
(1978) 09 GUJ CK 0012
In the Gujarat High Court

Biharilal Nathuram Mali

APPELLANT

Vs

Hirala Biharilal Mali and Others

RESPONDENT

Date of Decision : 20-09-1978

Acts Referred:

Bombay Court Fees Act, 1959 — Article 23(f), 3, 4, 6(iv)(j)

Citation : (1979) 1 GLR 514

Hon'ble Judges : S.H. Sheth, J

Bench : Single Bench

Judgement

S.H. Sheth, J.—Plaintiff is the father of defendants 1 and 2. Defendant 3 is the wife of defendant 1. Defendant 4 is the wife of defendant 2. Defendants 5 and 6 are the sons of defendant 1 and grandsons of the plaintiff. Defendants 7 and 8 are the sons of defendant 2 and grandsons of the plaintiff. The dispute in this litigation, therefore, is a purely family dispute.

2. The plaintiff has filed the present suit for a permanent injunction restraining the defendants from interfering with his management of Survey No. 337/1 of Rajpur Deesa and his possession thereof. It is a garden land. For the purposes of jurisdiction, the plaintiff valued the suit at Rs. 15,000/- and instituted it in the Court of the Civil Judge (Senior Division) at Palanpur. So far as Court-fees were concerned, he paid a sum of Rs. 30/-. The trial Court felt that the valuation of the suit by the plaintiff for the purpose of jurisdiction was not correct. Therefore, the controversy relating to the valuation was argued before the learned trial Judge. He held that the valuation for the purposes of Court-fees and jurisdiction must be the same. According to him, since the plaintiff had paid a fixed Court-fee of Rs. 30/-, the valuation of the suit should be Rs. 300/- for the purposes of Court-fees and that it should be the valuation for the purposes of jurisdiction. Having recorded this finding, he recorded the further finding that the suit, in that view of the matter, was not within his jurisdiction and ought to have been filed in the Court of the Civil Judge (Junior Division) at Deesa. He, therefore, returned the plaint for presentation to the proper Court.

3. It is that order which is challenged by the plaintiff in this appeal.

4. I first consider the question relating to the Court-fees. Section 6(iv)(j) of the Bombay Court-fees Act, 1959 provides as under:

In suits where declaration is sought, with or without injunction or other consequential relief and the subject matter in dispute is not susceptible of monetary evaluation and which are not otherwise provided for by this Act-thirty rupees.

This provision is not applicable to the present suit because this is not a suit for declaration with or without injunction. It is a suit for permanent injunction itself. What Section 6(iv)(j) contemplates is a suit for a declaration with or without a consequential relief in the shape of a permanent injunction. There is no other provision in Section 6 which is applicable to the present suit. In particular, this suit does not fall under Clauses (a) to (e) of Section 6(iv) because they contemplate different kinds of suits. In regard to suits falling under Clauses (a) to (i) of Section 6(iv), the plaintiff is at liberty to state the amount at which he values the reliefs which he seeks. Indeed he is supposed to state the reasons for that valuation.

5. Mr. Zaveri has invited my attention to Article 23(f) in Second Schedule to the Bombay Court-fess Act, 1959. It provides that a fixed Court-fee of Rs. 30/- shall be payable, inter alia, on the plaint in a suit presented to any Civil Court in respect of which there is no other provision in the Bombay Court-fees Act and the subject matter of which is not capable of being estimated in money value. It cannot be gainsaid that relief in the shape of a permanent injunction is not capable of being estimated in money value in a case of this type. There is no provision which lays down the amount of Court-fee payable in respect of a suit in which the only prayer is the prayer for issuing a permanent injunction. Therefore, the plaintiff, in the instant case, rightly paid a sum of Rs. 30/- under Article 23(f) in Second Schedule to the Bombay Court-fees Act, 1959.

