

ORDER BELOW EXHIBIT 33 IN REGULAR CIVIL SUIT NO.16/2016
(CNR No.MHRG14-000248-2016)

Janabai Chawaji Mhatre V/s. M/s.C.N.L.Builders through Chandar Lakhani & Ors.

1. This application is filed by defendant Nos.6/1 to 6/4 for return of the plaint on the ground that valuation of the suit is more than rupees five lakhs.
2. It is contended by defendant Nos. 6/1 to 6/4 that, plaintiff has filed this suit against defendants for declaration, cancellation of released deed dated 16.06.2008 and injunction. They further contended that in the plaint, plaintiff has sought cancellation of release deed dated 17.11.2009 executed between defendant Nos. 3 & 4 and defendant Nos. 1 & 2 is of value of Rs.1,40,40,000/-. In this suit plaintiff has also sought declaration of ownership. Therefore, this court has no pecuniary jurisdiction to try and entertain the suit. But as per valuation of the suit property, this suit is not maintainable before this court. Hence, these defendants prayed to return the plaint to plaintiff to file it before proper court under Order 7 Rule 10 of Code of Civil Procedure.
3. Plaintiff has objected the application by filing her say at Exh.39. She contended that said application is illegal and not maintainable. These defendants have agreed the transaction executed between defendant Nos. 1 & 2 and defendant Nos. 3 & 4, but she is not a party to that transaction. Hence, she prayed for return of the application.

4. Perused application, say and record of the suit. Heard both sides.

5. From the rival pleadings of the parties, following points are raised for my consideration. I have mentioned the same along with findings and reasons thereof as under :

Sr.No.	Points	Findings
1.	Whether defendant Nos. 6/1 to 6/4 proves that this suit is not maintainable before this Court and plaint has to be returned ?	In the negative
2.	What order ?	Application is rejected.

REASONS

6. Plaintiff has filed certified copies of 7/12 extracts of suit properties situated at Bhendkhal at Exh.4/1, certified copy of mutation entry No.2533 in respect of suit properties at Exh.4/2, certified copy of Award in respect of suit properties at Exh.4/3, certified copy of lease deed at Exh.4/4, certified copy of release deed at Exh.4/5, certified copy of triparty agreement at Exh.4/6, office copy of notice dated 12.06.2015 sent to defendants by plaintiff at Exh.4/7 & acknowledgement receipts & original copy of reply sent by advocate for defendants at Exh.4/8.

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

This application is filed by defendant Nos. 6/1 to 6/4 under Order 7 Rule 10 of Code of Civil Procedure. It is contention of these defendants that as per deed No.1191/2009 dated 17.11.2009, the valuation of suit properties is Rs.1,40,40,000/-. But, plaintiff has valued the suit for Rs.4000/- in place of Rs.1,40,40,000/-. Thus, the plaint is liable to be returned under Order 7 Rule 10 of Code of Civil Procedure.

8. From perusal of the record it reflects that it is pleading of the plaintiff that suit property is joint family property and not yet partitioned. It is argued by the advocate for defendant Nos. 6/1 to 6/4 that plaintiff has not valued the suit properly. This fact is denied by the plaintiff. It is assertion of the plaintiff that she has valued the suit properly. To return any plaint, it is necessary that plaintiff has applied for return of plaint for presenting it to the court in which the suit should have been instituted. There should be reasons for returning of plaint.

9. From perusal the plaint it reflects that plaintiff has sought only declaration that suit property was joint family property, declaration that suit property is joint family property, declaration that release deed dated 16.06.2008 being false and bogus declared to be as cancelled, declaration that tripartite agreement No.1191/2009 dated 17.11.2009 is not binding on plaintiff and for perpetual injunction against defendant No. 1 not to create third party interest.

As per plaint, plaintiff has sought four declarations and perpetual injunction. It is contention of these defendants that suit has to be valued under section 6(vii) of Maharashtra Court Fees Act (henceforth it is called as M.C.F. Act) i.e suit for share in joint property. On perusal of section 6(vii) of M.C.F. Act, suit has to be for partition and separate possession. But in this suit plaintiff has not claimed partition or separate possession.

10. It is further contention of these defendants that suit has to be valued under section 6(iv)(d) of M.C.F. Act i.e suit for ownership, etc. of immovable property, etc. On perusal of section 6(iv)(d) of M.C.F. Act, suit has to be for declaration of ownership. But in this suit plaintiff has not claimed declaration of ownership as provided under section 6(iv)(d) of M.C.F. Act.

11. It seems from the perusal of plaint that plaintiff has sought declarations in respect of suit property and in respect of release deed dated 16.06.2008 and in respect of tripartite agreement No. 1191/2009, dated 17.11.2009 and for perpetual injunction. She has paid proper court fee as per her reliefs. Thus, I have come to the conclusion that this court has pecuniary jurisdiction to try and decide this suit. Hence, I have answered point No. 1 in the negative.

AS TO POINT NO. 2 :

12. From perusal of the above reasoning I have come to the conclusion that plaintiff has valued the suit properly and this court

has pecuniary jurisdiction to try and decide this suit. Hence, I have answered point No. 1 in negative and to answer to point No. 2, I proceed to pass following order :

ORDER

Application is rejected.

Place: Uran.
Date: 14/12/2022.

(Nilesh M. Wali)
Civil Judge Jr.Divn., Uran.