

(1969) 09 GUJ CK 0004

In the Gujarat High Court

Case No : Civil Revision Application No. 1164 of 1966

Inderlal Panwarmal

APPELLANT

Vs

Khialdas Shewaram and Others

RESPONDENT

Date of Decision : 30-09-1969

Acts Referred:

Bombay Court Fees Act, 1959 — Article 5, 7, 6
Court Fees Act, 1870 — Section 7

Citation : AIR 1971 Guj 86 : (1970) GLR 948

Hon'ble Judges : Divan, J

Bench : Single Bench

Advocate : J.M. Acharya, for the Appellant; G.M. Vidyarthi, Asstt. Govt. Pleader for State, for the Respondent

Judgement

1. The interesting point which arises in this Civil Revision Application is in connection with the appropriate provision under the Bombay Court-fees Act, 1959, which is to be applied to the plaint in the instant case. The petitioner herein is the original plaintiff and he has filed a suit being suit No. 1448 of 1965 in the City Civil Court at Ahmedabad. The plaintiff has asked for a declaration that the writing passed by the plaintiff on September 1965, in favour of defendant No. 1 is illegal, ultra vires, null and void, void ab initio and not binding on the plaintiff and that the same is inoperative and ineffective. He has also prayed for the consequential relief of permanent injunction restraining the defendants from using in any manner or operating upon the said writing, dated September 9, 1965, against the plaintiff. The plaintiff filed the suit and paid Rs. 30/- on the plaint. After the suit was filed, the question was raised by the office of the City Civil Court as to what was the appropriate Court-fee. The Learned Registrar of the City Civil Court came to the conclusion that the plaintiff must pay Court-fees valuing the subject-matter of the suit at Rs. 17,600/- and, therefore, must pay the deficit Court-fee of Rs. 1280/-. Against this order of the learned Registrar, dated November 5, 1965, there was a Revision Application and the learned Judge in the City Civil Court came to the conclusion that Article 7 of the

First Schedule to the Bombay Court-fees Act, 1959, applied and that the order passed by the learned Registrar should be confirmed and the Revision Application should be dismissed. The present Civil Revision Application has been filed by the plaintiff against this order dismissing his revision application.

2. In order to appreciate the contentions of the petitioner and of the learned Assistant Government Pleader, who appears on behalf of the State before me, it is necessary to summarise the contentions of the plaintiff in his plaint filed in the City Civil Court. The plaintiff has alleged that he was originally a native of Sakkar in Sind, now situated in East Pakistan, (West?) and that he is a member of the Sakkar Panchayat formed in Ahmedabad and defendant No.2 is the President of Sakkar Panchayat. The plaintiff's brother Lachmandas is carrying on cloth business in Shop No. 4-A, Sindhi Market, Revdi Bazar, Ahmedabad; and the plaintiff is carrying his own cloth business in Shop No. 59-A, Sindhi Market, Revdi Bazar, Ahmedabad. According to the plaintiff, the plaintiff's brother Lachmandas came into financial difficulties and could not pay his creditors in time and creditors approached the Sakkar Panchayat. Defendants Nos. 2, 3 and 4 are the office bearers of the Sakkar Panchayat defendant No. 2 being the President defendant No. 3 being the Treasurer and defendant No. 4 being a leading member of the Panchayat, Defendants Nos. 2, 3 and 4 approached Lachmandas, the brother of the plaintiff and at their suggestion, in accordance with the custom of the Sindhi Community and trade, the management of the shop of Lachmandas was handed over to defendants Nos. 2 to 4 on September 9, 1965, and the arrangement was that Lachmandas appointed defendants Nos. 2, 3 and 4 to manage the business and to pay the creditors from the profits of that business. After defendants Nos. 2, 3 and 4 went through the account books of the plaintiff's brother they found that it was not possible for them to pay all the creditors because according to the account books the business was running at a loss and, therefore, the plaintiff avers in his plaint, defendants Nos. 2, 3 and 4 insisted that the plaintiff should also hand over management of his shop No. 59-A to defendants Nos. 2, 3 and 4 and that the plaintiff's business be also amalgamated with that of his brother so that all the creditors of Lachmandas might be paid. It is the case of the plaintiff that in the first instance the plaintiff's brother Lachmandas did not agree to the said proposal but he was threatened that in case he did not agree to the proposal, he would be put in jail and hence under those threats Lachmandas urged upon the plaintiff to agree to whatever proposal defendants Nos. 2 to 4 might suggest in order to save Lachmandas from jail as threatened by those defendants. According to the plaintiff he also did not agree to the proposal of Lachmandas in the first instance but, according to him, he was also threatened by the defendants and he was told that in case he did not agree, he would also be put into jail because they told him that they were rich people and that they were influential people and as such the plaintiff should agree to the proposal of the defendants. The plaintiff, according to him, was a young man of 25 years of age and he did not know anything about the threats held out by defendants Nos 2 to 4 and because

