



ORDER PASSED BELOW EXH. 30
(Passed on 11/07/2024)

01. This application is filed by defendant No. 9 under Order VII Rule 11 of the C.P.C. for rejection of the plaint. The plaintiff has filed say at Exh. 31.

02. Defendant No. 9 filed this application on two grounds. Firstly, the plaintiff had filed suit R.C.S. No. 11/2020 in which the Court by passing order below Exh. 14 directed the plaintiff to affix the necessary Court-fee, however, the plaintiff did not pay the Court-fee. Therefore, plaint has been rejected. The plaintiff again filed this suit on the same cause of action. The plaintiff also changed the relief in the present suit. Therefore, the present suit is not maintainable and the plaint is liable to be rejected. The defendant raised another objection that, the plaintiff has filed the suit in respect of the suit-properties value of Rs. 38,91,911/-. The plaintiff has only affixed the Court-fee to the extent of her share. The valuation of the whole property is beyond the jurisdiction of this Court. Therefore, he prayed to reject the plaint.

03. On the contrary, the plaintiff denied the contention of the defendant. The plaintiff further submitted that, the suit of the plaintiff is tenable as per the Order VII Rule 13 of the C.P.C. The plaintiff has affixed the necessary Court-fee on her share. The plaintiff prayed to reject the application.

04. Heard both the sides. Perused application, say and record. I have gone through the provision of Order VII Rule 11 of the C.P.C. It is settled principle of law that, while deciding the application for rejection

of plaint, the averment in the plaint should be considered and the defence of the defendant should not take into consideration. I have gone through the plaint. The defendant has relied on the certified copy of Exh. 21 of the R.C.S. No. 11/2020. It appears that the plaintiff had filed the suit. In which the plaint is rejected on the ground that, the plaintiff has not paid the Court-fee. However, in the said order, the Court has mentioned the provision of Order VII Rule 13 of the C.P.C. which is as under:-

13. Where rejection of plaint does not preclude presentation of fresh plaint- The rejection of the plaint on any of the grounds herein before mentioned shall not of its own force preclude the plaintiff from presenting a fresh plaint in respect of the same cause of action.

05. It is clear from the said provision that, the order of rejection of plaint does not preclude the plaintiff from presenting a fresh plaint in respect of the same cause of action. Therefore, in the present suit, the order of rejection of plaint does not preclude the plaintiff from presenting the fresh suit. The objection raised by the defendant No. 9 is not sustainable in the eyes of law.

06. The second objection raised by defendant No. 9 in respect of the valuation of the suit. I have gone through the relevant provisions which are Section 6(4)(vii) which is as follows:

(vii) for share in joint property:- In suit for partition and separate possession of the 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 constructive possession of the property of which he claims to be a co-parcner or co-owner according to the value the share in respect of which the suit is instituted;

Explanation:- For the purpose of this paragraph, if the property in which a share is claimed consists of or includes any land assessed to land revenue for the purpose of agriculture, the value of such land shall be deemed to be the value as determined under paragraph (v) of this section.

The Section 4 of the suit valuation Act 1887 which is as follows:

4. Valuation of relief in certain suits relating to land not to exceed the value of the land.-Where a suit mentioned in the [clauses (c), (d), (e), (g), (I) or (j) of paragraph (iv) or paragraph (vii) in section 6 or Articles 3,4,5 or 7 in Schedule I or clause (f) of Article 23 in Schedule II to the Bombay Court-fees Act, 1959] relate to land or an interest in land of which the value has been determined by rules under the last foregoing section, the amount at which for purposes of jurisdiction the relief sought in the suit is the value shall not exceed the value of the land or interest as determined by those rules.

07. In the present case in hand, admittedly in the para 17 of the plaint, the plaintiff mentioned the market value of the suit-properties as Rs. 38,91,911/-. However, the plaintiff has valued the suit to the extent of her share 1/13 and mentioned the suit valuation of Rs. 2,99,377.80/- and affixed the Court-fee of Rs. 10,430/- I have gone through the above provisions, from the above provisions, it transpires that, the value of the share is required to be mentioned as suit valuation and on which the Court-fee is required to be paid by the plaintiff. In the present suit, the plaintiff has properly valued the suit to the extent of her share and affixed the Court-fee. I have relied on the case law of ***the Hon'ble Allahabad High Court, Mitthoo Lal Vs. Gopal Chand, reported in AIR 1979 ALL 226.*** In the said case, the Hon'ble High Court held that, *"20. The result of got has been said above is that in a suit for partition, for the purpose of jurisdiction the share of the plaintiff in the property is to be valued and not the value of the entire property out of which the share is claim."*

08. In the present case, the plaintiff has already valued the suit to the extent of her share Rs. 2,99,377.80/- which is within the pecuniary jurisdiction of this Court. Therefore, the objection raised by the defendant is not sustainable and liable to be rejected. Hence, I pass the following order:

ORDER

01.	The application below Exh. 30 is hereby rejected with costs.
2	Both parties shall take note of the order.

Umarkhed.
Date: 11/07/2024

(A. S. Shaikh)
2nd Jt. Civil Judge, (Jr. Dn.)
Umarkhed