

Order Below Exh. 1 in R.C.S. No. 167/2011.

On Preliminary Issue.

(Passed on 21.06.2014.)

1. Heard Shri. C. L.Chavan Ld. Advocate for the defendant and Shri. R. D. Khatavkar Ld. Advocate for the plaintiff.

2. In view of order passed below Exh. 25, I have framed Preliminary Issues. During hearing on the preliminary issues none of the parties adduced oral or documentary evidence. But Ld. counsel for the plaintiff has filed written argument.

3. Ld. Advocate for defendants have submitted that the plaintiff sought declaration of three sale deeds of not binding upon him. The plaintiff has also sought to remove encroachment over the suit properties. It is therefore, plaintiff ought to have paid stamp as per section 6(V) and section 6(ha) of Bombay Court Fee Act 1959. But plaintiff have paid stamp as per section 6(J) of Bombay Court Fee Act 1959. They further submitted that the valuation of the property is of Rs. 75,20,260/- as per Government rate. Therefore, plaintiff should have paid stamp of Rs. 1,04,000/-. The defendants prays that

suit is under valued and not properly stamped, hence this court has no pecuniary jurisdiction to try this suit.

4. Ld. Advocate R. D. Khatavkar has filed written argument and submitted that the plaintiff has filed this suit for agricultural land. The suit property is not non-agricultural land. Accordingly, plaintiff has paid stamp of Rs. 10.400/- on consideration of alleged sale deed. In view of section 6(J) and 6(v)(b) of Bombay Court Fee Act stamp is paid. Hence, the plaintiff prays that suit is properly valued and stamped, therefore, this court has pecuniary jurisdiction to try this suit.

5. Considering the rival contentions of the parties and order passed below Exh. 25, I have framed preliminary issues at Exh. 42, I have recorded my findings for the reasons as under.

<u>Nos.</u>	<u>Preliminary Issues</u>	<u>Findings</u>
1	Whether the suit has been properly valued and whether the court fee has been properly paid?	... In the Affirmative.
2	Whether this court has pecuniary jurisdiction to try this suit?	... In the Affirmative.
3	What Order ?	... This court has jurisdiction to

try this suit.

:: REASONS ::

As to Issues no. 1 to 3 :

6. On going through the submissions of both the sides it seems that Ld. Advocate for defendant argue that the plaintiff ought to have paid stamp duty as per market value of the suit property. On the Contrary, Ld. Advocate for the plaintiff submitted that stamp duty have paid as per consideration of sale deeds. Hence, this court has jurisdiction to try this suit. As per above submissions, it seems that this is a law point to decide the jurisdiction of this court. At this stage, firstly it is necessary to go through the legal provisions of Bombay Court Fees Act. **Bombay Court Fees Act 1959 section 6(v)** for possession of lands, houses and gardens. In suits for the possession of land, houses and gardens according to the value of the subject-matter and such value shall be deemed to be, where the subject-matter is a house or garden-according to the market value of the house or garden and where the subject matter is land, and

a) Where the land is held on settlement for a period not exceeding thirty years and pays the full assessment to Government a sum equal to forty times the Survey assessment.

b) Where the land is held on a permanent settlement or

on a settlement for any period exceeding thirty years, and pays the full assessment to Government a sum equal (eighty times) the survey assessment, and where the whole or any part of the annual survey assessment is remitted a sum computed under sub-paragraph (a) or sub paragraph (b) as the case may be, in addition to eighty times the assessment or, the portion of assessment so remitted.

SECTION 6(iv) (ha) :- For avoidance of sale, contract for sale, etc : In suits for declaration that any sale, or contract for sale or termination of contract for sale, of any movable or immovable property is void one half of ad valorem fee leviable on the value of the property.

SECTION 6(iv) (j) :- For other declarations, in suits where declaration is sought, with or without injunction or other consequential relief and the subject matter in dispute is not susceptible of monetary evaluation and which are not otherwise provided for by this Act ad valorem fee payable, as if the amount or value of the subject - matter was one thousand rupees. In all suits clauses (a) to (i) the plaintiff shall state the amount at which he values the relief sought, with positive reasons for the valuation.