of the pressure and threats brought upon him, he passed a writing in favour of defendant No. 1 mentioning in the said writing that he agreed to sell shop No. 59-A including all the goods in that shop to defendant No. 1 for the sum of Rs. 17,600/- and also to the effect that he had received that amount in cash on the day on which the writing was passed. It is thus the contention of the plaintiff that this writing was taken on September 2, 1965, at about 6 P.M. at the shop of defendant No. 3 where the plaintiff had been called and thus the plaintiff was forced to pass the writing under the threats of being sent to jail. On the following day i.e., on September 10, 1965, the plaintiff consulted his lawyer and sent a telegram stating therein that the writing had been taken fraudulently from him and under coercion and that the same was not binding on the plaintiff and apparently this telegram was sent under the signature of the plaintiff's lawyer. It is under these circumstances that the plaintiff has filed his suit praying for a declaration that the writing passed by him in favour of defendant No. 1 on September 9, 1964, is illegal, ultra vires, null and void and not binding on him and that the same is inoperative and ineffective and also for the consequential relief of permanent injunction.

3. It is in the light of these averments made in the plaintiff and the reliefs prayed for by the plaintiff that I have to consider as to what is the appropriate provision of the Bombay Court-fees Act, 1959 (hereinafter referred to as the Act) applicable to the instant case.

4. Mr. Acharya for the petitioner contends that the case falls within Section 6(iv) (j) of the Act. Section 6(iv)(j) runs in the following terms:-

"(j) 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".

The learned Assistant Government Pleader on behalf of the State further urges that the case falls within Article 5 or at any rate Article 7 of the First Schedule of the Act. Article 5 of the First Schedule is in these terms: -

"5. Plaint in a suit, application or petition (including memorandum of appeal), to set aside alienation to which the plaintiff, applicant or appellant, as the case may be, was a party, either directly or through a legal guardian other than de facto or ad hoc guardian, manager or partner or Court.

A fee to the extent of the value of alienation to be set aside according to the scale prescribed under Article 1".

Article 7 of the First Schedule is in these terms: -

"Any other plaint, application or petition (including memorandum of appeal) to obtain substantive relief capable of being valued in terms of monetary gain or prevention or monetary loss, including cases wherein application or petition is either treated as a plaint or is described as the mode of obtaining the relief as

aforesaid.

A fee on the amount of the monetary gain or loss to be prevented according to the scale prescribed under Article 1".

5. It is clear from the very wording in Section 6(iv)(j) of the Act that that clause will apply if there is no other provision under the Act for a particular case before the Court. If any other provision of the Act applies, then Section 6(iv)(j) cannot have any operation. It is also obvious that Article 5 and Article 7 of the First Schedule are other provisions of the Act and if either of these two articles apply, then Section (iv) (j) cannot apply at all.