6. The question, therefore, which has arisen for my consideration is whether the valuation for the purposes of jurisdiction must be the same or one which corresponds to the valuation of the suit for the purposes of Court-fees. Mr. Zaveri has invited my attention to two sections of the Suits Valuation Act, 1887. Hi has invited my attention to Section 8 with the object of ruling it out of consideration for the purposes of the present suit. He has then invited my attention to Section 4 which, in my opinion, governs the present suit. Section 8 of this Suits Valuation Act, 1837 in its application to the State of Gujarat reads as follows:

Where in suits other than those referred to in Clause (d) of paragraph (iv), paragraphs (v), (vi),(vii) and (x) and Clause (d) of paragraph (xi) in Section 6 of Bombay Court-fees Act, 1959, Court-fees are payable ad-valorem under the Bombay Court-fees Act, 1959, the value as determinable for the computation of Court-fees and the value for purposes of jurisdiction shall be the same.

7. It has been argued by Mr. Zaveri that, in the instant case, since the Court-fees are not payable ad-valorem, Section 8 has no application to the instant case. I have already expressed the opinion in the foregoing parts of this judgment that Court-fee is payable in the present suit under Article 23(f) in Schedule II to the Bombay Court-fees Act, 1959. It is not an ad-valorem Court-fee but it is a fixed Court-fee. Therefore, since the material ingredient of Section 8 of the Suits Valuation Act, 1887 in its application to the State of Gujarat is not the field - payability of ad-valorem Court-fees-Section 8 has no application to the present case. I am, therefore, in agreement with him that Section 8 does not govern the present suit so far as the valuation for the purposes of jurisdiction is concerned.

8. The next section to which Mr. Zaveri invited my attention is Section 4. In its application to the State of Gujarat it provides as follows:

Where a suit mentioned in Clauses (c), (d), (e), (g), (h) or (j) of paragraph IV or paragraph VII in Section 6 or Articles 3, 4, 5 or 7 in Schedule I or Clause (f) of Article 23 in Schedule II to the Bombay Court-fees Act, 1959 relates to land or an interest in land of which the value has been determined by rules under the last foregoing section, the amount at which for purposes of jurisdiction the relief sought in the suit is valued shall not exceed the value of the land or interest as determined by those rules.

It is, therefore, clear that where an interest in the land of which the value has been determined by the rules made u/s 3 if the Court-fee is payable under Clause (f) of Article 23, Section 4 governs the determination of the value for the purposes of jurisdiction. In such a case, it cannot exceed the market value of the land. The defendants have not raised the contention that the value of the interest in the land has not been determined under rules made u/s 3 of the Suits Valuation Act, 1887. Therefore, the question of considering that aspect does not arise for me. The defendants have also not disputed that value of the land is more than Rs. 10,000/- If they had contended that it was less than Rs. 10,000/-, then an enquiry would have been required to be made for the purpose of recording a finding in that behalf in order to determine whether the suit would be within the pecuniary jurisdiction of the Court of Civil Judge (Junior Division) at Deesa or within the pecuniary jurisdiction of the Court of Civil Judge (Senior Division) at Palanpur. Since the market value of the land has not been disputed, I take it that what the plaintiff has shown is the correct market value of the land in respect of which he seeks a permanent injunction. Therefore, since the market value of the land is Rs. 15,000/- and since it was open to the plaintiff to value the suit at that figure for the purpose of jurisdiction u/s 4, he did what law permitted him to do. The learned trial Judge was, therefore, in error in holding that the valuation for the purposes of jurisdiction should be Rs. 330A and not Rs. 15,000/- as put by the plaintiff.

9. In that view of the matter, the learned trial Judge was in error in ordering the plaint to be returned for presentation to the proper Court. In my opinion, for this reasons which I have stated in this judgment, the suit is properly value 1 both for

the purposes of Court-fees and jurisdiction and it is within it peculiarly jurisdiction of the learned trial Judge. In the result, the appeal is allowed, the impugned order is set aside and the learned trial Judge is directed to proceed to decide the suit according to law and on merits. There shall be no order as to costs of this appeal in the circumstances of this case.