

**R.C.S.No. 59/2020**

**ORDER PASSED BELOW EXH.13**

This application is filed by defendants under Order 7 Rule 11(b) and (c) of the Code of Civil Procedure, 1908, Section 8 and 9 of Suits Valuation Act and Maharashtra Court Fees Act, 1959 for rejection of plaint. Plaintiff has filed her say and strongly opposed the application.

2. It is contended by the defendants that, plaintiff has filed this suit for partition, separate possession and declaration along with perpetual injunction. It is further contended that, plaintiff has not properly valued the suit property. Plaintiff has failed to deposit sufficient stamp duty for the reliefs she claimed. The plaintiff is challenging sale deed dated 24.07.2017 which was executed for amount of Rs.46,25,000/-. Plaintiff is further challenging the release deed dated 21.06.2016 executed by defendant nos. 4 to 7 in favour of defendant no.2 and 3. The plaintiff is further claiming her share in the suit property along with its possession. But the suit is not properly valued and insufficient stamp duty has been paid by the plaintiff. Therefore, the valuation of suit property needs to be carried out by the concerns and thereby plaintiff needs to be directed to deposit sufficient stamp duty according to the proper valuation of the suit property. Hence, defendant prayed for rejection of the plaint.

3. Plaintiff has filed her say at **Exh.13**. According to her she has properly valued the suit property and have deposited proper stamp duty. Therefore, she prayed that defendants application be rejected along with cost.

4. The following points arise for my determination and their findings therewith:-

<b>SR. NO.</b>	<b>POINTS</b>	<b>FINDINGS</b>
1	Whether defendants proves that, the suit not properly valued ?	In Negative..
2	Whether defendants proves that, the plaintiff has paid insufficient stamp duty ?	In Negative..
3	What order?	As per final order.

### **REASONS**

#### **AS TO POINT NO.1:-**

5. Heard Ld. Advocates for both the sides. Perused the plaint.

6. Perused the application and say. Perused the prayer clause i.e. para 8 of the suit property. Admittedly the suit has been filed for declaration, partition, separate possession and temporary injunction. The documents filed on record by both the parties shows that, all the suit properties are agricultural properties. According to the nature of the properties, for the prayer of partition and separate possession plaintiff has rightly valued the Court fees vide Section 6 (vii) of Maharashtra Court Fees Act, 1959. For the relief of declaration and injunction plaintiff has properly paid amount of Rs.200/- each for both reliefs. So far as the computation of Court fees regarding the prayer of declaration in relation with release deed dated 21.01.2016 is concern, plaintiff has rightly valued the Court fees vide Section 6 (iv)(j) of Maharashtra Court Fees Act, 1959.

7. Ld. Advocate for defendant submitted that, while

challenging the sale deed dated 21.01.2016 which was executed for the amount of Rs.46,25,000/- the plaintiff was expected to value the suit according to the Section 6 (vi)(ha) of Maharashtra Court Fees Act instead of Section 6(iv)(j) of Act. For that purpose he has relied upon **M/s Prism Reality Vs. Mr. Govind Yashwant Khalade and Ors., writ petition (stamp) no.24111/2014**, wherein Hon'ble Bombay High Court has held that, merely because the plaintiff questioned the sale deed as being sham and bogus, the plaintiffs cannot be exempted from rigours of Section 6(iv)(ha) of the Court Fees Act, in the matter of valuation of the suit and payment of the Court Fees and the plaintiff would have to valued the suit and pay court fees in terms of Section 6(iv)(ha) of Maharashtra Court Fees Act, 1959. After gone through the above citation it is seems that, when any party is seeking declaration regarding a contract or agreement then that avoidance of contract or sale needs to be valued as per Section 6(iv)(ha) of Maharashtra Court Fees Act.

8. In this regard I have relied upon **Dilip Kushalchand (Srisrimal ) Jain etc. 8 Vs. Hardik Deepakbhai Ramani etc. 7, writ petition no.8968/2018 dated 05 May 2022**, wherein Hon'ble Bombay High Court in para 26 held that,

“ 26. In view of above, answer to the reference is that the Court fee payable in regard to a suit for declaration of the sale deed to which the plaintiff is not party to the sale deed binding on him and for consequential injunction would be governed by Section 6(iv)(j) of Maharashtra Court Fees Act.”

9. The citation of **Dilip Jain (Supra)** is the latest citation than the citation of **Prism Reality (Supra)**. According to the law of

precedent, a later decision of the Co-ordinate bench normally binding upon the sub-ordinate Courts and has to be followed. Hence, the citation relied upon by the Court Suo-moto i.e. **Dilip Jain (Supra)** will be applicable to the present case and therefore plaintiff is expected to compute the court fees vide Section 6(iv)(j). In the present suit the plaintiff has computed the Court fees vide Section 6 (iv)(j) only. That means plaintiff has rightly computed the Court fees. Therefore I do not found any substance in the application. Hence, I answered point no.1 and 2 in negative. Consequently, application deserves to be rejected. Hence, the order.

**ORDER**

1. Application **Exh.13** is hereby rejected.
2. Cost in main cause.

Pen.  
Date: 21/12/2022

(Smt. R. N. Mujawar)  
CJJ and JMFC, Pen.

**CERTIFICATE**

“I affirm that the contents of this PDF file order are same word for word as per original order”.

Name of the stenographer	: Shri. A. A. Nakhawa
Name of the Court	: Smt. R. N. Mujawar Civil Judge, J.D.and J.M.F.C. Pen
Date of Decision	: 21-12-2022
Order signed by presiding officer	: 21-12-2022
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