6. Article 5 of the First Schedule has obviously no application to the instant case because there is no alienation by the plaintiff in favour of the defendant. It is not the case of the plaintiff that any alienation of Shop No. 59-A has already taken place. According to the averments in the plaint, he has been compelled to enter into an agreement to sell the shop to defendant No. 1 and he wants to set aside the agreement of sale. Hence the present suit is not a suit to set aside an alienation to which the plaintiff is a party but is a suit for a declaration that the agreement to sell the shop is not binding on the plaintiff.

7. Before I turn to Article 7 of the First Schedule, it would be better to refer to some of the decisions which lay down the principles on which the Court should interpret the plaint in cases arising for consideration under the Court-fees Act and the approach which the Courts should have in such matters.

8. In *The Vishnu Pratap Sugar Works (P) Ltd. Vs. The Chief Inspector of Stamps, U.P.*, in para 4, Shelat, J., delivering the judgment of the Court has observed that it is the substance and not the form which has to be considered while deciding which particular provision of the Act applies; and in that particular case, the Supreme Court ascertained the substance after reading the plaint as a whole.

9. In *Ponnammal alias Guruvammal and Others Vs. Kanthammal and Others*, the Madras High Court citing from an earlier decision of Wadsworth, J., in *Vellayya v. Ramaswami* ILR (1940) Mad 73 : (AIR 1939 Mad 894), observed: -

"When the plaintiff seeks to establish a title in himself and cannot establish that title without removing an insuperable obstruction such as a decree to which he has been a party or a deed to which he has been a party, then quite clearly he must get that decree or deed cancelled or declared void "in toto", and his suit is in substance a suit for the cancellation of the decree or deed even though it be framed as a suit for declaration. But when he is seeking to establish a title, and finds himself threatened by a decree or a transaction between third parties, he is not in a position to get that decree or that deed cancelled "in toto". that is a thing which can only be done by parties to the decree or deed or their representatives. His proper remedy therefore in order to clear the way with a view to establish his title, is to get a declaration that the decree or deed is invalid so far as he himself is concerned and he must therefore sue for such a

declaration and not for the cancellation of the decree or deed".

Basing his arguments upon these observations, the learned Assistant Government Pleader contended that in the instant case, the plaintiff seeks to establish his title and unless and until the agreement of September 9, 1965, in favour of defendant No. 1 is got rid of, the plaintiff cannot succeed in establishing his title; but this contention of the learned Assistant Government Pleader cannot help him because the title in the instant case is as of the date of the institution of the suit in the plaintiff. There is no cloud on his title and the only thing which can happen if that agreement dated September 9, 1969, is allowed to remain is that on the strength of that writing on agreement, defendant No. 1 could file a suit for specific performance against the plaintiff asking that Shop No. 59-A belonging to the plaintiff should be sold to defendant No. 1. It is to prevent the filing of such a suit and it is to prevent defendant No. 1 putting forward such a claim for specific performance that the plaintiff seems to have filed his suit contending that he was coerced into entering into that agreement and for a declaration that the agreement is not binding upon him. It is, therefore, clear that on the facts of this case the passage from the judgment of Wadsworth, J., cited above cannot help the learned Assistant Government Pleader.

10. Mr. Acharya, on behalf of the petitioner, relied upon the decision of the Bombay High Court in Chhotalal Kalidas Vs. Laxmidas Mayaram and Others, . In that case, a suit was filed by the plaintiff for a declaration that a certain sale effected by defendant No. 1 in favour of defendant No. 2 was illegal, void, invalid, ineffective and bad in law and that the sale should be set aside and for an injunction against the two defendants restraining them from proceeding further with the completion of the same. It was held on those facts by a Division Bench of the Bombay High Court that the suit fell expressly within the description of a suit to obtain a declaratory decree where consequential relief was prayed u/s 7(iv)(c) of the Court-fees Act, 1870 and further that if there is some standard by reference to which it may be possible to value the subject-matter of the suit and the Court comes to the conclusion that the valuation made by the plaintiff is wrong, it is open to the Court u/s 8-A of the Court-fees Act, 1870, to revise the valuation made by the plaintiff. The provisions of Section 8 of the Bombay Court-fees Act, 1959, are identical with the provisions of Section 8-A of the Court-fees Act, 1870. It is, therefore, clear that before the court can be called upon to revise the valuation made by the plaintiff, there must be some standard by reference to which it may be possible to value the subject-matter of the suit. It is true that the consideration mentioned in the writing, dated September 9, 1965, which the plaintiff seeks to avoid by his present suit, refers to a consideration of Rs. 17,600/- but it is obvious that that is not the standard in the instance case, by reference to which it is possible to value the subject-matter of the suit.

