

:: ORDER BELOW EXHIBIT-32 IN R.C.S.NO.49/2022 ::
CNRMHRG07-000502-2022

Ayesha Bibi Hajimiya Rias & Ors.
Vs.
Bashir Bala Miya Pounjekar & Ors.

1. The defendant No.3 has filed this application under Order VII Rule 11 of Civil Procedure Code. It is contended that, plaintiffs have challenged cancellation of registered agreement having No.6599/2007.

2. It is contention of the defendant No. 3 that, plaintiffs have not added necessary party in the suit, therefore, there is bar of non joinder of necessary party. Moreover, plaintiffs failed to make averments in plaint regarding when and where cause of action taken place, therefore, suit filed by plaintiffs is without cause of action liable to dismiss. Plaintiffs have challenged cancellation of registered agreement having No.6599/2007. Plaintiffs ought to pay court fee stamp as per 6 (iv) (j) (ja)(vii)(v)(b) of the Bombay Court Fee Act. But they have affixed only stamp of Rs.6,200/-, which is totally insufficient. Therefore, prayed for rejection of the suit as per Order 7 Rule 11 (a) & (c) of Code of Civil Procedure.

3. It is also contention of defendant No. 3 that genealogy mentioned by plaintiffs in the plaint is totally wrong. They have not added Gulam Gaus Pounjekar and Gulam Mohmmad Pounjekar. Plaintiffs also failed to add all suit properties in common hotchpot.

4. It is also contention of the defendant No. 3 that some portion of suit property have been already sold to Mohmmad Yasin Choudhary, Nasir Ahmad Majid Naje and Zamir Dastagir Naje but plaintiffs failed to make them party in the suit.

5. It is also contention of defendants that plaintiff's plaint in all reliefs i.e. one for declaration for cancellation of registered agreement, one for partition & one for permanent injunction. All claims are different therefore, plaintiffs ought to have pay court fees as per rules, therefore, suit is liable to dismiss as per Order VII Rule 11(d) of Code of civil Procedure. Therefore, prayed to reject the plaint.

6. On the contrary, plaintiffs have filed their say on Exh.38 and denied contentions raised by defendant No. 3 in toto. It is also contention of plaintiffs that cause of action arose in year 2021. Plaintiffs have paid valuation of court fee Rs. 9,030/-. Therefore, application filed by defendant No. 3 is baseless and only to delay the proceeding of the court. Plaintiffs have made correct valuation of the suit. All other contentions of application are baseless. Hence, they lastly prayed to dismiss the application of defendant No. 3 .

7. Heard Ld. Adv. Shri. Navin Badale for Defendant No. 3, Ld. Adv. Smt. Vidhyawati Gaikwad for the plaintiffs. I have perused the application, say, pleading of the plaint, documents on record and the authorities submitted by both the parties.

8. The Civil Procedure Code, 1908 (C. P. C. from herein now) is that essential procedural law which provides for the procedure for the enforcement of civil rights and liabilities specified under various substantive laws. An integral part to such procedural formalities is the institution of suit against the defendant in the court of law. A suit has to be instituted by presenting of the plaint. Presentation of plaint is subject to Order VI and Order VII under the C. P. C. wherein Order VII specifically dealt with plaint and its

formalities such as the particulars to be contained within. Among other rules under Order VII, Rule 11 states the various grounds upon which the court can reject a plaint. Whenever an application is filed under Order VII, Rule 11, the court before moving forward, needs to evaluate the said application and determine whether the plaint is admissible to be instituted or not. In the famous case of Saleem Bhai vs. State of Maharashtra held that, for the purpose of deciding an application under Order VII, Rule 11, only the averments in the plaint are germane. The object of the said provision is to keep out of courts irresponsible law suits. If the court is prima facie of the view that suit is an abuse of process of the court in the sense that it is a bogus irresponsible litigation, the jurisdiction under order VII Rule 11 of the code can be exercised. The Order VII rule 11 of C.P.C. read as under-

