

**IN THE COURT OF JOINT CIVIL JUDGE (J.D.) AT
SHAHAPUR, DIST. THANE.**

(Presided over by V. N. Shimpi)

**Regular Civil Suit No.56/2023
Exhibit No. 18
(CNRNo.MHTH200011782023)**

- (1) Kamalabai Gopal Bangar,
Age : 65 years, Occ. : Housewife,
- (2) Deepak Gopal Bangar,
Age : 52 years, Occ. : Farmer,
- (3) Hari Gopal Bangar,
Age : 48 years, Occ. : Farmer,
- (4) Namdev Gopal Bangar,
Age : 45 years, Occ. : Service,
All 1 to 4 R/o. Shelvali Bangar,
Post-Kinhavali, Tal. Shahapur,
Dist. Thane.

... **Plaintiffs**

– Versus –

- (1) Tatu Deu Bangar,
Age : 65 years, Occ. : Farmer,
- (2) Kashinath Deu Bangar,
Age : 56 years, Occ. : Service,
- (3) Vitthal Deu Bangar,
Age : 62 years, Occ. : Farmer,
- (4) Surekha Barku Bangar,
Age : 55 years, Occ. : Farmer,
All 1 to 4 R/o. Shelvali Bangar,
Post-Kinhavali, Tal. Shahapur,
Dist. Thane.

... **Defendants**

**SUIT FOR DECLARATION, INJUNCTION, PARTITION AND
SAPARATE POSSESSION.**

Smt. Sandhya Bhare : Advocate for plaintiffs.
Mr.N.T.Bondre : Advocate for defendants.

Order below Exh. 18 in R.C.S. No. 56/2023

By way of present application under consideration the defendant No 3 has prayed to reject the plaint by invoking the provision of Order 7 Rule

11 of Code of Civil Procedure on the following grounds. That, no cause of action has arisen to file a suit for plaintiffs, that cause of action has not mentioned in the plaint itself. It has further asserted by the defendant no 3 that, plaint does not disclose that, when cause of action has arise since plaintiffs have left relevant para blank. That plaintiff have not paid proper Court fee and have wrongly valued a suit for Rs. 1000/- (one thousand rupees only). It has further asserted by the defendant no. 3 that, wrong jurisdiction has been mentioned in the plaint, that plaintiffs have not filed plaint in a duplicate. That, the description and four boundaries has not mentioned in the plaint. On these grounds defendant no. 3 prayed that, plaint be rejected.

3) Plaintiffs filed their say to the present application at Exh. 29. It has contended by the plaintiffs that, cause of action has been clearly mentioned in the plaint and they have issued notice to the defendants on 14/04/2022. That, the suit has filed for partition, suit properties are the ancestral property and they are co-sharer and having one half share. Therefore, they have paid court fee as per the provisions of Section 6(IV) (j). It has contended by the plaintiff that, inadvertently para no. 6 has been left blank. It has further contended by the plaintiffs that, in para no. 2 it has specifically mentioned that, suit property is situated at Shahapur. It has further also contended by the plaintiffs that, there is no provision in the code of civil procedure regarding filing duplicate copy of plaint. Further, no such objection was endorsed by court at the time of filing the suit. On these ground plaintiff prayed that, application be rejected.

4) It is pertinent to note here that, present application has filed by defendant under Order-7, Rule-11. Therefore, for better understanding it is necessary to reproduce the Order-7, Rule-11 which runs as follows.

“Order-7 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 under-valued, and the plaintiff, on being required by the Court to so 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 Courts, 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-papers 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 correction the valuation or supplying the requisite stamp-papers, 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.]”

5) I have considered the submissions of the learned advocates for the parties and I have also gone through the records. So far as Order 7 Rule 11(a) is concern it is applicable only when cause of action has not disclosed in the plaint. In this situation it is necessary to view the plaint. On viewing the plaint it appears that, in plaint para no. 4 at it has mentioned by the plaintiff that, “*the plaintiffs proposed to the defendants for the partition of the suit property by meats and bond by approaching the concern revenue authority but the defendants have opposed the suggestion and they are not willing for partition of the suit property.*” Further, it has mentioned by plaintiff in the plaint para no. 12 that, “*on 13/04/2022 they have sent notice to defendants proposing partition of suit property.*”

6) Cumulative effect of afore stated portion of the plaint shows

that, there is sufficient averment regarding cause of action Therefore, I do not find any force in the ground that, cause of action has not been mentioned in suit.

