
(1965) 03 MP CK 0017

In the Madhya Pradesh High Court

Case No : Miscellaneous Civil Case No. 32 of 1964

Gulam Abbas and Others

APPELLANT

Vs

Tiyabali Bhai and Others

RESPONDENT

Date of Decision : 23-03-1965

Acts Referred:

Constitution of India, 1950 — Article 133(1)

Citation : AIR 1966 MP 92 : (1965) JLJ 766 : (1965) 10 MPLJ 787 : (1965) MPLJ 787

Hon'ble Judges : V.R. Newaskar, J; S.B. Sen, J

Bench : Division Bench

Advocate : M.A. Khan, for the Appellant; S.L. Garg, for the Respondent

Final Decision : Allowed

Judgement

Newaskar, J.

This is a petition under Article 133(1)(b) of the Constitution.

Material facts are that on 29-12-1899 three brothers Yusufali, Mohammadali and Alibhai jointly mortgaged two shops situated at Jaora with Khan Bahadur Yarmohammad Khan. The mortgage was usufructury and possession was delivered on the same day. In 1909 Khan Bahadur Yarmohammad died. His daughter Iftikhar Zamani Begum married Nawab Iftikharali of Jaora. She died in the year 1918 leaving her husband as the sole heir. The Nawab continued in possession till December 1945 when he sold his interest in the property to the defendants. The legal representatives of the mortgagors filed the present suit for redemption of the mortgage which was resisted by the purchasers from the Nawab. The suit was initially dismissed on the ground of limitation. However it was ultimately held by this Court that the claim for redemption was not barred by limitation and a decree for redemption was passed. The defendants now seek certificate against the aforesaid decree for redemption of the mortgage.

It is contended on behalf of the defendants that the effect of the decree for

redemption granted against them is that they would be deprived of the property which they had purchased for a consideration of Rs. 25,500. After its purchase by the petitioners they had spent about Rs. 34,500 in its reconstruction and re-modelling. Thus they have spent in all Rs. 60,000 for repairing the same. The present market-value of the property was also stated to be Rs: 70,000. An affidavit asserting these facts has been filed by one Mohammad Shafique who claims to have personal knowledge of all these facts stated above. There is no counter affidavit.

Short question for consideration is whether on the above facts the case is covered by Clause (b) of Article 133(1) of the Constitution. That provision is as follows :

"(1) An appeal shall lie to the Supreme Court from any judgment, decree or final order in a Civil proceeding of High Court in the territory of India if the High Court certifies:

(a)

(b) That the judgment, decree or final order involves directly or indirectly some claim for question respecting property of the like amount onvalue: (Rs. 20,000/-)or "

Since in the present case the plaintiff seeks redemption and possession of the property and the claim is disputed by the defendants according to whom the plaintiff is not entitled to redemption or possession the judgment does involve claim respecting property of over Rs. 20,000. The mortgage, no doubt, was for Rs. 4500 only but in considering the applicability of Clause (b) of Article 133(1) of the Constitution it is the value of the property in dispute to the appellant that is to be seen. In the Full Bench decision of the Andhra Pradesh High Court reported in Smt. Rajah Kishore Devigaru Vs. Bhaskara Gouta Chorani and Others, , it is held:

"(1) For valuation u/s 110 of the subject matter of the suit in the Court of first instance, the matter should be looked at from the point of view of the plaintiff. It is the amount or value of the reliefs excluding costs that the plaintiff would have directly obtained if he were successful, as on the date of the institution of the suit.

For also the valuation under Article 133(1)(a) of the subject matter of the dispute in the Court of first instance, the matter must be looked at from the point of view of the plaintiff. But it is the amount or value of the reliefs excluding costs that the plaintiff would, either directly or indirectly by the principle of res judicata obtain if he were successful as on the date of the institution of the suit.

For the valuation of the subject-matter in dispute on appeal to the Supreme Court, both u/s 110 paragraph 1 and under Article 133(1)(a), the effect of the judgment appealed from must be looked at from the point of view of the appellant as on the date of the judgment. It is the amount or the value of such of

the reliefs determined under Rule (2) supra in respect of which he is prejudiced by the judgment.

For also the valuation of an appeal u/s 110, paragraph 2, and under Article 133(1)(b), the judgment appealed from must be looked at from the point of view of the appellant as on the date of the judgment. But regard must be had to all the matters that necessarily result from the judgment and operate to his prejudice. The result must not be too remote or contingent on supervening facts and circumstances.

There is no rule of thumb demarcating paragraph 1 from paragraph 2 of Section 110 or Clause (a) from Clause (b) of Article 133(1). The question would be whether the valuation under Rule (3) supra is not a just measure of his detriment and the wider valuation under Rule (4) supra is called for. It is a matter for judicial determination on a consideration of all the facts and circumstances as at the time of the judgment appealed from."

Their Lordships observed in Paragraph 14 of the report as under:

"In our opinion, Clause (b) of Article 133(1) is intended to meet a situation essentially different from that arising under Clause (a). Under Clause (a) we have to look at the value of the reliefs obtainable in the suit and in the appeal. Under Clause (b) we have to look at the effect of the judgment appealed against from the point of view of the appellant. A thing is said to be involved in another when it is a necessary resultant of that other. (Stroud's Judicial Dictionary). The matters adjudicated upon in the judgment appealed from may have far reaching consequences determined to be property of the appellant, although they were not comprised in the cause of action of the plaintiff and cannot be regarded as being "still in dispute" on appeal. As observed by Lord Shaw in *Ratha Krishna Ayyar v. Sunderswamy Iyer* AIR 1922 PC 257:

"The proceedings may, in many cases, such as a suit for an instalment of rent or under a contract, raise the entire question of the contract relations between the parties and that question may, settled one way or the other, affect a much greater value, and its determination may govern rights and liabilities of a value beyond the limit."

