

MHWS080015172023



ORDER BELOW EXH.14

This is an application filed by defendant under Order 7 Rule 11 read with Order 7 Rule 10 read with Section 151 of Civil Procedure Code.

2] As per application, the plaintiff filed suit for partition and separate possession of suit property situated in Gram panchayat Mop, Tq. Risod, Dist. Washim described as property no. 324 admeasuring 9.90 sq. mtr., property no. 213 admeasuring 166.99 sq. mtr. and property no. 313 admeasuring 700 sq. mtr. It is submitted that, valuation of property described above has shown by the plaintiff became a market value for all property at Rs.1,25,000/-. It is further submitted that, described above is fetching market value at Rs.10,000/- per sq. mtr. accordingly total property is near about 241.94 sq. mtr. Considering the aforesaid fetching market value which comes Rs. 24,19,457/- approximately. Considering the nature of constructed property no.213 is having construction costs value Rs.10,00,000/- after depression cost. Therefore, total value of property described above in plaint fetching value at Rs.34,19,457/-. The plaintiff did not approximately value of the suit property as per the market value with malice intention to pay minimum court fees. The valuation of suit property given in the plaint is definitely much less than market value. Therefore, it is

necessary to give direction to the plaintiff to make correction as per the market value and pay requisite court fees, otherwise suit may kindly be dismissed with cost and plaint may kindly be rejected in the interest of justice. Considering the aforesaid circumstances mentioned in plaint may kindly be rejected on account of wrong valuation of suit and paying of lack of necessary court fees alternatively after correction in value of suit the plaint may kindly be return under Order 7 Rule 10 of C.P.C. for proper presentation of suit before the competent Court. Lastly, he prayed to allow the application.

3] Per contra, the present application is strongly opposed by plaintiff. It is a contention of plaintiff that, plaintiff have valued the suit property. While considering application under Order 7 Rule 11 of C.P.C. averments in the plaint is considered and not the defence of defendant as such the valuation drawn by defendant and raised the objection is not maintainable and plaint cannot be rejected on the ground of under valuation. Hence, there is no any ground to reject the plaint. Lastly, he prayed to reject the application.

4] Following points arise for my consideration and I have recorded my findings against each of them for the reasons mentioned there below :

<u>Sr. No.</u>	<u>POINTS</u>	<u>FINDINGS</u>
(i)	Whether application is liable to be allowed ?	...No
(ii)	What Order ?	Application is rejected.

REASONS

5] Read application, say filed by plaintiff Perused record and proceeding. Heard learned advocate for both sides, argued in lines with their application and say. Id. advocate for plaintiff has relied on following case laws :

i] Saleem Bhai & Ors. Vrs. State of Maharashtra & Ors., 2003 (2) Mh.L.J. 529, Hon'ble Supreme Court of India held that, it is only the plaint in which the relevant facts are to be seen not the written statement for the purpose of Order 7 Rule 11 Civil Procedure Code.

ii] Chetan Krishna Shetty Vrs. Seema Chetan Shetty & Ors., 2022 (3) BCR 510 Hon'ble Bombay High Court held that, in suit for declaration that any sale, or contract for sale or termination of contract for sale, of any moveable or immoveable property is void of ad valorem fee leviable on the value of the property.

AS TO POINT NO. 1 :-

6] Before proceed to further, it is proper to look into Order 7 Rule 11 of C.P.C. **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 proper 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...)

7] It is settled principle of law that, while deciding application under Order 7 Rule 11 of C.P.C. The court is not required to consider defence, other side or documentary evidence given by the defendants on merits, unless, appropriate issues are framed and the parties are allowed to lead evidence in this behalf. Further, the averments in the plaint are required to be treated as to whole considering an

application under Order 7 Rule 11 of C.P.C. The court cannot look into defence of the defendants.

8] In the light of these settled principles here, we have to see facts of the case in hand. On perusal of plaint, it is specifically averred in para no.9 of the plaint that, valuation of suit property is Rs.1,25,000/-. On the contrary ld. advocate for defendant contended that, market value of suit property at Rs. 34,19,457/- and filed the documents of valuation certificates of property nos.213 and 324 at Exh.21. But to decide the present application only averments in the plaint to be considered. The contentions raised by defendant in application as well as documents filed on record it is required full fledged trial of suit. Hence, application is not tenable at this stage. Hence, I answered point no.1 in the negative.

AS TO POINT NO. 2 :

Considering all the above aspects and finding of point no.1 the application is liable to be rejected. Accordingly, I pass the following order.

ORDER

1. The application below Exh.14 is rejected.
2. Costs in cause.

Date : 04/10/2024.

(Dinesh M. Gaikwad)
Jt. Civil Judge (Jr. Dn.),
Risod.

CERTIFICATE

I affirm that the contents of this P.D.F. File Order/Judgment are same word to word, as per the original **Order.**

Name of the Stenographer: Prashant K. More, **(Grade III)**

Name of court : Jt.C.J.J.D.& JMFC, Risod.

Date : 04.10.2024

Order signed by the
Presiding Officer : 11.11.2024

Order uploaded on : 11.11.2024