

Mr. Rajaram P. Lote for Applicants.  
Mr. Rupesh R. Lanjekar for Respondent No.1.

P.C. :

Heard Mr. Lote, learned Counsel for applicants and Mr. Lanjekar, learned Counsel for respondent No.1 at length. On the oral application made by Mr. Lote, leave to delete respondents No.2 to 25 is granted on the ground that they are the formal parties in the Suit and no relief is claimed against them in this Application. Leave as prayed for is granted. Amendment shall be carried out forthwith. Rule. Mr. Lanjekar waives service for respondent No.1. At the request and by consent of the parties, Rule is made returnable forthwith and the Application is taken up for final hearing.

2. By this Application under Section 115 of the Code of Civil Procedure, 1908 (for short 'C.P.C.'), applicants, hereinafter referred to as defendants No.1 and 2, have challenged the judgment and order dated 20.10.2015 passed by the learned Civil Judge, Junior Division, Ulhasnagar below exhibit-124 in Regular Civil Suit No.94 of 2012. By that order, the learned trial Judge rejected the application made by defendants No.1 and 2 under Order VII, Rule 11 of C.P.C. for rejecting the plaint on the ground that plaintiffs have not separately valued the prayers and accordingly, has not paid the court fees.

3. Mr. Lote submitted that respondent No.1, hereinafter referred to as plaintiff, has instituted Suit inter alia praying for perpetual injunction restraining defendants No.1 and 2 from entering into 53 Ares from Survey No.131/3 situate at Mauje Vasar, Taluka Ambarnath, District Thane (for short 'suit property') and further restraining them from carrying out quarrying work; for damages of Rs.3,04,400/- from defendants No.1 and 2 together with interest @12% p.a. from the date of institution of the Suit till decision of the Suit; restraining defendants No.1 and 2 from carrying out unauthorized business of hotel; for mandatory injunction directing defendants No.1 and 2 to demolish unauthorized construction. He submitted that Section 18 of the Maharashtra Court Fees Act (for short 'Act') lays down that where a Suit embraces two or more distinct subjects, the plaint shall be chargeable with the aggregate amount of the fees to which the plaint in Suit embracing separately each of such subjects would be liable under the Act. In short, he submitted that plaintiff has prayed for 4 different reliefs and accordingly, has to value each prayer separately and pay the court fees. As the plaintiff has not properly valued the Suit as also paid the court fees, plaint is liable to be rejected under Order VII, Rule 11(b) of C.P.C.

4. On the other hand, Mr. Lanjekar submitted that in paragraph 9 of the plaint, plaintiff has stated as to how he has valued the Suit. As the plaintiff has claimed damages of Rs.3,04,400/- from defendants No.1 and 2, Suit is valued accordingly and on that basis, court fee is paid. Apart from that, he submitted that basically, application under Order VII, Rule 11 filed by defendants No.1 and 2 is vague. He, therefore, submitted that no case is made out for interfering with the impugned order.

5. With the assistance of the learned Counsel for the parties, I have perused the copy of the plaint in R.C.S.No.94 of 2012. Perusal of paragraph 9 of the plaint shows that plaintiff has valued only prayer clause (b) by which he has claimed damages of Rs.3,04,400/- from defendants No.1 and 2 and accordingly has paid the court fees. Insofar as prayer clauses (a), (c) and (d), which are substantive in nature, are concerned, plaintiff has not valued the said prayers at all and accordingly has not paid the court fees. It is, therefore, firstly necessary for the plaintiff to amend paragraph 9 so as to value prayers (a), (c) and (d) separately and accordingly pay the court fees. After amending the plaint in the aforesaid terms, liberty is reserved to defendants No.1 and 2 to take out application under Section 8 of the Act for holding inquiry. If such application is made, the learned trial Judge will hold the necessary inquiry and pass appropriate order.

6. In view thereof, Mr. Lote seeks permission to withdraw application exhibit-124 with liberty to take out application under Section 8 of the Act after the plaintiff carries out amendment in paragraph 9 of the plaint. Liberty as prayed for is granted.

7. In view of the withdrawal of the application itself, nothing survives in this Application. Application fails and the same is dismissed. All the parties including the trial Court to act upon the authenticated copy of this order. Rule is discharged in the aforesaid terms with no order as to cost.

**(R. G. KETKAR, J.)**