

(1957) 12 BOM CK 0013

In the Bombay High Court

Case No : Letters Patent Appeal No. 50 of 1956

Chhotalal Kalidas

APPELLANT

Vs

Laxmidas Mayaram and Others

RESPONDENT

Date of Decision : 12-12-1957

Acts Referred:

Court Fees Act, 1870 — Article 17, 7 , 8A
Suits Valuation Act, 1887 — Section 8

Citation : AIR 1959 Bom 517 : (1958) 60 BOMLR 587 : (1958) ILR (Bom) 902

Hon'ble Judges : Shah, J;Gokhale, J

Bench : Division Bench

Advocate : C.S. Trivedi, instructed by Amin and Desai Attorneys, for the Appellant; S.B. Vakil, for the Respondent

Judgement

Shah J.

1. The plaintiffs filed Suit No. 2435 of 1954 in the City Civil Court at Bombay claiming the following reliefs:-

"(a) That it may be declared that the alleged sale by the 1st defendant in favour of the 2nd defendant purported to have been effected at the auction held on the 11th October 1954 is illegal, void, invalid, ineffective, bad in law and not binding up-on the plaintiffs by reason of the premises mentioned in the plaint and that the same be set aside.

(b) That the 1st defendant be permanently restrained by an Order and Injunction of this Honourable Court from proceeding further with the completion of the alleged sale and conveying the said properties in favour of the 2nd defendant and that the 2nd defendant be also restrained by an Order and Injunction of this Honourable Court from completing the alleged sale and having the said properties conveyed in his favour."

The plaintiffs value the claim for Court-fee and jurisdiction at Rs. 420. The defendants contended that the City Civil Court had no jurisdiction to entertain

the suit. They contended that the jurisdiction of the City Civil Court being limited to Rs. 25,000, the City Civil Court was incompetent having regard to the value of the subject-matter to entertain and try the suit. The learned Judge of the City Civil Court upheld the contention of the defendants and ordered that the plaint be returned for presentation to the proper Court. Against that order an appeal was preferred to this Court being Appeal from Order No. 171 of 1955. Mr. Justice Bavdekar, who heard the appeal, held that the City Civil Court had jurisdiction to entertain the suit and reversed the order passed by the trial Court and directed the trial Court to proceed according to law. Mr. Justice Bavdekar observed that at best the plaintiffs were claiming a declaration of their right of redemption which was of the value not exceeding Rs. 9,000 and the City Civil Court was competent to try a suit which was value at Rs. 9,000. Mr. Justice Bavdekar further observed that it did not seem "that as a matter of fact the subject-matter of the suit was the equity of redemption", and that the suit being a suit for a declaration and an injunction the plaintiffs were entitled to value it at any figure they liked and the enactment of Section 8A by Bombay Act 12 of 1954 did not take away the right of the plaintiffs to value the claim for declaration and injunction as they chose. Holding that no prima facie case was made out in support of the plea that the plaintiffs' suit was under-valued, and the jurisdiction of the Court to determine the correct valuation u/s 8A of the Court-fees Act was not attracted the learned Judge passed the order against which this appeal has been filed.

2. Section 7 of the Court-fees Act by Clause (iv)(c) prescribes the method of computation of Court-fee payable in suits to obtain a declaratory decree where consequential relief is claimed. In such a suit the Court-fee is to be computed according to the amount at which the relief sought is valued in the plaint but subject to the provisions of Section 8A with a minimum fee of Rs. 10. By Section 8A it is provided:

"If the Court is of opinion that the subject-matter of any suit has been wrongly valued it may revise the valuation and determine the correct valuation and may hold such inquiry as it thinks fit for such purpose."

Evidently u/s 7, Clause (iv)(c), the plaintiffs have the right to put their own valuation on the subject-matter of the suit, and it is on the valuation put by the plaintiffs that the Court-fee is exigible. By Section 8 of the Suits Valuation Act, 1887, in suits falling u/s 7(iv)(c) the value determinable for the computation of Court-fees, and the value for purposes of jurisdiction, are to be the same: that is, the valuation adopted by the plaintiff for computing the Court-fees governs the jurisdiction of the Court in which the suit is instituted. Indisputably by Section 8A of the Court-fees Act, which was enacted by Bombay Act 12 of 1954, the right of the plaintiff u/s 7(iv)(c) to put his own valuation on the subject-matter of the suit in the plaint for computation of Court-fee is made subject to the provisions of Section 8A. If in a case there is some standard by reference to which it may be possible to value the subject-matter of a suit and the Court comes to the conclusion that the valuation made by the plaintiff is wrong, it is

open to the Court to revise the valuation made by the plaintiff. But in this case it cannot be said that there was a standard by reference to which the valuation made by the plaintiffs of the subject-matter of the suit can be demonstrated to be wrong. The claim made by the plaintiffs is a claim for a declaration that a certain sale effected by the first defendant in favour of the second defendant was "illegal, void, invalid, ineffective and bad in law" and for an injunction against the two defendants: and we are unable to appreciate by reference to what standard the valuation of the subject-matter by the plaintiffs of a suit for a declaration that a particular sale is "invalid ineffective and bad in law" can be rectified. We, therefore agree with Mr. Justice Bavdekar that the valuation made by the plaintiffs not being shown to be wrong, the Court is incompetent to revise it.

3. Mr. C.S. Trivedi, who appears on behalf of the first defendant in this appeal, submits that the suit was not one falling within the description of suits covered by Section 7(iv)(c) of the Court-fees Act but the appropriate provision which governs it is Schedule II. Article 17 (iv) or (vii); and on that hypothesis Mr. Trivedi contends that as Section 8 of the Suits Valuation Act did not apply to the suit filed by the plaintiff, the valuation for the purpose of Court-fee and jurisdiction need not be the same and that the plaintiffs were bound to value for purposes of jurisdiction the claim at the market value of the property which was the subject-matter of the suit. We are unable to agree with the contention of Mr. Trivedi. This suit cannot be regarded as one to set aside an alienation. The plaintiffs claimed a declaration that the auction sale held by the first defendant is void, ineffective and bad in law. A suit for a declaration that a sale is "invalid and ineffective" is not a suit to set aside an alienation. Nor can it said that the suit is one where it is not possible to estimate at a money value the subject-matter in dispute and which is not otherwise provided for by the Act. The suit falls expressly within the description of a suit to obtain a declaratory decree where consequential relief is prayed u/s 7(iv)(c) of the Court-fees Act, and, therefore, it does not fall within the scope of the residuary Article 17 (vii) of Schedule II.

4. In that view of the case, the order passed by Mr. Justice Bavdekar must be sustained and the appeal dismissed with costs.