

ORDER BELOW EXHIBIT 35 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 rejection of the plaint on the ground that suit is barred being instituted by not valuing suit properly and paying insufficient court fee.

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/-. They further contended that plaintiff has not properly valued the suit and has not paid proper court fee. Hence, defendant Nos. 6/1 to 6/4 prayed for rejection of the plaint under Order 7 Rule 11(b)(d)(e) of Code of Civil Procedure.

3. Plaintiff has objected the application by filing her say at Exh.40. 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. She further stated that defendants have not specifically mentioned about grounds under Sub rule (d) & (e) of Rule 11 of C.P.C. therefore, application is illegal. Plaintiff has valued the suit properly and paid proper court fee. Hence, she prayed for rejection 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 plaintiff has not valued the suit properly ?	In the negative
2.	Whether defendant Nos. 6/1 to 6/4 proves that plaintiff has not paid proper court fee ?	In the negative
3.	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 tripartite 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 NOS.1 & 2 :-

This application is filed by defendant Nos. 6/1 to 6/4 under Order 7 Rule 11(b) of Code of Civil Procedure. Though these defendants have mentioned in their application that plaint is barred under order 7 rule 11(d) & (e) of C.P.C., they have not mentioned these grounds in their application. Thus, application is treated only under Order 7 Rule 11(b) 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/- & thus has paid insufficient court fee. Thus, plaintiff has not valued the suit as of Rs.1,40,40,000/- and not paid court fee upon that. Thus, the plaint is liable to be rejected under Order 7 Rule 11(b) 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 and have not paid sufficient court fee. This fact is denied by the plaintiff. It is assertion of the plaintiff that she has valued the suit properly and has paid proper court fee. To reject any plaint, it is necessary that plaintiff to be ordered to pay deficit court fee and failure to pay deficit court fee by plaintiff will result in rejection of plaint. In this case this court has not ordered about any deficit court fee. Order 7 Rule 11(b) of Code of Civil Procedure runs as follows -

O.7 R.11(b) – where the relief claimed is under valued, and the plaintiff, on being required by the Court to so correct the valuation within a time to be fixed by the Court, fails to do so.

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. Defendants have not mentioned what is required court fee and how much insufficient court fee has been paid. Thus, I have come to the conclusion that plaintiff has paid proper court fee. Hence, I have answered point Nos. 1 & 2 in the negative.

AS TO POINT NO. 3 :

12. From perusal of the above reasoning I have come to the conclusion that plaintiff has valued the suit properly and has paid proper court fee. Hence, I have answered point Nos. 1 & 2 in negative and to answer to point No. 3, I proceed to pass following order :

ORDER

Application is rejected.

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

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