Another illustration is furnished by the case cited in *Subramania Aiyar v. Sellamma* ILR Mad 843: (AIR 1916 Mad 985), *Devesikamoney Pandarasannadhi v. Pallaniappa Chettiar* ILR Mad 535 where the plaintiff obtained a decree for possession of land worth at the most Rs. 2,000, but the buildings which the defendant had erected on the land and which he had to remove were worth over Rs. 20,000, and leave to appeal to the Privy Council was granted. In *Surapali Ray v. Ram Narain Mukherjee* AIR 1923 PC 88, the suit was for rent below the appealable value and was decided against all the defendants, but some of the defendants were aggrieved because they had transferred their tenancy right to other defendants, which transfer was held to be invalid. Their appeal to the Privy Council was held to be competent because the subject-matter in dispute

was a recurring liability and is in respect of property considerably above the appealable value."

They further observed that on true construction of Article 133(1).

"Clause (b) applied where the value is not fair or correct measure of the extent to which the appellant is prejudiced by the judgment appealed from. :

They agreed with the view taken in the decision of the Privy Council in *Meghji Lakh amshi and Bros v. Furniture Workshop*, 1954 A.C. 80 which dealt with a similar provision relating to East Africa regarding right of appeal to the Privy Council that a case may fall in whole or in part within more than one limit of the provision and that it will be sufficient for the appellant to show that he comes under any one. This means that it is competent for the petitioner to seek a certificate either under Clause (a) or under Clause (b).

In view of the observations in the above case, with which we agree, it seems that in the present case the value to the appellant is the present value of the property which according to him is more than Rs. 20,000/- as is clear from the affidavit filed on behalf of the appellant and to which the respondent has not taken any exception. In case the judgment sought to be appealed against stands the petitioner would lose the property which, according to him, is worth more than Rs. 20,000/-. The case therefore involves a claim regarding property of more than Rs. 20,000/- and the case is covered by Clause (b) of Article 133(1) of the Constitution.

In *Haramani Devi v. Balaram Panda*, AIR 1957 Orissa 109 it was held that Clause (2) of Section 110 C.P.C. which is similarly worded as Clause (b) of Article 133(1) of the Constitution may apply also to the property which is in dispute in the suit.

The learned counsel for the appellant relied upon the decisions reported in *Mangina Venkataswami and Another Vs. Nuli Manikyam and Others*, , *Sati Bala Dasi Vs. Chota Nagpur Banking Association Ltd. and Another*, and *Gulabchand v. Kudilal* AIR 1952 MaD B 149 (FB). These decisions really have no application to the circumstances of the present case.

In *Sati Bala Dasi Vs. Chota Nagpur Banking Association Ltd. and Another*, , the mortgagee had filed a suit for enforcement of the mortgage by sale of the property. The suit was decreed and the defendant mortgagor sought leave to appeal against an appellate order of the High Court. In that connection it was held that in a mortgage suit the property which is given as a security for the loan is not the property in dispute in the suit, nor ,is the decision, that the mortgagee is entitled to recover the money which he advanced one involving either a claim to or a question respecting the security. The only property in dispute in a mortgage suit is the loan advanced by the mortgagor to the mortgagee. The mere fact that if the loan is not repaid in time fixed by the decree the mortgaged property would be sold cannot mean that there is any question affecting the security or the property. This is not the position in this case. Here the plaintiff

seeks possession of the property on the allegation, of a mortgage. The defendant challenged the mortgage and pleaded bar of limitation. The claim is decreed. The effect of the decree is that the defendant is deprived of the property which is of considerable value to him, he having purchased the same for Rs. 25,500/-and having spent over it nearly 35,000/-. The same view is taken in Mangina Venkataswami and Another Vs. Nuli Manikyam and Others, . In both the above cases what was considered was regarding applicability of Clause (1) (a) of Article 133 of the Constitution.

In the latter case in Mangina Venkataswami and Another Vs. Nuli Manikyam and Others, the question regarding applicability of Article 133(1)(b) of the Constitution was also considered. The observations in that case were considered by the Full Bench of the Andhra Pradesh High Court in AIR 1960 Andh Pra 286 (supra) and it was observed that the method of adopting the value of the mortgaged property instead of the amount sought to be recovered as the criterion for valuation runs counter to the dictum of Lord Atkinson in a case reported in Mirza Abid Hussain Khan v. Ahmad Hussain AIR 1923 PC 102 . Although the Andhra Pradesh High Court disagreed with the view taken in Nadir Husain and Others Vs. Municipal Board and Another , Mt. Ram Devi Vs. Badlu Ram and Another, etc. yet in the present case what is thrown in dispute is the title to the property. The defendant not only denied plaintiff's title to the property and his right to claim redemption but he also pleaded bar of limitation thereby suggesting extinction of his title even if any had existed. In such a case Clause (b) of Article 133(1) of the Constitution is applicable and it could well be said that there is claim or question respecting property worth more than Rs. 20,000/-. The present case can well be said to fall under Conclusion No. 5 of the conclusions summarised by the Full bench of the Andhra Pradesh High Court at p. 291 of Smt. Rajah Kishore Devigaru Vs. Bhaskara Gouta Chorani and Others, .

On consideration of the entire facts and circumstances of the case as discussed above, we are inclined to hold that the petitioner is entitled to the certificate sought for by him.

Certificate under Article 133(1)(b) of the Constitution shall issue.