

ORDER BELOW EXH.21 IN R.C.S. No.65/2016

(Passed on 30/08/2016)

(Mahadeo Gaikwad Vs. Vasant Herkal)

This is an application filed by defendant Nos.1 to 3 for under Order 7 Rule 11 of C.P.C. to direct plaintiffs to pay deficit court fee stamp.

2] Perused the application and say of plaintiffs thereon. Heard Mr.U.H.Sanas, Learned advocate for defendants and Mr.R.H.Bhosle, Learned advocate for plaintiffs.

3] According to defendants, this is a suit for declaration that the plaintiffs are the owner of 91 R land and perpetual injunction. Suit property is part of Gat No.600 situated at Shendurjane, Tal.Wai, Dist.Satara. Therefore, plaintiffs are required to pay court fees stamp as per valuation of 91 R land. However, plaintiffs have not paid the requisite court fees stamp. Hence, the application.

4] Plaintiffs have filed their say at Exh.24. It is contended that the application is false and not maintainable in the eyes of law. The application is filed only for prolonging the matter. Plaintiffs have paid requisite court fee stamp as per the Maharashtra Court Fees Act,1959. Therefore, there is no question of giving stamp on valuation of 91 R land. Hence, prayed for rejection of application.

5] Considering the rival submissions of both sides following points arise for my determination and I recorded my findings thereon as under;

Sr.No.	Points	Findings
1]	Whether defendants prove that the suit is under valued ?	...In the affirmative
2]	What order ?	...Application is allowed.

REASONS

AS TO POINT NO.1 AND 2 :-

6] It is argued by the Learned advocate for defendants that declaration is of two types. One is declaration relating to ownership etc. and other is declaration of status without monetary attribute. The suit comes in first category of declaration because plaintiffs have sought declaration regarding specific 91 R land. Therefore, monetary attribute is attached to such declaration. Therefore, plaintiffs are required to pay court fees stamp as per valuation of 91 R land.

7] On the other hand, the Learned advocate for plaintiffs argued that Gat No.601 is owned by the plaintiffs and Gat No.600 is owned by the defendants. Plaintiffs have sought declaration of 91 R land which is part of Gat No.601. The said land is owned by the plaintiffs. Therefore, there is no question of giving court fees stamp as per valuation of said land.

8] Learned advocate for the plaintiffs relied upon the judgment of the Hon'ble Patna high court in Devasharay Singh V/S Saroj Kumar Alias. Saroj Singh,(2008 AIR(Pat) 154) wherein it was held that if the plaintiffs seeks a relief for cancellation of a deed he has to pay *ad valorem* court-fee as per the valuation of the deed, but if he seeks a relief for declaring the deed to be *void ab initio* and not binding upon him a fixed declaratory court-fee would be sufficient.

9] Before going into the rival submissions of both sides, it is proper to mention the relevant provisions under the *Code of civil procedure and the Maharashtra Court Fees Act, 1959*.

Order VII Rule 11. Rejection of plaint :-

The plaint shall be rejected in the following cases:-

- (a) where it does not disclose a cause of action;
- (b) where the relief claimed is undervalued and the plaintiff, on being required by the Court to correct the valuation within a time to be fixed by the Court, fails to do so;
- (c) where the relief claimed is properly valued, but the plaint is written upon paper insufficiently stamped and the plaintiff, on being required by the Court to supply the requisite stamp-paper within a time to be fixed by the Court, fails to do so;
- (d) where the suit appears from the statement in the plaint to be barred by any law ;
- (e) where it is not filed in duplicate;
- (f) Where the plaintiff fails to comply with the provisions of rule 9.

Provided that the time fixed by the Court for the correction of the valuation or supplying of the requisite stamp-paper shall not be extended unless the Court, for reasons to be recorded, is satisfied that the plaintiff was prevented by any cause of an exceptional nature from correcting the valuation or supplying the requisite stamp-paper, as the case may be, within the time fixed by the Court and that refusal to extend such time would cause grave injustice to the plaintiff.

10] Considering the aforesaid provision, it appears that where the relief claimed is undervalued, the Court can give time to the plaintiff to correct the valuation within a fixed time. Only when the plaintiff, on being required by the Court to correct the valuation within a time to be fixed by the Court, fails to do so, the court shall reject the plaint.

11] **Section. 6 (iv) (d) of Maharashtra Court Fees Act,1959 reads as under:-** For ownership etc. of immovable property etc.-In suits for declaration in respect of ownership, or nature of tenancy, title, tenure, right, lease, freedom or exemption from, or non-liability to, attachment with or without sale or other attributes, of immovable property, such as a declaration that certain land is personal property of the Ruler of any former Indian State or public trust property or property of any class or community-one-fourth *ad-valorem* fee leviable for a suit for possession on the basis of title of the subject-matter, subject to a minimum fee of [one hundred rupees]:

Provided that if the question is of attachment with or without sale the amount of fee shall be the *ad valorem* fee according to the value of the property sought to be protected from attachment with or without sale or the fee [Sixty Rupees]. whichever is less :

Provided further that where the defendant is or class under or through a limited owner, the amount of fee shall be 3 [one-third] of such *ad valorem fee*, subject to the minimum fee specified above :

Provided also that in any of the cases falling under this clause except its first proviso, when in addition any consequential relief other than possession is sought the amount of fee shall be one-half of *ad valorem* fee and when the consequential relief also sought include a relief for possession the amount of fee shall be the full *ad valorem* fee ;

12] On perusal of the record it appears that plaintiffs have sought relief of declaration of ownership of 91 R land along with consequential relief of perpetual injunction. Therefore, monetary attribute is attached to such declaration. Therefore, plaintiffs are required to pay court fees stamp as per provision contained in Section 6(iv)(d) of the Maharashtra Court Fees Act. The facts of the judgment of the Hon'ble Patna high court in Devasharay Singh V/S Saroj Kumar Alias Saroj Singh,(2008 AIR(Pat) 154) upon which

the plaintiffs are relied, are different from the present suit, as in the present suit plaintiffs have sought the relief of declaration of ownership to 91 R land and not declaration in respect of the sale-deed. Therefore, this judgment is not helpful to the plaintiffs.

13] Considering the aforesaid provision of law relating to court fee stamp it appears that for the relief of declaration of ownership in addition consequential relief other than possession is sought the amount of court fee stamp shall be one half of the *ad-valorem* fee. In the present suit plaintiffs have sought relief of declaration of their ownership to 91 R land along with consequential relief of perpetual injunction. Therefore, plaintiffs are required to pay one half of *ad valorem* fee leviable for a suit for possession on the basis of title of the subject matter. Therefore, plaintiffs are required to pay deficit court fee stamp as per third proviso of Section 6 (iv)(d) of the Maharashtra Court Fees Act. Hence, in answer to point No.1, I record my finding in the affirmative and in answer to point No.2 pass the following order.

ORDER

1. The application is allowed.
2. Plaintiffs shall pay deficit court fees stamp as per third proviso to Section 6 (iv)(d) of the Maharashtra Court Fees Act within One month from the date of order.
3. Both parties to take note.
4. Costs in cause.

Wai
Date : 30/08/2016.

(Rohini K. Thorat)
2nd Jt Civil Judge, Junior Division, Wai.