

ORDER BELOW EXHIBIT 18 IN RCS. 722/2013

Defendants have filed application for rejection of plaint under order VII rule 11(b) & (c) of Code of Civil Procedure.

2. The council for the defendant submitted that plaintiffs have filed present suit for declaration of ownership in respect of land survey No. 3 hissa No. 6(P) admeasuring 632 sq. meter situated at village Pisavali Tal. Kalyan. The plaintiffs have also challenged the agreement for sale and power of attorney both dated 05.02.1994 executed in favour of defendant No. 2 and deed of confirmation dated 02.10.2009 and deed of conveyance dated 08.12.2009 executed in favour of defendants are illegal and not binding on plaintiffs. The plaintiffs have valued the suit land for Rs. 1,00,000/- and valued the suit as per section 6(iv)(d) and paid court fee of Rs. 6,430/- only. As the plaintiffs have challenged the agreement for sale, power of attorney, deed of confirmation and deed of conveyance, the plaintiffs ought to have value the suit properly. Therefore, the plaintiffs neither valued the suit properly nor paid the court fee. Therefore, plaint is liable to be rejected.

3. The plaintiffs have strongly opposed the application vide reply Exh. 21. The counsel for the plaintiffs submitted that the valuation made by the Government as per ready reckoner is not proper for

payment of Court fee. Therefore, market value mentioned in the ready reckoner can not be considered as market value of the suit property. Enquiry under section 8 of the Bombay Court Fees Act is essential. Cancellation of agreement for sale, Power of attorney, confirmation deed and deed of conveyance are ancillary reliefs. Therefore, said reliefs did not attract any court fee. Therefore, he prayed to reject the application.

4. Considering the averments in both the applications and reply this Court framed preliminary issue "*Whether suit is property valued?*" Both parties have not adduce any evidence. Therefore, matter is fixed for hearing.

5. The plaintiffs ought to have value the suit according with the relief claimed by them. The plaintiffs are claiming declaration for ownership and possession of the suit property. For the same plaintiff ought to have paid the court fee according with section 6(iv)(d) of the Maharashtra Court Fees Act. Plaintiffs have also challenged agreement for sale and power of attorney both dated 05.02.1994. For the same plaintiffs ought to have value the suit as per section 6(iv)(ha) of the Maharashtra Court Fees Act. Plaintiff have also challenged the confirmation deed dated 02.10.2009 and deed of conveyance dated 08.12.2009 but for the same also plaintiff ought to have value the suit as per section 6(iv)(ha) of the Maharashtra Court Fees Act. Prima facie

appears that valuation of the suit property as shown is every meager. Therefore, plaintiffs ought to have ascertain market value of the suit property. Prima facie appears that plaintiffs have not valued the suit properly and have also not paid proper Court fee accordingly. Therefore, plaintiff is hereby directed to comply the said order before 17.01.2019.

Date :- 03.01.2019

(A. S. Lanjewar)
4th Jt. Civil Judge (S.D),
Kalyan.