

ORDER BELOW EXH.64

The defendant no.1 has filed present application for rejection of suit on the ground of its undervaluation in view of Order 7 Rule 11(b) of the Code of Civil Procedure 1908 (for short the Code). The defendant no.1 submitted that the plaintiff filed present suit for declaration of his ownership over the entire suit property which consists of duplex bungalow situated therein along with open land so that he had to pay court fee as per consideration amount of sale deed whereby he purchased the suit property. Similarly, the plaintiff has sought possession of encroached portion admeasuring 0-01-10 HR which is neat about half share out of entire area admeasuring 0-02-44 HR of the suit property so that the plaintiff is liable to value the suit as per market value of that encroached portion. Consideration amount of the sale deed through which the plaintiff has purchased the suit property is to the tune of Rs.30,00,000/- and as per section 6(v) of the Maharashtra Court Fees Act (for short 'Court Fee Act') by properly making valuation of the suit, court fee has to be paid. The plaintiff must pay court fee by calculating valuation of entire plot of the suit property, duplex bungalow situated therein as per its market value in view of section 6(iv) (d) of the Court Fee Act. For want of proper valuation and court fee, present suit is not deserved to be tried & disposed and therefore it should be rejected.

2. The plaintiff opposed to present application by filing his say at Exh.00 whereby he contended that for getting removed encroachment made by the defendant no.1 in the suit property he filed the suit. He also sought declaration of his ownership over the

suit property. At his instance the suit property has been measured by court commissioner and survey report is also filed on record whereby it clears that the defendant no.1 made encroachment to the extent of 0.01.10 HR in the suit property. He further submitted that he is ready to pay required court fee accordingly. He also submitted that his main relief is about removal of encroachment, however for proving the encroachment, he sought declaration of his title too. He also submitted that the defendant no.1 merely in order to protract the trial filed present application. Hence the plaintiff prayed to reject the application.

3. Heard learned Advocate Shri. M. D. Patil for the defendant no.1, he argued that present suit needs to be rejected on ground of insufficient court fee. He also argued the defendant no.1 has raised objection about pecuniary jurisdiction to entertain the suit before this court, issue of non-joinder of necessary parties, the plaintiff being NRI has no locus standi to file the suit and deficient court fee. The plaintiff wrongly valued to suit as per section 6(iv) (j) instead of 6(iv) (d) of Court Fee Act. Suit ought to have been valued on its consideration amount of the suit property mentioned in sale deed, the plaintiff should have valued the area of encroachment which is to the extent of 0-1-10 HR, however he failed to do so. Hence Shri. Patil Prayed to reject the suit.

4. Per contra, Learned Advocate Smt M. N. Manohar for the plaintiff argued that whatever court fee is required to be paid, the plaintiff is ready to pay it. The present application is filed only to prolong the case. The plaintiff has rightly valued the suit and though

it is accepted that there is no proper valuation, on basis of deficient court fee suit cannot be rejected unless proper opportunity of correcting the court fee is given to the plaintiff. Hence Smt. Manohar prayed to reject the application.

5. Considering rival contentions of both parties and documents produced by them on records following points arise for my determination, to which I have recorded my findings for the reasons stated below: -

<u>Sr.No</u>	<u>Points for determination</u>	<u>findings</u>
1.	Whether the plaint of plaintiffs needs to be rejected for deficient court fee and other grounds raised by the defendant no.1?	No.
2.	What order?	Application is rejected

REASONS

AS TO POINT NO.1: -

6. While considering an application under Order 7 Rule 11 of the Code, the court can only look at the averments in the plaint presuming them to be correct and the accompanying documents. Further, it is also well settled that the court fee has to be paid on the plaint as framed and not on the plaint as it ought to have been framed unless by astuteness employed in drafting the plaint for evading court fees or conferring jurisdiction on the court which doesn't have. In view of this legal proposition, this court is supposed to peruse only pleading of the the plaint. The plaintiff come up with the case of encroachment made by the defendant no.1 on the

southern side of the suit property to the extent of 0-01-10 HR, accordingly he sought possession of that encroached portion too. Relief of possession is regulated by section 6(v) of the Court Fee Act which states that if the land is not assessed to government revenue or has house/gardens, it must be valued as per its market value. Admittedly the suit property is non-agricultural property, even whatever portion is stated to be encroached by the defendant no.1 appears to be used for residential purpose, the defendant no.1 constructed thereon building with name of 'Omkar Residency' illegally so that this land can be categorized as house property. As the suit for possession of the plaintiff relates to the house property, the plaintiff has to value the court fee for relief of possession of that encroached portion as per its market value contemplated under section 6(v) and not as per sub-clause (a), (b), (c) of section 6 (v) of the Court Fee Act.

7. Further so far as relief of declaration of ownership is concerned, the plaintiff wants to get declared his ownership over the entire suit property which is consisting of one duplex bungalow and open space, for prupose of valuing the court fee that bungalow and open land should be treated as house & garden, not the land assessable to the land revue only. Therefore, as per section 6(iv) (d) of the Court Fee Act, the court fee should be one fourth of the ad valorem fee that would be leviabale for a relief of possession of suit property based on title. The plaintiff for relief of possession & declaration of ownership has not rightly valued the suit as per 6 (v) & 6 (vi) (d) of the Court fee Act. However, still I am of view the suit should not be rejected on that ground. The suit cannot be rejected

merely on the ground of deficient court fees; the court is mandatorily required to give the plaintiff sufficient time to rectify the deficiency before ordering rejection under O 7 R11 of the Code. And it cannot be overlooked that learned Advocate Smt. Manohar for the plaintiff fairly conceded that the plaintiff is ready to pay required court fee so that the plaintiff is entitled to get sufficient opportunity to correct valuation of the suit.

8. Learned Advocate Shri. M. D. Patil for the defendant no.1 also argued that the defendant no.1 has raised other various issues on basis of which suit must be rejected, however whatever issues are raised by the defendant no.1 appears to be triable issues, and at this stage it cannot be considered as grounds for rejection of the suit. Shri. Patil also argued that the suit valuation goes beyond pecuniary jurisdiction of this court, however this fact can also be seen after correcting valuation of the suit, after correction, if the suit goes beyond the pecuniary jurisdiction of this court, it can be returned to the plaintiff for presenting to the proper court which have jurisdiction, but on that basis also the suit cannot be rejected. Hence I don't find that at this stage, on basis of objections raised by the defendant no.1, suit should be rejected. Hence I answered the point no.1 in negative.

AS TO POINT NO.2: -

9. In view of negative finding of the point no.1, I am not inclined to allow the present application, however, in view of finding about deficient court fee, the plaintiff should be directed to correct

the valuation of the suit. Hence, in answer to point no.2, I am passing following order.

ORDER

1. Application stands rejected.
2. The plaintiff shall correct valuation of the suit as to his relief of possession of encroached portion & declaration of his ownership over the suit property.
3. After correcting valuation of the suit, the plaintiff to pay proper court fees, failing which suit will be dismissed.
4. Both parties to note of this order.

Date :- 09.01.2026.
Place :- Roha.

(S.V.Khaire)
Civil Judge, Junior Division
Roha