11. In Jafferli Alibhai and Another Vs. S.R. Dossa and Co. and Another, , Vimadalal, J., sitting singly in the Bombay High Court, was concerned with the valuation of the suit for the purposes of the Court-fees as determined by the

Taxing Master of the High Court of Bombay. The suit before Vimadalal, J., was a representative suit filed u/s 53 of the Transfer of Property Act, 1882, by the creditors of the defendant for a declaration that a Deed of Assignment of property passed by the defendant was void as against them; and the learned Judge held that the case fell within Section 6(iv)(j) of the Act. He held that the subject-matter of the suit was not the property comprised in the Deed of Assignment which was sought to be set aside but was a relief by way of declaration itself, namely, the declaration that the Deed of Assignment was void as against the plaintiffs and the same was not susceptible of monetary evaluation. It is true as pointed out by Wadsworth, J., in the passage cited above, that the plaintiffs themselves not being a party to the Deed of Assignment, the only way to challenge the Deed of Assignment was by praying for a declaration that the Deed of Assignment was void as against them and not binding to them. To that extent the decision of Vimadalal, J., can be distinguished from the facts of the present case and it can be said that the case before Vimadalal, J., falls within the four corners of the principle laid down by Wadsworth, J.

12. In Civil Revn. Appln. No. 1121 of 1963, decided by me on 29-6-1965 (Guj), I had held that the suit to challenge the validity of a Notification issued by the Government under the Land Acquisition Act of 1894 was governed by Section 6(iv)(j) of the Act and did not fall under any other provision of the Act and Mr. Acharya relied upon that decision of mine in support of his contention.

13. The learned Assistant Government pleader contended that in the instant case the agreement, on the plaintiff's own averments in the plaint is voidable if all the contentions of the plaintiff are believed, because according to the plaintiff's averments in the plaint the agreement which he has challenged was brought about by coercion. The learned Assistant Government Pleader has contended that since the agreement is not void ab initio but is merely voidable, it not being a case of forgery, the provisions of Section 6(iv)(j) cannot apply. He has relied upon the observations of the Full Bench of the Patna High Court in *Mt. Rupia v. Bhatu Mahton*, AIR 1944 Pat 17. There is in the Supreme Court decision referred to by me earlier, the Full Bench observed: -

"A suit though cast in the form of a declaratory relief only, but in substance aiming at setting aside a deed formally executed and registered in accordance with law is governed by Section 7(iv)(c) and not by Schedule 2, Article 17 (iii)".

In that case, the plaintiff alleged that the defendants fraudulently got the plaintiff to execute certain sale deeds which were without consideration and prayed for a declaration that the sale deeds were got up and fraudulent and that the defendants had acquired no title by virtue of the same, and it was held that as the sale deeds on their very face had been duly executed and properly registered, carrying with them the necessary legal consequence that title passed from the transferor to the transferee the sale deeds would necessarily require to be cancelled in order to get rid of the legal consequences attaching to them. That

being the very object of the suit though the plaintiff did not in terms ask for the cancellation of the deeds in question, that relief was implicit in the relief sought for. The suit, therefore, being one for declaration and consequential relief was governed by Section 7(iv)(c) and not Schedule 2, Article 17 (iii) of that Act.

