ORDER BELOW EXH. 46 AND 75 IN SPL.C.S. No. 09/2015

01. The defendant no. 7 has filed the application vide Exh. 46 for rejection of plaint under the provisions of Order 7 Rule 11 of C.P.C. Similarly, the defendant nos. 1 and 2 also filed the application vide Exh. 75 for directing the plaintiffs to correct the valuation and supply the Court fee stamps.

02. The defendant no. 7 contended that the suit properties are mentioned in para no. 1 of the plaint. The suit properties mentioned in para no. 1A are non agricultural land. The suit properties mentioned in para no. 1A (Sr.no.1 to 4) were agricultural fields but thereafter order of N.A. came to be passed and 29 plots were created. The said suit properties including plots were having the valuation of Rs.1,27,59,000/-. The empty land is 968 sq.mtrs. The plaintiffs have mistakenly / falsely showed the valuation of the suit properties mentioned in para no. 1A (fields mentioned in Sr. nos. 1 to 4). Likewise, the suit properties mentioned in para no. 1D is one flat which is having cost of Rs.40 lakhs, but the plaintiff has undervalued the price of the flat. The suit properties vide para no. 1C is one survey no. i.e. 155/1 situated at Mangalwar Peth, Karad and plot no. 3C alongwith bungalow. There is house and blocks standing on the survey no. 155/1. The plaintiffs have not mentioned the proper valuation in regard to suit properties mentioned in para no. 1C. The plaintiffs have wrongly valued the suit properties and unless and until it is corrected the suit cannot be proceeded further. The defendant no. 7 prayed for the rejection of the plaint.

03. The defendant nos. 1 and 2 challenged the valuation made by the plaintiffs and submitted that the plaintiffs have wrongly valued the suit properties mentioned in para no.1C. The plaintiffs have not given the valuation and have not affixed the proper Court fee stamp. Unless and until the plaintiffs corrected the valuation and

provide the Court fee, the suit cannot go further. The direction be given to the plaintiffs to correct the valuation of the suit properties mentioned in para no. 1C. The defendant nos. 1 and 2 prayed for the direction to plaintiffs to make the proper valuation.

04. Say of the other side came to be invited. The other side i.e. plaintiffs filed the say vide Exh. 46 and submitted that the plaintiffs have properly valued the suit properties. The father of the plaintiffs died on 25.09.2010 and at that time the suit properties mentioned in para no. 1A were agricultural. Therefore, plaintiffs have valued the suit properties as per the provisions finds place in Maharashtra Court Fees Act relating to valuation of agricultural land. Likewise, the valuation done in respect of property mentioned in para no. 1D is proper.

05. The plaintiffs also filed the say to the application vide Exh. 75 and submitted that the house property is mentioned in para no. 1C of the plaint and it is valued at Rs.13 lakhs. The valuation is proper and more than actual price. The Court fee stamp has been provided on 13 lakhs. The properties are properly valued and applications vide Exh. 46 and 75 are liable to be rejected.

06. In view of rival contentions of the parties the following points arise for my determination and I have recorded my findings subject to the reasons as mentioned hereinafter :

Sr. No.	Points	Findings
1	Whether the plaintiffs have properly valued the suit properties for the purpose of Court fee stamps ?	**In the negative.**
2	What order ?	**As per final order.**

REASONS

07. The defendant nos.1, 2 and 7 came with the case that

the suit properties are mentioned in para no. 1 of the plaint. The suit properties mentioned in para no.1 A are non agricultural lands but plaintiffs have shown it as agricultural land and valued the suit properties which is wrong and contrary to the law. Likewise, less valuation is given in respect of other properties. The plaintiffs are required to value the suit properties properly and provide the Court fee stamp, otherwise, the plaint is liable to be rejected under Order 7 Rule 11 of C.P.C. The plaintiffs replied the application and submitted that their father died in 2010. At that time some suit properties were agricultural, therefore, the plaintiffs have valued the suit properties considering the suit properties as agricultural. Likewise, the suit properties mentioned in para no. 1C are properly valued. More valuation is given in respect of suit properties mentioned in para no.1C. The application of defendants is untenable and liable to be rejected.