7) Admittedly, suit is for declaration, injunction and partition. In the plaint para 17, plaintiffs have asserted that *“The suit property is the ancestral property of the parties to this suit, plaintiffs and defendants have ½ (half) share each in the property. Suit property is not assessable to its monetary evaluation. Hence the present suit is valued the purpose of Court U/s 6 (vi) (j) of the Bombay court fees Act and accordingly court fee stamps of Rs 1000/-.”* Admittedly, plaintiffs have valued the suit for Rs 1000/- and paid court fees on the said valuation as per the provisions of section 6 (vi) (j) of the Maharashtra Court fees Act. In this situation it is necessary to reproduce the provision of Section 6 (vi) (j) of the Maharashtra Court fee Act. Which runs as follows:- *(for the sake of convenience only relevant provisions has been reproduce in detail)*

“Computation of fees payable in certain suits.— *The amount of fee payable under this Act in the suits next hereinafter mentioned shall be computed as follows:—*

- (i) for money.*
- (ii) for maintenance and annuities.*
- (iii) for other moveable property having a market value.*
- (iv) against recovery of any money due as a tax, etc*
 - b) similar claim in respect of moveable property.*
 - c) for status with monetary attribute.*
 - d) for ownership etc. of immoveable property*
 - e) declaration for easements, etc.*
 - f) for other status without monetary attribute.*
 - g) for other status without monetary attribute.*
 - h) or periodical money returns.*

- ha) *for avoidance of sale, contract for sale, etc.*
- hb) *for avoidance of acquisition proceedings.*
- i) *for accounts*
- 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 the value of the subject matter was one thousand rupees.*

In all suits under clauses (a) to (l), the plaintiff shall state the amount at which he values the relief sought, with the reasons for the valuation.

- v) *for possession of lands, houses and gardens.*
- vi) *to enforce a right of pre-emption.*
- vii) *for share in joint property.*
- viii) *for interest of assignee of land revenue.*
- ix) *to set aside an attachment.*
- x) *to redeem.*
to foreclose.
- xi) *for specific performance.*
- xii) *between landlord and tenant.”*

8) From the above provision it is clear that, the suit for declaration with or without injunction and for other consequential relief can be valued for Rs 1000/-. particularly when suit property is not susceptible of monetary evaluation and no other provision prescribed in Act to value the suit.

9) It is important to mention here that, in the present application defendant No.3 has not stated the exact value of the suit property. Further, there is no documentary instrument on record to ascertain the value of suit property. It is a universal truth that, value of the property is the change according to time, market strategy and it is in the form of infinity. Considering this provision and face value of the plaint it is clear that,

plaintiff have paid proper Court fee for the reliefs of declaration and injunction only. However, the in the present suit plaintiffs have prayed for the relief of partition. It is important to mention here that the Section 6 (vii) of the Maharashtra Court Fees Act deals with the provision for the computation of Fees payable in suit for share in joint property. Section 6 (vii) of the Maharashtra Court Fees Act runs as follows:- *(for the sake of convenience only relevant provisions has been reproduce in detail)*

“Computation of fees payable in certain suits.— The amount of fee payable under this Act in the suits next hereinafter mentioned shall be computed as follows:—

- (i) *for money.*
- (ii) *for maintenance and annuities.*
- (iii) *for other moveable property having a market value.*
- (iv) *against recovery of any money due as a tax, etc*
 - b) *similar claim in respect of moveable property.*
 - c) *for status with monetary attribute.*
 - d) *for ownership etc. of immoveable property*
 - e) *declaration for easements, etc.*
 - f) *for other status without monetary attribute.*
 - g) *for other status without monetary attribute.*
 - h) *or periodical money returns.*
 - ha) *for avoidance of sale, contract for sale, etc.*
 - hb) *for avoidance of acquisition proceedings.*
 - i) *for accounts*
 - j) *for other declarations.*
- v) *for possession of lands, houses and gardens.*
- vi) *to enforce a right of pre-emption.*
- vii) ***for share in joint property.— In suit for partition***

and separate possession of a share of joint family property or of joint property, or to enforce a right to a share in any property on the ground that it is joint family property or joint property whether or not the plaintiff is in actual or.

