

R.C.S. No. 32/2016

Subhash+ 1 Vs. Ramesh + 1

Order Below Exh. No. 15

(Passed on 05/09/2018)

[CNR No. MHWS090005362016]

1. This is an application filed by the defendant No.1 for rejection of the plaint under **Order 7 Rule 11 of the Civil Procedure Code** “for short the C.P.C”.

2. Perused the application and the say filed by the advocate for the plaintiff. Heard the learned advocate for the defendant Shri. P.D. Rathod and learned advocate for the plaintiffs Shri. R.D. Thakre.

3. Perused the record. It is contended by the defendant that the plaintiffs filed a suit for possession and permanent injunction. In the present form the suit of the plaintiffs is not tenable under law as they have not complied the provisions of law as considering the fact and documents of the case on which the plaintiffs relying. It is further submitted that if going through the pleading and the relief claimed is not sustainable under law in the present fact of the case. Hence, it is liable to be rejected under Order 7 Rule 11 of the C.P.C.

4. It is further submitted that, the plaintiffs have sought relief of possession which is the main relief in the suit according to the pleading and thereafter claiming a relief of injunction. That the suit of the plaintiff is undervalued which is pleaded in para No.9 of the plaint and the plaintiffs valued the suit for the purpose of court fees and jurisdiction of rupees 1,000/- and paid rupees 200/- only. It is submitted that the plaintiffs have not valued the suit for purpose of court fees and jurisdiction for relief of possession. The each relief should be valued separately for the purpose of the court fees and

jurisdiction. But the plaintiffs have not valued the suit properly for the relief claimed hence suit of the plaintiffs is liable to be rejected with cost.

5. It is further submitted by the defendant that, the plaintiffs have pleaded in para No.7 regarding the cause of action and which is shown July 2016, in fact for to filing the suit the plaintiff have no cause of action and it is clear from the pleading itself the plaintiff have only mentioned the cause of action arose on July 2016 but there is no such indication which has to show that the cause of action arose on July 2016. Therefore, also the suit of the plaintiff is liable to be rejected for cause of action.

6. The advocate for the plaintiffs strongly opposed this application as the ground mentioned in this application is not tenable. The defendant/ applicant not given amount of the court fees which is required to file with this suit. Hence, application of the defendant is vague. Further, it is submitted by the advocate for the plaintiff that if the court comes to the conclusion that the suit is undervalued and required court fees is not fix then the plaintiff is ready to file the required court fees as per the direction of this court. Hence, this application is not having any merit and liable to be rejected.

7. Perused the record and proceeding of this case. The plaintiff filed this suit for possession and perpetual injunction. The plaintiffs have valued their suit for Rs.1,000/- and paid court fees of Rs.200/- only. It was essential for the plaintiffs to value their suit for possession and permanent injunction and to pay court fees accordingly. Further, record show that the sale deed of the suit property is not filed on record through which the court can ascertain the actual court fees. The plaintiffs have come with specific case that they got the suit property from government. Hence, in such situation it will be just and proper to direct the plaintiffs to correct the suit valuation as per **Maharashtra Suit Valuation (Determination of**

Value of Land for Jurisdiction Purposes) Rules, 1983 and to pay court fees as per **Bombay Court Fees Act, 1959**.

8. I have gone through the provisions of **Order 7 Rule 11** of the C.P.C. which provides that on the following grounds the plaint shall be rejected. The grounds are as follows.

- 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 provision of rule 9.

The plaint shall be rejected in above cases. The application comes within the purview of Order 7 Rule 11(b) and (c) of the situations under order VII Rule 11 (a) to (f) of the Civil Procedure Code. Therefore, I am of the view that opportunity and time should be given to the plaintiff for correcting the valuation of the suit and to deposit proper court fees as per law. After going through the legal provisions I am of the view that the suit ought to be valued at market value and court fees should have to be given accordingly. Hence, the plaintiffs should have to be directed to correct the valuation of the suit and pay court fees accordingly.

9. Moreover, in **Civil Appeal No. 5254/2006 i.e. P.V. Guru Raj Reddy & Another Vs. P. Neeradha Reddy in para No.5 on Feb.13, 2015 the Hon'ble Apex Court** held that At the stage of exercise of power under Order VII R.11 the stand of the defendants in the Written Statement or in the application for rejection of the plaint is wholly immaterial. It is only if the averments in the plaint ex facio do not disclose a cause of action or on a reading thereof the suit appears to be barred under any law the plaint can

be rejected. In all other situations, the claims will have to be adjudicated in the course of the trial. So considering this legal aspects at this stage I am of the view that plaintiffs should be given one opportunity to correct the valuation and to pay court fees accordingly. Hence, I pass the following order.

OPERATIVE ORDER

1. Application (Exh. No. 15) is hereby dispose off in following terms.
2. The plaintiffs are directed to correct valuation of the suit and to pay court fees as per para No. 7 of this order.
3. The plaintiffs are further directed to supply the requisite stamp paper within one month failing which the plaint shall stand rejected unless time is extended under Order 7 Rule 11 of the Civil Procedure Code.
4. No order as to costs.

Sd/-
(R.M.Shaikh)

Date : - 05/09/2018

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 :- P.R. Nawghare(Jr. clerk)

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

Date :- 05/09/2018

Order signed by the :- 05/09/2018
presiding officer on

Order uploaded on :- 05/09/2018