

CS-CCC/2339/2011

ORDER

IN THE CITY CIVIL COURT AT AHMEDABAD**18****CIVIL SUIT (CCC) NO. 2339 OF 2011.****ORDER BELOW EXH.19/20:-
(CHAMBER SUMMONS)**

1. This Chamber Summons has been taken out by the defendant under the provisions of Order 7 Rule 11(b) of Code of Civil Procedure and prayed for rejecting the plaint on the ground of deficit court fee stamp, more particularly mentioned in the chamber summons.

2. On being served with the notice of this chamber summons, the plaintiff appeared and filed his reply at Exh.26 denying all the averments inter-alia and submitted that as per the sale deed produced along with separate list, the plaintiff has affixed court fee stamp according to the market value, therefore, the chamber summons taken out by the defendant is required to be rejected accordingly.

3. I have heard the L.A. Mr. A.C.Thaker on behalf of the defendant and L.A. Mr. S.M.Shah on behalf of the plaintiff. I have also perused the records. The L.A. of the defendant has contended in support of his application that the plaintiff has not paid court fees according to the market value of the disputed property. Therefore, the plaintiff suit should be rejected under Order 7 Rule 11 of the Civil Procedure Code. On the other side, the L.A. for the plaintiff has submitted that the plaintiff has paid the court fees according to the market value of the property and in support of the same he has produced

the sale deed and copy of the property card of the third party. Therefore, this chamber summons is required to be rejected.

4. On perusing the averments and contention made by the plaintiff in the suit, the plaintiff has challenged the Gift Deed which was executed on 01.03.2007 and prayed to cancel the Gift Deed and also prayed to declare that the disputed property is in co-ownership of heirs of Sohebbhai Mohsin Ali Sabuwala. On perusing the contents, it has been alleged by the defendant that the plaintiff has not properly affixed court fees according to the market value and on that contention he relied on the principles laid down in the case of **Sagar Talkies, Baroda V/s. Yogeshkumar Ambalal Thakkar reported in 1976-GLR-0-707**. The ratio laid down in the aforesaid case that the court fees have to be paid on the basis of the market value of the subject matter of the suit against that the plaintiff's L.A. has argued that in the aforesaid case the suit was filed by the landlord-licensor for getting possession and recovery against the licensee. The plaintiff's L.A. has also relied on the the citation **2010 (0) GLHEL-SC 48351, Supreme Court of India** - Kerala Court-Fees and Suits Valuation Act, 1959 Section 40. In the said case, it was held that the court fees will be payable on value of property and not on market value of the property.

5. I have heard both the parties and considering the ratio laid down by the Apex Court and looking to the record, the plaintiff has filed the suit for challenging the Gift Deed and to declare the

Gift Deed null and void. So, when the suit is for declaration and possession of the property to which the declaration relates court fees shall be computed on the market value of the property or on Rs.1,000/- whichever is higher. In this case, the plaintiff has not prayed for possession and as per the ratio laid down by the Supreme Court that the court fees will be payable on the value of property and not on the market value of the property and moreover, looking to the documents produced by the plaintiff at mark 27/1 & 27/2, copy of the city survey No.1754 & 1756. Thus, it appears from the records that at the time of filing the suit, the plaintiff has paid court fees according to the market value of the property. The defendant is failed to show that the plaintiff has not paid proper court fees on the value of the property and therefore, this chamber summons is hereby rejected and disposed of accordingly.

Pronounced in open court on this **11th day of April, 2012.**

Date : 11/04/2012
Place:AHMEDABAD

(K. J. DASONDI)
AUXILIARY CHAMBER JUDGE,
COURT NO. 18
CITY CIVIL COURT, AHMEDABAD