08. The plaintiffs have filed this suit in the year 2014 (26.04.2014) against 7 defendants. The plaintiffs have filed this suit for partition, possession, recovery of money and pre-emption alongwith mesne profits against the defendants. The plaintiffs also prayed for injunction and direction to initiate action against the defendants for making forged signature. The plaintiff nos. 1 and 2 are sisters and they are daughters of Gani Yasin Kagadi who died on 25.09.2010 leaving behind him wife, 2 sons and 4 daughters. It is the contention of the plaintiffs that after the death of their father forged gift deed came to be prepared and defendant nos. 1 and 2 secured the suit properties in their name. The suit property vide para no. 1A came to be sold by the defendant nos. 1 and 2 to defendant no. 7. The agricultural land which is described in para no. 1A came to be sold for nominal price. In fact the agricultural land was of crores of rupees. The plaintiffs published the notices and publicized it that the

land is disputed land and plaintiffs are having their share in the property. But inspite of the public notice the sale transaction came to be effected. The plaintiffs left with no alternative but to institute this suit. The plaintiffs mentioned the following properties in para no. 1A.

Sr. No.	**Gat No.**	**Area**		**Assessment**		**Share**
		H.	**R.**	**Rs.**	**Pai.**	
1	393/3/1	00	22	01	31	Whole
2	393/3/2	00	10	20	00	Whole
3	393/3/2B	00	48	02	19	Whole
4	393/6	00	16	00	87	Whole

The property in para no. 1B is one survey no. 409 area 0.88 R. wherein the plaintiffs are having ½ share.

The property in para no. 1C is field survey no. 155/1 situated at Mangalwar Peth, Karad having area 377.9 Sq.mtrs., with RCC house and shops wherein plaintiffs are having ½ share.

The another property in para no.1C is T.P. scheme no. 1 plot no.389 out of which plot no. 36 area 633.33 sq.mtrs., alongwith 900 sq.ft. bungalow.

The property in para no.1D is one flat situated at Pune bearing no. 506 area 1000 sq.fts.

The property in para no. 1E is one revolver and liquor license

The property in para no.1F is golden and silver ornaments and pots.

The above mentioned properties are suit properties mentioned in para no. 1 of the plaint which came to be valued by the plaintiffs as per para no. 7 of plaint. The plaintiffs valued the properties mentioned in para no. 1A as agricultural land and valuation was done as per the relevant provisions. The plaintiffs valued the property mentioned in para no.1 C at Rs.13 lakhs and Court fee came to be paid accordingly. Likewise, the plaintiffs estimated Rs.15 lakhs as price for the flat situated at Pune and accordingly Court fee came to be affixed. The plaintiffs valued revolver and liquor license at Rs.8,500/- and stamp came to be paid.

09. The defendant nos. 1,2 and 7 objected the valuation done by the plaintiffs. The defendants specifically objected to the valuation in respect of property no. 1A. The defendants submitted that the properties mentioned in para no. 1A are non agricultural but the plaintiffs falsely described the suit properties as agricultural land and valued accordingly. The valuation is arbitrary and wrong. The defendants objected to the valuation done by the plaintiffs in respect of suit properties mentioned in para no.1C. It is the contention of the defendants that valuation of the properties comes to Rs.50,21,000/- but plaintiffs are wrongly valued the properties at Rs.13 lakhs. Same is case with the properties mentioned in para no.1 C(2). The defendants further submitted that the flat situated at Pune is having cost of Rs.39,92,830/- but plaintiffs valued the flat at Rs.15 lakhs. The total valuation for suit properties comes at Rs.2,55,55,330/-. The valuation done by the plaintiffs is arbitrary and cannot be relied. The defendants mainly relied on valuation done by the Sub-Registrar and challenged the valuation made by the plaintiffs.

10. The argument of the parties and perusal of the document make it clear that the plaintiffs filed this suit for partition and separate possession of their share. The plaintiffs valued the suit properties 1A as per para no. 7 of the plaint wherein the plaintiffs mentioned it that the suit properties mentioned in para no. 1A and B are agricultural lands and valued the suit property and paid Court fee. The plaintiffs valued the suit properties 1A and 1B at Rs.240/-

