

SCS No.207/2016

ORDER BELOW EXH.28
(Passed on 25th day of October, 2016)

1. Defendant no.1 has filed the present application as per provisions of order 7 Rule 11 of CPC. for claiming rejection of plaint as barred by Law.
2. It is submitted that, the suit is filed for injunction, declaration, partition, separate possession, mesne profit. Plaintiff no.1 to 3 and defendant no.1 and 2 are the real brothers and sisters. The defendant no.3. who is their mother is the lawful owner of the suit property, as the sale deed is executed in her favour. After the execution and registration of gift deed in favour of defendant no.1. now defendant no.1 has become the legal and lawful owner of the property. The market value of the property for the year 2016 is 56,25,200/- out of which 1/3rd share is claimed in the present suit by plaintiffs for the value of Rs.29,78,700/- for which the court fees is paid for Rs.31,630/-. As per the rates of Government Ready Reckoner the suit property is valued for Rs.56,25,200/-. Therefore, plaintiff has to pay the deficit court fees. By filing the present application here, this defendant no.1. submitted that, for non payment of required court fees the plaint needs to be rejected.

3. As per Exh.33 defendant no.3 has filed reply. Thereby submitted that, their father who is husband of defendant no.3 has purchased the property from his own income. He was in service. Out of his income he had purchased the property. Whenever the document is under challenged in the form of Gift Deed alleged to be executed in favour of defendant no.1. and when the plaintiff is claiming the equal share in the suit property and therefore, the application of defendant no.1. is not maintainable.
4. The plaintiff submitted reply at Exh.34. Thereby stated that, all the submissions made in the application are false. The plaintiff has done the correct valuation. The market value of the suit property cannot be taken into consideration as per submission of defendant no.1. The rate of market value is taken into consideration, then the valuation of the Gift Deed as alleged to be registered in favour of defendant no.1., cannot be accepted. The value as mentioned in the ready reckoner is not the market value of the property. Though the Gift Deed is of the year 2010, the plaintiff has increased the value to the extend of more than 6,00,000/- and more than 20% amount is deposited as the court fees. As per the provisions of Suit Valuation Act, the inquiry is required to ascertain the value of suit property. The provision of Order 7 Rule 11 of CPC are not attracted. This plaintiff is sure about valuation done by him and further that, if proper inquiry about valuation is conducted and if same is determined, then opportunity needs to be given to the plaintiff for the same. Accordingly, he claims for

rejection of application.

5. Heard the arguments at length. Following points arise for determination. Findings to them are given for the reasons as follows :-

<u>SR.NO.</u>	<u>POINTS</u>	<u>FINDINGS</u>
1.	Whether plaint can be rejected?	..No..
2.	What order ?	..Application is rejected as per final order..

R E A S O N S

AS TO POINT NO.1 :-

6. As per provisions of order 7 Rule 11 of C.P.C. for the various grounds mentioned in Clause No.(a) to (f) the plaint can be rejected. It also includes Clause (c) as where the relief claimed is properly valued. But the plaint is written upon the insufficiently stamped paper, then the plaintiff can be required to supply the requisite stamp paper within time fixed by the court and when the plaintiff fails to comply of the order for depositing requisite stamp paper in time, than in such circumstances, the plaint needs to be rejected.

7. Here, as per submission of defendant no.1. as per

the copy of the ready reckoner, he is submitting about more valuation and requirement of more court fees, for filing the suit.

8. Perused the provisions of Maharashtra Court Fees Act, Section 8 in which it provides that, if the Court is of the opinion that, the subject matter of the suit if, wrongly valued than the application is needed before the court for provision of such valuation made and than court has to revise the valuation, after holding such inquiry as may be necessary.
9. Here, alongwith the application of rejection of plaint as per list Exh.29 the certified copy of valuation for the year 2016 of the suit property is filed on record. On perusal of the same about the suit property the chart is not explaining anything and it is the ready reckoner issued for the purposes of the transaction to be carried out by Sub Registrar Office and the stamp duty is to be recovered for fiscal purposes for all such transactions. As per the clause of valuation mentioned in plaint, here it seems that, plaintiff has valued the claim properly.
10. Considering all these submissions and legal position at this interim stage, it seems that, the suit is properly valued for the claim made by the plaintiff. Moreover, as per Section 8 of Suit Valuation Act, about making inquiry, there is no application filed on record by this defendant. Therefore, the provisions of Order 7 Rule 11 of CPC cannot be exercised, and

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plaint cannot be straightway rejected as such at this interim stage. So point no.1 is answered in negative.

AS TO POINT NO.2 :-

11. In view of submissions made by the both parties and on perusal of record, it will be proper to frame issues of valuation and jurisdiction alongwith the main issues. Accordingly, for point no.2 following order is passed.

ORDER

1. Application Exh.28 is rejected.
2. Costs in cause.
3. Suit to proceed.

Nagpur
Dtd.25.10.2016

(Smt.P.S.Kale)
3rd Jt.Civil Judge Sr.Dn.
Nagpur