

**Order below Exh.159 in Spl.C.S. No. 68/2012**

1] This application has been filed by plaintiff raising objection under Order 7 Rule 11(b)(c) of the Civil Procedure Code. According to plaintiff the relief claimed by defendant by way of counter claim is under valued and there is non payment of requisite court fees.

2] Plaintiff contended that the defendant averred that the sale deed dated 5-9-2011 is not binding on the share of defendant. Defendant required to pay the court fees as per Section 6 (ha) of the Maharashtra Court fees Act and total suit valuation must be Rs.61,50,000/- and Rs.10,00,000/-. Unfortunately, the total valuation of the suit is Rs. 71,50,000/-. Hence, it is prayed that the counter claim may kindly be rejected as per Order VII Rule 11(c) of the Civil Procedure Code.

3] Defendant replied at Exh.170 and denied the contents of application. According to them, the counter claim is filed for specific performance of the contract dated 2-6-2011 in between plaintiff and defendant No.1. Claim against subsequent purchaser is superficial and no court fee is required to be paid in that regard. Therefore, the provision of Section 6 (ha) of the Maharashtra Court Fees Act, 1959 is not applicable. The counter claim is not under valued. Hence, application is devoid of merit and may kindly be rejected.

4] I have heard learned Adv. Shri.Mulla on behalf of defendant and learned Adv. Shri. Ghare on behalf of plaintiff. After considering the pleading and the documents on record and after considering the argument on behalf of both the parties, I have framed preliminary issues which are as under. That issue with finding is as under -:

<b>Sr.No.</b>	<b>Preliminary Issue</b>	<b>Findings</b>
1.	Whether the counter claim is under valued ?	In the negative
2.	Whether there is requirement of payment of court fees as per Section 6(ha) of the Maharashtra Court fee stamp Act ?	In the negative
3.	What order ?	As per final order

**REASONS**

**As to Issue Nos. 1 & 2 :-**

5] While considering the objection raised under Order VII Rule 11, it is incumbent upon the Court to read a counter claim in a whole. Therefore, I have gone through the pleading of the defendant. Gat No. 49/1 admeasuring 0 Hect.94-Are situated at Vidyanagar within the boundaries of Sangli, Miraj and Kupwad Municipal Corporation, is the subject matter of the counter claim.

It is pleaded by the defendant that the suit land is owned by plaintiff's grand father Govind Maruti Sutar vide the registered deed bearing No.2954/2005 dtd.27-9-2015. The

property was bequeathed by deceased Govind to his grandson Suryakant (Present plaintiff). Being a owner plaintiff agreed to sale the suit land to defendant. So called agreement dated 2-6-2011 is the concluded contract between plaintiff and defendant No. 1. Defendant is ready and willing to perform his part of contract. However, plaintiff committed breach. It is alleged that plaintiff executed sale deed on 5-9-2011 in favour of defendant Nos.5 to 8. This defendant No.1 has asked relief of specific performance of the contract dated 2-6-2011. Defendant No.1 alternatively seeking relief of compensation of Rs.10,00,000/- with interest. In counter claim Para No. 6 (a) defendant prayed that the sale deed dated 5-9-2011 in respect of suit land is not binding upon him and the relief of declaration may kindly be granted to that effect. In para No. 4 of the counter claim defendant has valued the suit property Rs. 27,00,000/- and paid court fee for the relief of specific performance as per provision Section 6 (xi)(a).

6] On perusal of the counter claim, it appears that the substantive relief claimed by the defendant No.1 is in respect of specific performance of the agreement dated 2-6-2011. Contents of the counter claim revealed that the total consideration in respect of transaction was settled at Rs.27,00,000/- out of which the defendant has tendered an amount of Rs. 5,00,000/- and the balance amount of Rs. 22,00,000/- was to be paid on the date of execution of the sale deed. Thus, defendant valued the counter claim for Rs.27,00,000/- for the purpose of jurisdiction and court fees.

7] Although the defendant No.1 has sought relief in respect of declaration that the sale deed executed on 5-9-2011 in favour of defendant Nos.5 to 8 be declared inoperative as against rights of the defendant No.1 the said relief is ancillary.

8] It is contended by the plaintiff that defendant no.1 shall require to pay ad-valorem court fee, considering the valuation of the subsequent transaction of Rs.61,50,000/-. Said contention cannot be accepted. According to plaintiff, provisions of Section 6(ha) of the Maharashtra Court Fee Act are applicable.

At this juncture, it cannot be said that the subject matter in dispute is in susceptible of monetary evaluation and as such, the provisions of Section 6(j) of the Act would not apply.

In the present case, the main relief claimed in the counter claim in respect of specific performance of agreement, it is essentially a claim between the vendor and vendee and the subsequent transferee is required to be impleaded only for the purpose of issuing direction to him to join the vendor in executing the registered document. It is not essential for the defendant No.1 to claim declaration in respect of subsequent transaction in a counter claim for specific performance of agreement.

9] In case of, "**Khanderao s/o. Bhujangrao Babar V/s. Bharatbai w/o. Shrimant Gomsale & Ors., 2009(3) All M.R. 568**". The Hon'ble Bombay High Court, Bench at Aurangabad held that, "Section 19(a) of the Specific Relief Act provides that the specific performance of the contract may be enforced against either party

thereto whereas under section 19(b) relief can be sought against any other person claiming under him by a title arising subsequently to the contract, except a transferee for value who has paid his money in good faith and without notice of the original contract. The subsequent purchaser are joined as party defendants for securing relief in respect of specific performance. Although the declaratory relief is claimed against the subsequent purchasers the said claim is superficial and no court fees is required to be paid in that regard and hold that neither the provisions of section 6(ha) nor provisions of section (j) of the Bombay Court Fees Act are attracted and therefore, no court fees is required to be paid in respect of declaratory relief sought for by the defendant No.1.

Reliance placed on the ratio laid down by the Apex Court in the matter of,

- [1] Durga Prasad and another V/s. Deep Chand and others, reported in A.I.R. 1954 SC 75,
- [2] Ramesh Chandra Chandiol V/s. Chuni Lal Sabharwal, reported in A.I.R. 1971 S.C. 1238, and
- [3] Dilip Bastimal Jain V/s. Baban Bhanudas Kamble, reported in 2001(3) Mh.L.J. 730 : 2001(3) ALL M.R. 338".

10] Taking into consideration, the ratio laid down by the Hon'ble High Court and the Hon'ble Apex Court in the matter cited supra, in the instant matter it can be said that joining of co-defendant to the counter claim is merely for securing relief of specific performance as contemplated by Section 19(b) of the Specific Relief Act. Although the declaratory relief is claimed

against the subsequent purchasers the said claim is superficial and no court fees is required to be paid in that regard. Even the objection raised by plaintiff does not call for. The provisions of Section 6 (ha) of Bombay Court fees Act are not applicable. The counter claim held to be rightly valued under Section 6 (xi) of the Act treating it as falling under Article 7, Schedule I of the Bombay Court Fees Act. Therefore, I have given finding of point No. 1 & 2 in the negative.

In the result, I proceed to pass the following order :-

**ORDER**

1) Application (Exh. 159) stands rejected.

(Dictated directly on computer and pronounced in open Court)

Date : 03-08-2016

Sdxxx/-  
(Mrs.N.H.Makhre)  
Civil Judge Sr.Dn.  
Sangli