assessed to land revenue for the purposes of agriculture, the value of such land shall be deemed to be value as determined under paragraph (v) of the said section.

10] Paragraph (v) of section-6 provides that, the suit is to be valued where the land is held on settlement for a period not exceeding 30 years and pays to full assessment to Government a sum equal to 40 times to the survey assessment.

11] Plaintiffs and defendant no. 1 to 3 appears to be members of Hindu joint family. Plaintiffs are claiming partition and separate possession of the suit properties being co-sharers. Therefore, the suit for partition and separate possession has to be valued on 40 times of survey assessment. Plaintiffs have made valuation of the suit for partition and separate possession on 200 times of land assessment. They valued the suit on their share on Rs. 1,550/-. They are claiming 1/5th share in the suit properties, therefore, the valuation and the court fees on relief of partition and separate possession is correct.

12] As per Section-6 of the Maharashtra Court Fees Act, in all suits under clauses- (a) to (i), the plaintiffs shall state the amount at which they value the relief sought with the reasons for the valuation. On perusal of plaint, it appears that, plaintiffs did not value the suit on the relief of declaration. They did not assign any reason for non-valuation and non-payment of court fees on the relief of declaration.

13] Plaintiffs are claiming that, the power of attorney deed and

two sale deeds are not binding on their shares. The power of attorney deed attached to sale deed dt. 21/10/2009 shows that, it was given without consideration. The suit for declaration in respect of the power of attorney deed is not susceptible to monetary evaluation. Therefore, said relief would be governed by Section-6 (iv) (j) of the Maharashtra Court Fees Act. Plaintiffs have to value and pay court fee stamp on the relief of declaration in respect of power of attorney deed as per said provision.

14] Plaintiffs also sought relief of declaration that, the sale deeds dt. 21/10/2009 and 07/03/2014 are not binding on their shares. They are seeking avoidance of sale deeds. Therefore, the suit for declaration of two sale deeds as not binding on the plaintiffs' share ought to have been valued as per Section- 6(iv) (ha) of the Maharashtra Court Fees Act. Plaintiffs have to pay stamp duty for the relief of declaration of said sale deeds separately. The suit is not properly valued, therefore, I answered point no. 1 in the negative and in answer to point no. 2, I pass the following order...

ORDER

- 1- Application Exh. 41 is allowed as under.
- 2- Plaintiffs are hereby directed to value the suit for declaration of above mentioned sale deeds as per section-6(iv) (ha) of the Maharashtra Court Fees Act and to pay deficit court fees on or before next date.
- 3- Plaintiffs are hereby directed to value the suit for declaration of power of attorney deed as per section-6(iv)(j) of the Maharashtra Court Fees Act and to pay deficit court fees on or before next date.

Place: Saswad
Date: 04/04/2018

(V. K. Jadhav)
Civil Judge Junior Division, Saswad

CERTIFICATE

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

Name of clerk - G. S. Chougule
Court Name - V.K. Jadhav, CJJD, Saswad.
Date - 04/04/2018
Order signed by
P.O. on - 04/04/2018
Order uploaded on - 16/04/2018