

**Misc(J) 37/12**

20.05.13:

Order arises out of petitions 1790/12 filed under order VII Rule 11 with reference to section VIII of suit valuation act.

Petitioner/Defendant's case is that plaintiff has erroneously valued his suit. It has been stated that plaintiff has valued his suit for jurisdiction at Rs. 2 Lakhs. The suit of the plaintiff is for declaration & permanent injunction on the property mentioned in schedule A & A(1) of the plaint which consist of land measuring 1 K 5 L and the two storied RCC building. That the present valuation of the land is Rs. 9, 62, 500 and approximate market value of the RCC building is estimated on Rs. 95,00,000. That the suit is filed by the plaintiff for declaration of his right and joint possession, but court fee for such relief is not mentioned in the plaint. In view of the aforesaid facts petitioner has prayed for framing a preliminary issue regarding the alleged undervaluation.

O.P/Plaintiff filed written objection denying the claims of the petitioner and stated that his suit is for partition of joint ancestral property consisting of an old dilapidated house and as such proper value of the property cannot be estimated .Hence the approximate value is stated in the plaint. Plaintiff has relied upon the following decision.

AIR 2002 Madhyapradesh 194, Dhramraj Singh –vs- Vaidyanath Prasad Khare.

I have gone through the decision, wherein it is held that in a suit for declaration plaintiff is required to pay fixed court fee as per Article 17 of schedule II of the court fee Act. For claiming the relief of permanent injunction the court fee is payable as per section 7 (iv) d of the Act. The plaintiff is at liberty to put his own valuation on such relief. The value of the suit for injunction would also be the value for pecuniary jurisdiction as per section 8 of suit valuation Act. It is also been held that the question of court fee must be considered in the light of allegation made in the plaint and its decision can't be influenced either by the pleas in the written statement or by final decision of the suit on merits.

Perused the Plaint, WS and available materials on records. Perusal of plaint reveals that plaintiff has instituted the suit for declaration of right and joint possession over the suit land and for injunction to prevent/ restrained the defendants to raise any structure over the suit property.

For the declaration plaintiff is required to pay fix court fee and accordingly it is seen that plaintiff has paid fix court fee of Rs 22.

As per section 7(iv)d of Court Fee Act Plaintiff has right to value the injunction on the basis of relief claimed but the same should not be manifestly absurd . In the instant case plaintiff has valued the injunction at Rs 100 and has paid court fee thereupon.

From the averment of the parties , it appears that the relief is claimed against an joint family property consisting of an old building and as such I am of the considered opinion that the valuation for jurisdiction which is fixed at Rs 200,000/ is not undervalued.

In view of the aforesaid legal position I am of the considered opinion that there is no any irregularity in valuation of the suit ,moreover the issue of valuation is between the plaintiff and the court which can even be taken up at the time of final disposal of the suit.

In view of the above facts and circumstances , I am of the considered opinion that the petition filed by the defendant is not maintainable and accordingly the same is rejected.

Petition is accordingly disposed off.

Mrs Achma Rahman.

Munsiff No 1, Jorhat.