7. Ld. Advocate for defendant relied in

Abdulsattar Gulabbhai Bagwan v/s. Vaibhav Gosavi reported in 2012 (2) All MR 310, wherein held that,

" Plaintiff executed sale deed in favour of defendants under fraud and misrepresentation that it is partition deed. Even though suit is allowed in respect of share of plaintiff in suit property as per first prayer and previous sale deeds are set aside second prayer is to declare subsequent sale deeds executed by defendants as not binding. Plaintiff is in fact seeking setting aside of subsequent sale needs - second prayer is not just consequential relief. Suit liable to be valued in terms of second prayer also section 6(iv) (ha) would be attracted.

8. Ld. Advocate for plaintiff has relied in following citations.

1. **Raosaheb Ramrao Shinde V/s. Sahebrao Ramrao Shinde 2010(2) MLJ, 273,** wherein Hon'ble High Court held that,

" In case of suit of possession of Land where and is held on permanent settlement. It shall be governed by Section 6(v) and observed that the claim for declaration in question can not be treated as a claim really necessitated by the nature of suit, the real or principal remedy sought by the plaintiff being a decree for possession.

2. *Asha Sopan Maithane V.s, Ramkryshna Punjaji Wanare 2011(4) Bom. C.R. 637 Nagpur Banch,* wherein Hon'ble High Court held that,

" Provisions of section 6 of Court Fee Act which deal with computation of fees payable in certain suits, words used for value of property and market value for present purposes, it needs to be noticed that section 6(v) prescribes Court Fee in suit for possession of land, house and gardens. This clause(v) itself shows that such court fee is payable according to value of subject matter. It also stipulates that in case of houses and gardens its market value is deemed to be value of subject matter and where subject-matter is land, a sum equal to 40 times or 80 times survey assessment, is deemed to be its value. That Hon'ble High Court observed that in case of agricultural land value is deemed to be at either 40 times or 80 time its survey assessment. Hence language of section 6(iv) (ha) assumes importance and it does not use word "market value" but it only uses word "value of property".

3. *Radhabai Mahadeo Thakurr V/s. Gajanan Shriram Akone 2010 (1) Mh.L.J.873, Nagpur,* wherein Hon'ble Apex Court held that,

" For the purpose of Court Fee the value of the property shall be equal to 40 times survey assessment. And the

suit could not have been valued for the purpose of Jurisdiction or for the court fee on the basis of market value. There in the Hon'ble Apex Court referred Rule 2 of the Maharashtra Suit valuation Rule 1983.

4. *Madhavrao Sitaram Johali V.s, The State of Maharashtra AIR 1978 Bombay Page no. 344,* wherein Hon'ble Apex Court held that,

" Suit for possession of tank in a Mahal included the land under water in tank, Court fee paid on the basis of land revenue of Mahal held was correct.

9. I have carefully gone through the case laws cited by the both the sides and fact and circumstances of the present suit it seems that plaintiff has paid court fee on agricultural land not on house or garden. More so, plaintiff has paid court fee on consideration of alleged sale deeds. The plaintiff has paid court fee in view of section 6(iv)(ha) and 6 (iv)(j) of Bombay Court Fee Act 1959. The citation placed by defendants is not useful in given case as fact and circumstances is different in nature. On the contrary citations placed by plaintiff is very useful to this case. In given circumstances and ratio laid down in case laws cited by plaintiff I am of the view that the plaintiff has been properly valued the suit and property

paid court fee. In the result, this court has pecuniary jurisdiction to try this suit. Hence, I answered preliminary issue no. 1 and 2 in the affirmative and proceed to pass the following order.

:: ORDER ::

1. This court has pecuniary jurisdiction to try this suit.
2. Both sides and their counsel take note of this order and proceed further.

Place : Karad.

Date : 21.06.2014.

(R. N. Gaikwad)

VIIIth Jt. C.J.J.D. Karad.

Tal.Karad Dist. Satara.