

R.C.S. No.17/2010

Simapuri Vs. Vilas

CNR No.MHWS09-000195-2010

ORDER PASSED BELOW EXH.48

(Passed on 06.09.2018)

1. This is an application filed by the defendant No.2 to 4 for inquiry and fixation of valuation of counter claim of defendant No.2 to 4 under Section 8 of Bombay Court Fees Act.

2. It is contended by the present defendants that they have filed counter claim only for perpetual injunction and accordingly counter claim is valued. Further, objection application by plaintiff challenging valuation of the counter claim filed and allowed.

3. It is further contended by the present defendants that it is necessary to determine correct valuation of the counter claim under section 8 of the Bombay Court Fees Act. What is the correct valuation is not determined by the court. Property is agricultural land subject to land revenue the sale deed of plaintiff is of Rs.1,25,000/-. The counter claim is simplicitor for permanent injunction. Thus, as the Court passed the order to pay court fees and therefore, it is necessary to determine the correct valuation for paying correct court fees as per Act. Hence, inquiry be made and correct valuation of counter claim be determined otherwise defendant No.2 to 4 are ladies and minor will suffer loss. Hence, they filed the present application for correcting valuation of counter claim.

4. The plaintiff filed her say and opposed the present application. It is contended by the plaintiff that as there is no such motive of section 8 of Bombay Court Fees Act. Because in this matter the order regarding the counter claim whatever mentioned in present application is totally barred by limitation as so many opportunities have been given to

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the defendant. So that, correction of court fees valuation after order of court within specific time parties have to follow up. But no such follow up has been taken by defendants or their advocate. If correction of valuation is allowed, then only such application is tenable but no such order on record.

5. It is further contended by the defendant that on 14.11.2011 this court has again directed to deposit the court fees stamp within one week, then also latches on the part of defendants. They failed to follow the order of the court. Thus, there is consistent breach of order of court. Hence, the plaintiff for rejection of this application.

6. Perused the application. Heard the learned advocate for the defendants Shri R.D.Thakre and the learned advocate for the plaintiff Shri J.H.Shaikh at sufficient length.

7. Perused the record. Perusal of the record shows that after filing this application my learned Predecessor called report from Assistant Superintendent. Accordingly, the then A.S. given his report contending that the counter claimants valued the counter claim at Rs.1,000/- and for that valuation court fees of Rs.200/- is necessary to be paid.

8. The learned advocate for the plaintiff objected this application on the ground that already issues are framed at Exh.41. Perusal of the issue No.3 shows that the defendant has asked relief of declaration about the alleged sale-deed. Hence, as per Section 6 of Bombay Court Fees Act, the counter claimants have to pay court fees on the alleged sale-deed.

9. Perusal of the issues at Exh.41 shows the contention as alleged by the advocate for the plaintiff. However, it is important to note here that during the course of argument the learned advocate for the defendants clearly submitted that their counter claim at Exh.16 is only for

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perpetual injunction. The counter claimants have not sought relief of any declaration.

10. Perusal of the counter claim at Exh.16 shows that the title of the counter claim is for permanent injunction only. Moreover, in prayer clause of the counter claim only relief of decree for permanent injunction is claimed. Perusal of the counter claim at Exh.16 further shows that the counter claimants have valued their counter claim at Rs.1,000/- and paid court fees of Rs.200/- which is proper for relief of permanent injunction. The A.S. has reported the same. Hence, in such circumstance, considering submission of the learned advocate for the defendants, I pass the following order :-

ORDER

- 1) The application (Exh.No.48) is disposed-off with no order as to costs.
- 2) The matter is old one both parties are directed to expedite the matter.

Sd/-

Manora.
Date : 06/09/2018

(**R.M. Shaikh**)
2nd Jt. Civil Judge, (J.D.), Manora.

CERTIFICATE

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

Name of Clerk :- N. B. Khandare (Steno-L.G.)

Court Name :- 2nd Jt. Civil Judge (Jr.Dn.) and J.M.F.C., Manora.
Dist. Washim.

Date :- 06/09/2018

Order signed by the :- 09/09/2018
presiding officer on

Order uploaded on :- 07/09/2018