

ORDER BELOW EXH. NO. 110 IN R.C.S NO.06/2012**(Vasant Shinde V/s. Shashikant Shinde & Ors.)**

The plaintiff has filed present application under Order VII, Rule 11 of Code of Civil Procedure for rejection of plaint/counter claim. According to plaintiff, the defendant no.1A to 1C have filed counter claim and claimed relief of perpetual injunction and three declarations. However, defendants did not make proper valuation of the counter claim. The defendants only paid Court fee of Rs.320/-, which is insufficient. The defendants in counter claim also claim relief in respect of sale deed of Rs.1,50,000/-. However, defendants did not make proper valuation and could not pay Court fee for such relief. Therefore, plaintiff prayed to direct defendants to pay proper Court fee and in case of their failure, their counter claim be rejected. The plaintiff relied on judgment of Hon'ble Bombay High Court in the case of Prism Reality Vs. Govind Yashwant Khalade, 2015(2)Mh.L.J. 472, Jayant Bhimsen Joshi Vs. Raghavendra Bhimsen Joshi, 2016(1) Bom. CR 462, Common Piru Caudhari Vs. Berubai Chendu Redhiwale & Ors., 2017(4) All MR 283.

2. The defendants have filed their say at Exh.No.112. They denied the contentions of plaintiff. According to them the plaintiff has filed false application. The defendants have paid proper Court fee for the reliefs claimed in counter claim. As defendants claimed relief of perpetual injunction as a consequential relief, therefore they could not pay Court fee for such relief. The plaintiff has filed false application, therefore they prayed to reject the application with costs of Rs.5,000/-. The defendants relied on judgment of Hon'ble Supreme Court in the case of Alpana Gupta Vs. APG Towers Pvt., Ltd, 2019 ALL SCR 2018, Dilip Khushalchand Jain Vs. Hardik Dipakbhai Ramani, AIR online 2022, BOM 991, Suhrid Singh @ Sardool Singh

Vs. Randhir Singh, AIR 2010 SC 2807.

3. Perused the record and proceeding. Heard, the Learned Advocates of both parties. The plaintiff has filed this application for rejection of counter claim under Order VII Rule 11 of C.P.C. It is settled position of law that, counter-claim is treated as a plaint and therefore provisions Order VII Rule 11 is applicable to counter-claim also. It is settled position of law that, while deciding of application under O VII R 11 of C.P.C. only averments of plaint/counter claim can be taken into consideration. Therefore, I read the counter-claim filed by defendant no.1A to 1C. The defendants in their counter-claim made prayer about perpetual injunction and declaration about not binding of sale deed dated 13.02.2008. The defendants also sought declaration about M.E. No.3041 and declaration about name of person who executed sale deed dated 13.02.2008. Record shows that, the defendants have made three declarations and claim relief of perpetual injunction. The defendants mentioned the valuation of suit as Rs.2000/- and paid Court fee of Rs.320/-. Therefore, record prima-facie shows that, the defendants are not properly valued the suit. The valuation in respect of one declaration is not made. So far as the Court fee concerning the declaration about not binding of sale deed, the observation of Hon'ble Supreme Court is cristle clear. The Hon'ble Supreme Court in Suhrid Singh @ Sardool Singh Vs. Randhir Singh has observed that, "in this case there is no prayer for cancellation of the sale deeds. The prayer is for the declaration that the deeds do not bind the coparcenary and for joint possession. The plaintiff in the suit was not the executant of the sale deed. Therefore, the Court fee was computable u/s 7(iv) C of the Act. The Trial Court and The High Court were, therefore, not justified in holding that the effect of the prayer was to seek cancellation of the sale deeds or that

therefore Court fee had to be paid on the sale consideration mentioned in the sale deeds". From these observations of Hon'ble Supreme Court, it is clear that, the prayer about cancellation of sale deeds and prayer about not binding of sale deed are different and would be covered by different provisions of Maharashtra Court Fees Act.

4. The Hon'ble Bombay High Court in Common Piru Caudhari Vs. Berubai Chendu Redhiwale, 2017(4) All MR 283 observed that "Section 6 (iv) (ha) is concerned, the same is applies to the suit for declaration that any sale, contract of sale or termination of contract of sale, of any movable or immovable property is void. Insofar as section 6 (iv) (j) is concerned, the same applies to suits which have been filed for declaration other than those sought in the earlier Section 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 by this Act. Therefore, declaration that sale is not binding would be squarely covered under Section 6 (iv) (j) of Maharashtra Court fees Act and not covered under Section 6 (iv) (ha) of Maharashtra Court fees Act."

5. On careful perusal of counter-claim of present suit, it reveals that in present counter-claim the defendants claimed declaration as sale deed is not binding on them. It is a case of defendants that, their father did not executed the sale deed and instated of their father the defendant no.2 was executed a sale deed. Therefore, it seen from the record that, deceased father of defendants is not executant of the sale deed. Therefore, in view of ratio laid down by Hon'ble Supreme Court in the case of Suhrid Singh @ Sardool Singh Vs. Randhir Singh and ratio laid down by Hon'ble Bombay High Court in the case of Common Piru Caudhari Vs.

Berubai Chendu Redhiwale, I come to conclusion that, the declaration claimed by defendants do not come within the ambit of Section 6 (iv) (ha) of Maharashtra Court fees Act but it was covered by Section 6 (iv) (j) of Maharashtra Court fees Act. The ratio of Hon'ble Supreme Court and Hon'ble Bombay High Court of above mentioned citations will prevail over the citations i.e. Prism Reality Vs. Govind Yashwant Khalade and Jayant Bhimsen Joshi Vs. Raghavendra Bhimsen Joshi, therefore it is not discussed herewith. Therefore, defendants have paid Court fees of Rs. 200/- for declaration of sale deed as not binding on them is seems to be just and proper.

6. On perusal of counter-claim it revealed that defendants did not pay Court fee for consequential relief of injunction. The defendants ought to have pay Court fee for relief of injunction and declaration about mutation entry, but they did not pay. Therefore, in present suit Court fees for relief of injunction and one declaration seems to be deficient. In such situation before rejecting plaint on that account, it is necessary to give chance to pay Court fee for relief of injunction and declaration. Hence, the following order.

ORDER

The defendants are directed to pay Court fees for relief of perpetual injunction and declaration about Mutation Entry as per Section 6 (iv) (j) of Maharashtra Court Fees Act within 30 days.

Phaltan
Date:-20.02.2026

(A. S. Satote)
3rd Jt. Civil Judge Jr. Dn., Phaltan