

ORDER BELOW EXH. NO. 56

This application is under Order VII Rule 10 for return of plaint on ground of pecuniary jurisdiction of this Court. Heard.

2. Defendant no.8 submitted that, he purchased 1 hector 21 Are portion of the suit property from defendant no.7 on 22-11-2018 for total consideration of Rs.13,00,000/- vide registered sale deed. The said sale deed is challenged by the plaintiff by relief of declaration and injunction. The relief prayed by the plaintiff is declaration that the said sale deed is void and not binding on him and injunction is to restrain defendant no.8 from selling the property. Hence, the Court is required to adjudicate whether this sale deed is binding on the plaintiff or not, sale deed is legal or illegal, whether defendant no.8 can or cannot sale the property on the basis of the said sale deed. The said sale deed is of Rs.13,00,000/- and hence, this Court has no jurisdiction to decide this suit. Defendant no.8 prayed for returning this suit to the plaintiff for presenting the same in the Court of Senior Division at Barshi.

3. The plaintiff objected this application vide reply at Exh.59 stating that, the suit was filed on 1-1-2018. The interim application for temporary injunction is pending in this case. Further, the said sale deed dated 22-11-2018 is illegal and without handing over of possession. At the time of filing of the suit the sale deed was standing in name of

defendant no.7. Accordingly, the plaintiff filed this suit in the Court having jurisdiction to decide the same. Due to such illegal act of defendant no.8 it can not be said that this Court has no jurisdiction. The execution of sale deed is subsequent act of defendant no.8. He prayed for rejection of this application and for costs of Rs.2,000/- for consuming time of this Court.

3. Perused record of the case. The suit is for partition and declaration. The record shows that the suit was filed on 01-01-2018 and at that time the plaintiff challenged two sale deeds dated 01-10-1997 and 04-05-2000. At that time the plaintiff paid court fee stamps and valued the suit accordingly. Thereafter during pendency of the suit two sale deeds are executed by defendant no. 7 and defendant no. 6A being sale deeds dated 22-11-2018 and 23-05-2019. It is clear that these sale deeds were issued during pendency of the suit and whether these sale deeds are binding on the plaintiff or not is a matter of proof. The plaintiff has stated that he is in possession of the suit property. Thus there is no relief of possession and such contention of the plaintiff as to possession is also matter of proof. But the suit is for partition and as per law during pendency of the suit if any such sale deed is made then if the case of the plaintiff is proved then such sale deeds become void-ab-initio. Further more the plaintiff is not party to these sale deeds hence challenge of these sale deeds executed during

pendency of suit is not amount to cancellation to sale deeds. The amount at which the plaintiff has valued the relief sought for the purposes of court fees that determines the value for jurisdiction in the suit. Considering such position I think the plaintiff is not required to value the suit on the basis of subsequent sale deeds during pendency of the suit and that consideration would not affect on jurisdiction of this court. Hence objection of the plaintiff as to jurisdiction at this stage is not tenable and no case is made out as to return of the plaint as this court has jurisdiction considering valuation of the suit. Hence following order:

ORDER

Application is rejected.

Date: 03/07/2019

(R. S. Dhadake)
2nd Jt. Civil Judge, J. D.
Barshi, Dist. Solapur.

CERTIFICATE

I affirm that, the contents of this PDF file Order/Judgment are same word to word, as per original Order/Judgment.

Name of Stenographer	:	S. V. Kokate
Court	:	2 nd Jt CJJD & JMFC, Barshi.
Date:	:	03/07/2019
Judgment/Order signed by the presiding officer	:	03/07/2019
Judgment/Order uploaded on	:	05/07/2019