- viii) for interest of assignee of land revenue.*
- ix) to set aside an attachment.*
- x) to redeem.*
to foreclose.
- xi) for specific performance.*
- xii) between landlord and tenant.”*

10) Considering the prayer for the relief of partition in suit property and provision of the Section 6 (vii) of the Maharashtra Court Fees Act. Plaintiffs were bound to pay the Court fee on the assessment value of the suit property. As aforesaid plaintiffs have paid Court fee only for the relief of declaration and injunction. As per the provisions of section 6 (vi) (j) of the Maharashtra Court fee Act and have not paid the court fee for the relief of partition.

11) At the cost repetition from the face value of the plaint it appears that, suit is for partition of the ancestral property and defendants are co-sharerer in it. It means plaintiff and defendant are sailing in the same boat and in this situation conclusion of the suit will have effect on all the parties to the suit. It is also important to mention here that, defendant no. 1 to 4 have appeared through one and same counsel Shri. N.T. Bondre. On the contrary present application has filed by the defendant no. 3 and said application has signed by Ld.Advocate Shri. N.T.Bondre only on behalf of defendant no. 3. It is also important to mentioned here that defendant no. 1, 2 and 4 have also filed their written statement at Exh.29 on 05/09/2024 i.e. more than two and half month post of present application. In other words it clears from the application itself that, present application is for rejection of plaint only against the defendant no. 3.

12) It has well settled by the Hon'ble Supreme Court in **MADHAV PRASAD AGRAWAL AND ANOTHERS V/S. AXIS BANK LTD. AND ANOTHERS (2019) 7 SCC 158** and held in para no. 10 that,

“We do not deem it necessary to elaborate on all other arguments as we are inclined to accept the objection of the appellant(s) that the relief of rejection of plaint in exercise of powers under Order 7 Rule 11(d) CPC cannot be pursued only in respect of one of the defendant(s). In other words, the plaint has to be rejected as a whole or not at all, in exercise of power under Order 7 Rule 11(d) CPC. Indeed, the learned Single Judge rejected this objection raised by the appellant(s) by relying on the decision of the Division Bench of the same High Court. However, we find that the decision of this Court in Sejal Glass Ltd. is directly on the point. In that case, an application was filed by the defendant(s) under Order 7 Rule 11(d) CPC stating that the plaint disclosed no cause of action. The civil court held that the plaint is to be bifurcated as it did not disclose any cause of action against the Director’s Defendant(s) 2 to 4 therein. On that basis, the High court had opined that the suit can continue against Defendant 1 company alone. The question considered by this Court was whether such a course is open to the civil court in exercise of powers under Order 7 Rule 11(d) CPC. The court answered the said question in the negative by adverting to several decisions on the point which had consistently held that the plaint can either be rejected as a whole or not at all. The court held that it is not permissible to reject plaint qua any particular portion of a plaint including against some of the defendant(s) and continue the same against the others. In no uncertain terms the court has held that if the plaint survives against certain defendant(s) and/or properties, Order 7 Rule 11(d) CPC will have no application at all, and the suit as a whole must then proceed to trial.”

13) On perusal of record it clears that, at the time of institution of suit plaintiff has not filed plaint in duplicate on record. Further, said fact is also clear from the para no. 7 of the say of plaintiffs at Exh. 21. It is necessary to mention here that, the code of civil procedure is handmade of the justice and a procedural law. Considering this it is necessary to take a liberal approach while dealing with the procedural aspect. Further, in view of section 151 of CPC. This court may pass such order which are necessary for the ends of justice or to prevent abuse of the process of the court.

14) As it has already held that, plaintiffs have not paid court fees stamp for the relief of partition and separate possession. In this situation it is necessary to give sufficient opportunity to the plaintiff to pay a requisite stamp paper. It is also necessary to direct the plaintiff to file duplicate copy of plaint on record in compliance of provisions of Order 1 Rule 1 of CPC.

15) In view of the aforesaid facts reasons and riling(Supra) of Hon'ble Supreme Court. I pass following order :-

ORDER

- 1) Application is rejected.
- 2) Plaintiffs are directed to pay the requisite stamp in respect of prayer for partition and separate possession till next date.
- 3) If plaintiffs are fail to pay the requisite stamp duty in that situation plaint will reject under Order-7, Rule-11 (b) of the Civil Procedure Code.
- 4) Plaintiffs are directed to file duplicate copy of plaint on record till next date.
- 5) If plaintiffs are failed to filed duplicate copy on record in that situation plaint will reject under Order 7 Rule 11(e).
- 6) No order as to costs.

Place :-Shahapur.
Date :- 27/01/2025

(V. N. Shimpi)
Jt. Civil Judge (J. D.),
Shahapur