

Regular Civil Suit No. 69/2021

Order on Exh. 16

1) Defendant had filed present application under order 7 Rule 11 (a) (b) and (d) of code of civil procedure.

2) In short the contents of application are as under

It is stated by the defendant that plaintiff filed this suit for declaration of ownership on the basis of mutation entry of no 417 dt. 28/06/1948. But on the basis of mutation entries ownership can not be decided. Hence Plaint should be rejected under order VII Rule 11 (a) of C.P.C.

3) Secondly defendant states that Plaintiff filed present suit for declaration that Mutation Entry no 1326 is not binding upon them. But Plaintiff can not claim declaration regarding mutation entry before Civil Court. Hence, this suit is barred u/s 2 of Maharashtra Revenue jurisdiction Act Hence, Plaint be rejected under order VII Rule 11 (d) of CPC.

4) Thirdly Defendant states that suit is not property valued as per Section 6 (V) of Bombay Court fees Act and Sec. 2 of Maharashtra suit Valuation Determination OF Value of Land For Jurisdiction Purpose Rule 1983. Hence, It should be rejected under order 7 Rule 11(b) of C.P.C.

5) Plaintiff had filed his say at Exh. 22 and objected the application. He states that in the year 1948 partition was effected what by virtue of that partition father of Plaintiff becomes owner of suit property & after demise of their father they becomes owner of suit property. Hence defendants submission regarding declaration of ownership based on mutation entry is not tenable . Hence, application deserves to be rejected.

6) Further plaintiff submits that defendant raised question of jurisdiction under order VII Rule 11 (d) of C.P.C but this question can not be decided under provisions of order 7 Rule 11 (d). Hence application should be rejected.

7) Lastly plaintiff submitted that, suit is properly valued as per provisions of Bombay Court fees Act. Hence this application is deserves to be rejected.

8) Heard Ld. Advocates for plaintiff & defendant. Perused plaint and documents filed along with plaint.

Points of determination along with the findings and reasons there on as under

Sr. No.	Points	findings
1	whether plaint should be rejected under order VII R 11(a) of C.P.C ?	No
2	whether plaint should be rejected under order VII R 11(d) of C.P.C ?	NO
3	whether plaint should be rejected under order VII R 11(b) of C.P.C ?	As per final order
4	What Order ?	As per final order

REASONS

As to point No. 1

9) Upon perusal of plaint it reveals that Late Pandurang Lungaji Mumbaikar had divided his property between his sons. Plaintiffs father is son of Pandurang Lungaji Mumbaiker & by virtue of this division of

property plaintiffs father become owner of suit property since 1948. after the demise of plaintiffs father plaintiff become owner of suit property. After that plaintiffs allowed defendant to use suit property per grazing. Hence since 1981 Defendant using this land for grazing but in the year 2021 defendant tried to sold suit land without any knowledge to plaintiff. Plaintiff come to know about this fact from paper-notice . Then plaintiff asked him about sale of land but defendant had not paid attention towards plaintiff and trying to sale suit property to third person. Hence plaintiff brought this suit. Upon reading the plaint it prima facia reveals that plaintiff is not claiming his ownership upon Mutation Entry no 417 but upon previous partition. Now defendant had objected the plaint on the ground that ownership cannot be decided upon Mutation Entry Hence, suit is liable to be rejected.

10) Defendant placed on record judgment of Defendant placed on record judgment of **hon'ble Supreme Court Jitendra Singh vs state of M P** , **hon'ble Delhi High Court in Ramesh Arya vs pawan Arya** .With due respect to authority cited by defendant the fact of present suit are different hence this authority will not help defendant. The objection raised by defendant is not sustained at this stage, Hence liable to rejected. Hence answer point No. 1 in negative.

Point No. 2 -

11) Another point raised by defendant is that declaration regarding Mutation Entry is not binding upon plaintiff cannot be decided by this court. Jurisdiction of this court is barred by law . Hence plaint is liable to be rejected.

12) Defendant placed on record judgment of **hon'ble Supreme Court Bhargavi Constructions and another vs Kothakapu Muthyam Reddy**

With due respect to authority cited by defendant the fact of present suit are different hence this authority will not help defendant.

13) Jurisdiction is mixed question of law & fact. It should be decided at the time trial. for this point plaintiff cannot be rejected at threshold. Hence second point raised by defendant as to order VII Rule (d) of C.P.C cannot be sustained. Hence, answer point no 2 in negative.

Point No 3.

14) Defendant raised third objection regarding court fee. plaintiff in his plaint para no 14(A) paid court fee as per Sec. 6(d) & 6(v) of Maharashtra Court Fees Act but As per provisions of Sec. 2 of Maharashtra suit Valuation Determination Of Value of Land For Jurisdiction Purpose Rule 1983. Where subject matter of suit is land a sum equal to two hundred times of the assessment payable in relation to land.

15) Plaintiff had paid court fees 80 times but he had to pay court fee 200 times of assessment. Hence it shows that plaintiff had paid insufficient court fees. Hence before rejecting the plaint for payment of insufficient court fee sum equal to 200 times of the assessment opportunity should be given to plaintiff for payment of proper court fee.

16) The contentions of defendant for rejection of plaint under order 7 11(a)(d) are fails. In view of above discussion in order to answer point no 4 I pass following order .

::ORDER::

- 1) Defendant prayer as to rejection of plaint under order 7 11(a)(d) are rejected.
- 2) Plaintiff is directed to pay court fee sum equal to two hundred times of the assessment payable in relation of the land within 15 days from date of order. If Plaintiff failed to pay proper court fee order of rejection of plaint will be passed.

Uran

(P.N.Pathade)

Date- 01/07/2022

2nd jt. C.J.J.D Uran