and accordingly the stamps came to be paid. The properties mentioned in para no. 1A are non agricultural land as per the defendants. The perusal of the Exh. 1 and specifically para no. 1A shows that the plaintiffs stated that the survey no. 393 is having 29 plots. The contention of the plaintiffs itself shows that the properties mentioned in para no.1A are non agricultural. The parties have adduced the documents wherein scenario becomes more clear. The defendants have filed the documents wherein non agricultural order of the properties mentioned in para no. 1A is apparent. The non agricultural order shows that the suit properties of para no.1A are made non agricultural as per the order of the Collector dated 21.07.2012. On 21.07.2012 the status of the properties were changed. Ferfar shows that 29 plots were created. The defendants also filed the index 2 copies wherein it is mentioned that the plots were sold to different persons. So it is clear that the properties vide survey no. 393 mentioned in para no. 1A at Sr. nos. 1 to 4 were made non agricultural in the year 2012. The plaintiffs are aware about the status of the properties. The plaintiffs valued the above mentioned properties as per rules applicable to the agricultural lands. The valuation done by the plaintiffs is apparently wrong and needs to be corrected.

11. During the term of argument advocate Shri.Ghate submitted that the father of the plaintiffs died in the year 2010 and at the time of his death properties were non agricultural. The plaintiffs are having share in the properties. The properties came to be sold wrongly/ illegally. The cause of action arose on the death of father of the plaintiffs. The father of the plaintiffs left the properties as agricultural properties, therefore, plaintiffs valued the suit properties mentioned in para no.1A as agricultural properties. The defendants objected to the contention. The contention of the

advocate Shri. Ghate cannot be accepted because plaintiffs filed the suit in the year 2014 when the properties were made non agricultural. The valuation should be done on the date of the suit. The past valuation cannot be permissible. The valuation should be made on the current price of the properties. If the properties are non agricultural then properties should be valued as per the rules applicable to non agricultural land. The status of the property is important and present status of the property is only relevant for the purpose of the valuation and payment of Court fees. The contention of the advocate Shri.Ghate cannot be accepted. So it is clear that valuation in regard to properties mentioned in para no. 1A of the plaint has been done wrongly and arbitrarily.

12. The plaintiffs have included the properties mentioned in para no. 1C and 1D to which the defendants have taken the strong objections. It is the contention of the defendants that the properties mentioned in para no.1C and 1D are not properly valued. The defendants filed the valuation certificate issued by the Sub-Registrar on 11.08.2022. The plaintiffs have valued the properties mentioned in para no.1C at Rs.13 lakhs. It is the contention of the defendants that the properties are having cost of Rs.88,00,03,500/-. The defendants have filed and relied on certificate issued by the Sub-Registrar, Registration department. Likewise, the defendants submitted that the plaintiffs valued the flat no. 506 situated at Pune at Rs.15 lakhs, but the certificate issued by the Sub-Registrar, Registration department shows that flat is having market value of Rs.39,92,830/-. The defendants specifically relied the certificates issued by the Sub-Registrar, Karad in regard to the valuation. Likewise, the defendants also relied on the certificate of Sub-Registrar in regard to properties mentioned in para no.1A of plaint. The defendants specifically submitted that the plaintiffs valued the

suit properties as agricultural but valuation makes it clear that the properties are having market price of Rs.1,27,59,000/-. The defendants relied on certificate of Sub-Registrar in regard to the flat situated on Pune and said certificate is given by Sub-Registrar, Haveli. On the contrary the plaintiffs supported the valuation done by them in plaint.

13. The defendants submitted that the valuation made by the plaintiffs in regard to the properties mentioned in para no.1C and D are false. The defendants placed reliance on the certificates issued by the Sub-Registrar and submitted that the valuation done by the plaintiffs is wrong. The certificate of Sub-Registrar cannot be decisive in regard to the valuation. The certificate issued by the Sub-Registrar in regard to the flat makes it clear that the valuation is done as per the application and information given by the applicant. Said certificate cannot be helpful for the purpose of the valuation. The certificate issued by the Sub-Registrar in regard to the property no. 1C is standing on the same footing. The certificates further make it clear that the valuation done therein is only for the purpose of registration. The certificates are not useful for any other purpose. The certificates produced by the defendant cannot be useful for the case. There is no any other material against the valuation made by the plaintiffs in regard to suit properties mentioned in para no. 1C and D. Unless and until there is reliable material against the valuation made by the plaintiffs, the valuation done by the plaintiffs is liable to be accepted. The defendants have produced the valuation certificate in regard to properties of para 1A but said certificate is not useful for the reasons mentioned above. The defendants have also produced certificate of the private valuer but the certificate of the private valuer is also irrelevant. No sale transaction of the adjoining properties came to be produced by the defendants for challenging