14. In the instant case, however, I am not concerned with the setting aside of the effect of an executed agreement or of a completed sale-deed but with a voidable agreement to convey the shop at a future date. I may point out that this decision of the Full Bench of the Patna High Court was considered by a Division Bench of that Court in *Indrasan Prasad Singh and Another Vs. Shree Raghubans Rout and Others*, . There the Division Bench observed that caution must be observed so as not to import into the plaint anything which it does not really contain, either actually or by necessary implication and in construing the plaint the Court must take it as it is, not as it may think it ought to have been. A relief not asked for cannot be imported so as to charge court-fee thereon. Where a plaintiff who is entitled to consequential relief frames his suit as one for a declaration only, the Court is not entitled to insist upon his praying for a consequential relief and paying the court-fee proper for such a suit. It was further observed by the Division Bench of the Patna High Court that where the suit was brought for a declaration that a certain bazidawa deed executed by the plaintiff's mother and her sister was invalid, void and not binding upon the plaintiffs as the document was procured by fraud, the plaint cannot be read as one for declaration with consequential relief and the court-fee paid as for declaration was sufficient. Against it may be pointed out, that in the case before the Division Bench as in the case before *Vimadalal, J.*, the plaintiff was not a party to the agreement which was sought to be set aside and that the mere relief of declaration was sufficient for the purposes of the plaintiff in that suit.

15. In the light of these decisions, reading the plaint as a whole, the question that I have to ask myself is as to whether the present suit in substance is a suit to obtain substantive relief capable of being valued in terms of monetary gain or prevention of monetary loss. Now, the plaintiff alleges in the plaint that though no money had in fact been passed from defendant No. 1 to him, the agreement which he seeks to set aside as having been obtained under coercion from him, sets out that defendant No. 1 had paid consideration amount of Rs. 17,600/- to the plaintiff. It is no doubt true that if the plaintiff succeeds in the suit and the Court comes to hold that the agreement, dated September 9, 1965 was obtained from him under coercion or by threat, then the Court must also hold that no consideration had passed from defendant No. 1 to the plaintiff and that the recital in the agreement to the effect that consideration amount of Rupees 17,600/- had been paid by defendant No. 1 to the plaintiff would be of no effect whatsoever. But it is one thing to say that as a result of the declaration granted by the Court upon the plaintiff's suit, he would get some relief regarding the alleged payment of monetary consideration by defendant No. 1 to the plaintiff and it is another thing altogether to say that the substance of the suit is to obtain the relief capable of being valued in terms of monetary gain or prevention

of monetary loss. The substance of the suit is to avoid the alleged agreement of September 8, 1965 and the rest are the consequences purely flowing from such cancellation or avoiding of the agreement by the Court. If the agreement remains outstanding and the relief sought for by the plaintiff regarding the avoidance of that agreement is not granted various consequences may follow but in substance as well as in form the present suit cannot be said to be a suit to obtain substantive relief of monetary gain or prevention of monetary loss. Under these circumstances it is obvious that Article 7 of the First Schedule also cannot apply. With respect, the learned Registrar of the City Civil Court and the learned Judge in the City Civil Court were both in error when they came to the conclusion that the present suit falls under Article 7 of the First Schedule to the Act.

16. Applying the principle laid down by the Division Bench of the Bombay High Court in *Chhotalal Kalidas Vs. Laxmidas Mayaram and Others*, it cannot be said that in the instant case there is some standard by which it may be possible to value the subject-matter of the suit.

17. The result, therefore, is that it is not open to the Court to revise the valuation which the plaintiff has put in his plaint in the suit, namely, valuation at Rs. 300/- and the case clearly falls within Section 6(iv)(j) of the Act. This Civil Revision Application is, therefore, allowed and the order passed by the Registrar of the City Civil Court, Ahmedabad and the order passed by the learned Judge in the City Civil Court in revision are both set aside and it is held that the amount of Court-fees paid by the plaintiff is proper. Rule is made absolute. There will be no order as to costs of this Civil Revision Application.

18. Petition allowed.