

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO.8537 OF 2018

Prakash s/o Mohanlal Shroti and anr.

-vs-

Asha w/o Rameshwar Sharma and ors.

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders.

Ms Archita M. Sudame, Advocate for petitioners.
Respondents served.

CORAM : A.S.CHANDURKAR, J.
DATE : September 03, 2019

An order passed by the trial Court below Exhibit-38 rejecting the application which was filed seeking rejection of the plaint on the ground that there was failure on the part of the plaintiff to comply with an earlier order dated 23/04/2018 is the subject matter of challenge in the present writ petition.

2. Initially on an application filed by the defendants under provisions of Order-VII Rule 11 below Exhibit-16 on the ground that the suit was not properly valued, the trial Court on 23/04/2018 directed the plaintiff to deposit proper court fees within a period of one month. In that order it was observed that the plaintiff had not sought any declaration with regard to the sale-deeds executed in favour of defendant Nos.3 to 7. Thereafter the plaintiff deposited further court fees of Rs.400/-. Hence the defendant Nos.1 and 2 moved another application at Exhibit-38 seeking rejection of the plaint. The trial Court has rejected that application on the ground that proper court fees were paid by the plaintiff in the light of reliefs sought in the plaint.

3. I have heard the learned counsel for the petitioner and I have perused the documents placed on record. The question as regards payment of court fees has to be adjudicated in the light of the reliefs sought in the plaint. According to the defendant Nos.1 and 2 further amount of Rs.42,045/- ought to be paid by the plaintiff as proper court fees. It is seen that even if that contention of the defendant Nos.1 and 2 is accepted, the Court of learned Civil Judge (Junior Division) would continue to have pecuniary jurisdiction to entertain the suit.

4. In that view of the matter the trial Court can be directed to frame an issue with regard to proper valuation of the suit and the amount of court fees the plaintiff is liable to pay. That issue can be adjudicated with all other issues and the trial Court can pass appropriate orders at the conclusion of the trial. It is therefore not necessary to examine the correctness of the order dated 13/11/2018 at this stage. With these directions and keeping the respective contentions open, the writ petition is disposed of in aforesaid terms. No costs.

JUDGE