the valuation done by the plaintiffs. The citation of **Ashok Bansilal Mutha Vs. State of Maharashtra and ors.** W.P. no.550/1990 decided by Hon’ble Bombay High Court on 01.07.2012 is relevant and require to be quoted here. The citation is on the point of Section 32A of Bombay Stamp Act (Determination of True Market Value of Property Rules 1991). The Hon’ble Bombay High Court held that the ready reckoner could not have encroached upon quasi judicial exercise of powers by Collector while determining true market value of property. This Court, therefore, had issued certain directions and observed that ready reckoner at the most could have been used as a guideline. In the citation of **Javaji Nagnathan Vs. Revenue Divisional Officer, Adilabad reported in 1994 (4) SCC 595**, wherein the Hon’ble Apex Court held that *such ready reckoner which has not statutory backing can not be used even as guidelines*. The true market value can be decided by the Collector stamps. The defendants never filed any application before the Collector stamps for valuation of the suit properties or defendants never filed any application in this case for directing the Collector stamps to make the true valuation. The certificates adduced by the defendants against the valuation made by the plaintiffs is unhealthy and cannot be relied as the certificates are based on fixed prices for the area. The valuation done by the plaintiffs in regard to properties mentioned in para no.1C and 1D is required to be accepted.

14. The plaintiffs have mentioned golden and silver jewellery and pots but no details of the jewellery and pots have been given. The plaintiffs have not valued the ornaments and pots which is also the defective valuation done by the plaintiffs. The above mentioned discussion makes it clear that the plaintiffs wrongly valued the properties mentioned in para no.1 A and no valuation is given in regard to properties mentioned in para no.1F. The rest of

the valuation appears to be properly done.

15. The plaintiffs and defendants filed the citations which are required to be mentioned/considered. The plaintiffs relied on citation of **Polamrasetti Manikyam Vs. Teegala Venkata Ramayya reported in AIR 2014 Supreme Court 1286**, wherein Hon'ble Supreme Court held that, *value of property cannot be substituted with expression market value of property.* The said citation is related to Section 37 of Andhra Pradesh Court fees and Suit Valuation Act, 1956. The said citation is irrelevant as Court fee Act is different.

The plaintiffs thereafter relied on citation of **Om Plastic Industries, Dhule and ors. Vs. Maharashtra State Finance Corporation, Mumbai & ors. Reported in 2001 MHLJ 1 560**, wherein the Hon'ble Bombay High Court held that, *the plaint should be examined to find out the real nature of the suit and relief claimed*. The cause of action and relief sought are important. The said citation is irrelevant for the case in hand as the citation enshrine the principle of law only.

* The plaintiffs thereafter relied on citation of **Kamaleshwar Kishor Singh Vs. Paras Nath Singh reported in AIR 2002** Supreme Court 233, wherein the Hon'ble Supreme Court held that it is substance of relief sought for and not form which will be determinative of valuation and payment of Court fees. The said citation is also irrelevant and non helpful for the plaintiffs.

* The next citation relied by the plaintiffs is **Mahadev Govind Gharge & ors. Vs. The Special Land Acquisition Officer, Upper Krishna Project, Jamkhandi, Karnataka reported in AIR 2011 Supreme Court 2439**, wherein it is held that, *processual law is not to be a tyrant but a servant, not an obstruction but an aid to justice*. The citation is general in nature and having no direct application to the case in hand but the citation is a guiding star.

* The next citation relied is **Mukhopadhyaya Vs. Gopala Gowda reported in Aironline 2013 SC 180**, wherein the Hon'ble Apex Court held that t*he District Legal Services Authority to pay the Court fee in the case of poor litigants and plaint should not be rejected*. The said citation is irrelevant and inapplicable to the case in hand. The plaintiffs are not poor.

* The plaintiffs also relied on **Mr. Aman Harishkumar Vij Petitioner Vs. Smt. Shantabai Anandrao Patil & ors. 2015 ALL MR 3 522**, wherein the Hon'ble Bombay High Court observed the provisions of the Court Fees Act and observed that t*he fiscal statute like the Court Fees Act is required to be construed strictly. In case of any doubt or ambiguity, the statute has to be construed in favour of the subject.* In this case there is no doubt and no compassionate ground exists in favour of the plaintiff. The plaintiffs wrongly valued the properties mentioned in para no.1A. The status of the property is wrongly taken. The ratio is inapplicable to the case in hand.