O.VII R.11- Rejection of plaint— The plaint shall be rejected in the following cases:— (a) where it does not disclose a cause of action; (b) where the relief claimed is undervalued, and the plaintiff, on being required by the Court to correct the valuation within a time to be fixed by the Court, fails to do so; (c) where the relief claimed is properly valued, but the plaint is returned upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp-paper within a time to be fixed by the Court, fails to do so; (d) where the suit appears from the statement in the plaint to be barred by any law :

[Provided that the time fixed by the Court for the correction of the valuation or supplying of the requisite stamp-paper shall not be extended unless the Court, for reasons to be recorded, is satisfied

that the plaintiff was prevented by any cause of an exceptional nature from correcting the valuation or supplying the requisite stamp-paper, as the case may be, within the time fixed by the Court and that refusal to extend such time would cause grave injustice to the plaintiff.

9. In order to deal with such a menace, the C.P.C. under Order VII Rule 11 provides litigants the option to pursue an independent and special remedy, empowering courts to summarily dismiss a suit at the threshold, without proceeding to record evidence, and conducting trial, on the basis of the evidence adduced, if it is satisfied that the action should be terminated on any grounds contained in this provision. Recently, the Hon'ble Supreme Court of India in the case of *Dahiben v. Arvindbhai Kalyanji Bhanusali reported in 2020 SCC online SC 562*, while dealing with an appeal against an order allowing rejection of a suit at the threshold, had occasion to consider various precedents, discussing the intent and purpose of O.VII R.11, while setting out the principles in relation to the same.

10. It is contention of the defendants that plaintiffs have not paid proper court fees on the instrument in which declaration is sought by them. Section 149 provides that, "where the whole or any part of court fee prescribed for any document has not been paid, the court may, in its discretion, at any stage, allow the person by whom such fee is payable, to pay the whole or part as the case may be, of such court fee, and upon such payment, the document in respect of which such fee is payable, shall have the same force and effect as such fee had been paid in the first instances". The court is having

discretion to direct the parties to pay deficit court fees. Therefore the opportunity to the parties will be given, if it is found that there deficit court fees. Therefore the grounds raised by both the parties in their application about deficit court fees are not sufficient to invoke power under O.VII R.11 of CPC. The payment of court fee furthermore is the matter between the state and suitor. If the objection is raised then it will be decided as per Sec.149 of CPC separately. " *Where the whole or any part of any fee prescribed for any document by the law for the time being in force relating to court-fees has not been paid, the Court may, in its discretion, at any stage, allow the person, by whom such fee is payable, to pay the whole or part, as the case may be, of such court-fees, and upon such payment the document, in respect of which such fee is payable, shall have the same force and effect as if such fee had been paid in the first instance.*"

11. In the present case relief of declaration that cancellation of registered agreement document No.6599/2005 has been claimed, as per Section 6(iv)(ha) of Bombay Court Fees Act plaintiffs have paid stamp of Rs.4,615/-, the court fees was payable. Accordingly, the plaintiffs have correctly valued the suit and correctly paid court fees.

12. In the present case relief of partition has been claimed, for that purpose also plaintiffs have paid court fee stamp as per Section 6(v) of Bombay Court Fees Act. Accordingly, the plaintiffs have correctly valued the suit and correctly paid court fees as per reliefs. In totality plaintiffs have paid stamp of Rs.9,080/- which is more than sufficient.

13. The other grounds raised by both the parties are necessary to be proved by leading cogent evidence on record. The suit for vindication of rights is instituted, it has to be ascertained if the right accrues under Act and the act itself provide complete machinery for determination of said right. If so then right can not be considered as civil or personal right outside the purview of the Act. The certain rights have been claimed by both the parties, therefore the said rights or claims will be decided after adjudication of trial. Considering the aforesaid facts and circumstances of the case and the ratio laid down by Hon'ble Courts, I came to the conclusion that the application filed by defendants under O.VII R.11 of C.P.C. are devoid of merit. Hence, I pass the following order.

:: ORDER ::

1. The application filed by defendants below Exh. 33 under O.VII R. XI is hereby rejected.
2. The cost will be in main cause.

[Smt. S. R. Shinde]

Date: 09-08-2023

Civil Judge Jr. Div. Karjat,
Dist. Raigad