* The plaintiffs thereafter relied on citation of **Bharat Bhushan Gupta Vs. Pratap Narain Verma & Anr. 2022 AIAR (Civil) 720**, wherein it is held that *it is the nature of relief claimed in the plaint which is decisive of the question of suit valuation as a necessary corollary market value does not become decisive of suit valuation*. The citation is in respect of valuation in regard to injunction. The citation is inapplicable to the case in hand.

* The plaintiffs again relied on citation of **Deepak Natwarlal Parekh Vs. Tejas Natwarlal Parekh 2015 (1) Bom. C.R. 180**, wherein it is held that *the plaintiff can value plaint as per his estimation and same is ordinarily accepted*. But in said citation it is also held that the Court has right to correct the valuation if it is made arbitrary and unreasonable. The Court cannot say that valuation done by the plaintiff is gospel truth.

* The plaintiffs relied on **V.N.Sarin Vs. Major Ajit Kumar Poplai reported in 1966 AIR 432**, wherein Hon'ble Apex Court held that, *the partition is not a transfer and transfer of property means an act by which a living person conveys property in present or in future*. The Hon'ble Supreme Court make such observation in reference to theme of partition. The observation cannot be helpful for the plaintiffs.

16. The defendants have relied on citation of **Shabbir AH. AB. Raheem Hakeem & anr. Vs. Sajeda Abdul Hafiz & anr. Reported in 2008 (4) Bom. C.R. 554**, wherein it is held by Hon'ble Bombay High Court that *the report of Sub-Registrar who is an independent person should have been relied by trial Court and report of the Sub-Registrar was helpful for the Court*. The ratio cannot be made applicable to the case in hand because Sub-Registrar was asked by the Hon'ble Bombay High Court to make the report in Writ Petition no. 1372/2006. The said report was specific and was related to the property in question. The said report was prepared in reference to the direction of the Hon'ble Bombay High Court. The said report cannot be equated with the reports filed by the defendants, therefore, the said citations cannot be made applicable.

17. The defendants again relied on citation of **Commercial Aviation and Travel Company Vs. Vimla Pannalal reported in 1988 DGLS (Soft) 408**, wherein Hon'ble Apex Court held that the *Court can direct the valuation to be corrected and if the plaintiffs fails to correct the valuation within the time fixed by the Court then plaint is liable to be rejected*. This citation is on the point of Order 7 Rule 11 of C.P.C. The citation is indirectly applicable to the case in hand.

18. The plaintiffs have valued the suit properties mentioned in para no.1A wrongly. They valued the suit properties considering the properties as agricultural but properties mentioned in para 1A

are non agricultural. The valuation done by the plaintiffs is apparently wrong. Moreover, the plaintiffs have not made valuation in regard to golden and silver ornaments and pots. The plaintiffs have to correct the valuation and provide the Court fee stamps if required. The above mentioned citations and ratio expressed therein are not decisive. The defendants relied on certificates issued by the Sub-Registrar but said certificates are not useful. The defendants never took any pain to get the valuation done by the Collector stamps. Likewise, the valuation done by the private valuer cannot be relied. In view of above said discussion following position is apparent :-

1. The plaintiffs have wrongly valued the suit properties mentioned in para no. 1A of the plaint i.e. survey no. 393 mentioned in Sr.nos. 1 to 4.
2. The plaintiffs have not given any valuation in respect of golden and silver ornaments and pots.
3. The plaintiffs valuation is defective to some extent which is required to be corrected by the plaintiffs.

19. The above mentioned discussion makes it clear that the plaintiffs failed to make proper valuation in regard to some suit properties. In view of above discussion, I answer point no. 1 in negative. The plaintiffs are required to make correct valuation in respect of properties mentioned in para no. 1A (Sr. nos. 1 to 4) and also give the valuation regarding golden and silver ornaments and pots. In circumstances of the case, no party is entitled for the costs. In view of above reasons I am inclined to pass following order.

ORDER

1. The application is partly allowed.
2. The plaintiffs to make proper valuation in regard to properties

mentioned in para no. 1A (Sr. nos. 1 to 4) and provide the Court fee stamps if required.

3. The plaintiffs to make valuation in respect of golden and silver ornaments and pots.

4. The plaintiffs to complete the process of valuation within 2 months and make the necessary corrections in the plaint.

5. No any order as to costs.

Karad. (V. S. Khot)
Date-10.10.2022 Civil Judge Senior Division,Karad.