

(1971) 01 GUJ CK 0001
In the Gujarat High Court

Case No : Civil Revision Application No. 151 of 1968

Khimji Jiva and Others

APPELLANT

Vs

Narendra Kumar Maganlal Shah and Others

RESPONDENT

Date of Decision : 25-01-1971

Acts Referred:

Bombay Civil Courts Act, 1869 — Section 24, 26, 8
Bombay Court Fees Act, 1959 — Section 6
Civil Procedure Code, 1908 (CPC) — Order 7 Rule 10, 115

Citation : AIR 1972 Guj 280 : (1972) 13 GLR 23

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

Bench : Single Bench

Advocate : D.D. Vyas, for the Appellant; Suresh M. Shah, Dipak M. Shah and P.V. Hathi, for the Respondent

Judgement

1. The plaintiffs filed the present suit in the Court of the Civil Judge, Senior Division at Rajkot for a declaration that the agreement of sale executed by the defendant No. 3 in favour of the defendants Nos. 1 and 2 was not binding upon the plaintiffs and that the consent decree passed in Special Civil Suit No. 5 of 1966 between the defendants Nos. 1 and 2 on one hand and the defendant No. 3 on the other hand was also not binding on them.

2. The defendants filed their Written Statement and contested the suit. The defendants Nos. 1 and 2 thereafter made application, Ex. 22 for raising and deciding a preliminary issue as to the Court-fees and jurisdiction of the Court. The plaintiffs resisted that application.

3. The learned Trial Judge after hearing both the parties decided that application and held that the preliminary issue which the defendants Nos. 1 and 2 had sought should be raised. However, what he, in fact, did was not to raise the issue in the form in which issues are raised but, having held that the aforesaid preliminary issue be raised, he heard the parties on merits of that issue and straightway recorded his findings in the order below Ex. 22. The learned Trial

Judge by his said order did not direct the plaintiffs to pay any additional Court-fees but held that the claim in suit ought to have been valued at Rupees 12,000/- which according to the learned Trial Judge represented 4/5th share of the four plaintiffs in the property in question - only 1/5th going to the defendant No. 3 who is the father of the three plaintiffs and husband of the defendant No. 4. It was the defendant No. 3 who had executed the agreement of sale in respect of the property in question in favour of the defendants Nos. 1 and 2 and against whom the aforesaid consent decree for specific performance of the contract was passed in Special Civil Suit No. 5 of 1966 in respect of which the plaintiffs have sought a declaration that it is not binding upon them. Having recorded the aforesaid finding the learned Judge made the following operative order.

"This Court has no pecuniary jurisdiction. Hence this suit to be dismissed from the file of the Court and plaint to be returned to the plaintiffs for presentation and hearing by the proper Court."

4. It is against this order that this Civil Revision Application has been filed.

5. The order which the learned Trial Judge has made is contradictory in terms. If the suit is dismissed the plaint cannot be returned for presentation to the proper Court. If the plaint is ordered to be returned for presentation to the proper Court the suit cannot be dismissed. The learned Trial Judge has combined both these contradictory directions in the operative part of the order which he has made below Ex. 22. Therefore, irrespective of whether this Civil Revision Application succeeds or fails. The order which the learned Trial Judge has made shall have to be corrected. I shall revert to it after I decide the contentions raised by the learned Advocates on the merits of the case.

6. One of the contentions raised before me is that the value of the subject-matter in the present suit is incapable of monetary evaluation. In order to appreciate this contention it is necessary to have a fresh look at a few facts and the prayers which the plaintiffs have made. The three plaintiffs who are the sons of the defendant No. 3 have filed this suit for a declaration that the agreement of sale in respect of an Immovable property which the defendant No. 3 executed in favour of the defendants Nos. 1 and 2 is not binding upon them and that the decree for specific performance of that agreement of sale obtained by the defendants Nos. 1 and 2 against the defendant No. 3 in Special Civil Suit No. 5 of 196 is also not binding upon them. In spite of the present suit filed by the three sons of the defendant No. 3 it is open to the defendant No. 3 to comply with the decree for specific performance passed in the aforesaid suit and honour the agreement of sale which he has executed in favour of the defendants Nos. 1 and 2 if he (the defendant No. 3) so choose. If he so acts, it will not affect the plaintiffs' right in the property if they are otherwise found to have any. Therefore, the plaintiffs, in my opinion, do not want the agreement of sale or any alienation (if there is one) by the defendant No. 3 to be set aside as the learned Trial Judge has erroneously assumed. They want only to prevent the consent decree obtained by the defendants Nos. 1 and 2 against the defendant No. 3 in

the aforesaid suit and the agreement of sale executed by the defendant No. 3 in favour of the defendants Nos. 1 and 2 from clouding their rights to the property in question. They want to avoid that effect. A suit filed to avoid such an effect and to have the cloudy weather cleared is in my opinion, incapable of being evaluated in monetary terms.

7. If the plaintiffs themselves had done anything which they wanted to avoid, cancel or undo, the position would have been different. It would have probably meant that they wanted to sell the property which they themselves had purported to alienate or in respect of which they had purported to extinguish or destroy their own rights.

8. A situation wherein a person tries to perform an act or do something which clouds the rights of another and a situation in which a person does something by which he purports to extinguish or destroys his own rights are two entirely different situations. In my opinion, the relief claimed under the facts constituting the first situation is incapable of monetary evaluation. Whether the relief claimed by a person under the facts constituting the second situation is capable or incapable of monetary evaluation does not arise for my consideration and I, therefore, do not propose to express any opinion on that hypothetical situation. In the view which I have taken the order which the learned trial Judge has made valuing the subject-matter in dispute in the suit between the parties at Rs. 12000/- is erroneous. That finding recorded by the learned trial Judge must, therefore, be set aside.

9. Since I have held that the subject-matter of the plaintiffs' claim is incapable of monetary evaluation, the court-fees on such a claim will have obviously to be paid u/s 6(iv)(j) of the Bombay Court-fees act, 1959. The question, however, which has been raised before me is a question of jurisdiction. Does a Civil Judge (Junior Division) have jurisdiction to entertain and try a suit in which the subject-matter is incapable of monetary evaluation? Section 8 of the Suits Valuation Act, 1887 need not detain me to answer this question because it in terms applies to cases where court-fees are payable ad valorem. On my finding that is not the situation in the present case. Section 6(iv)(j) of the Bombay Court-fees Act. Rs. 30/-. Therefore, Section 8 of the Suits Valuation Act, 1887 has no application to the present case.

10. Whether a Civil Judge (Junior Division) or a Civil Judge (Senior Division) shall have jurisdiction to decide a suit of this type is to be determined with reference to Section 24 of the Bombay Civil Courts Act. 1869. It is that Act which determines the forum for a suit. The first two paragraphs of Section 24 of the Bombay Civil Courts Act, 1869 (hereinafter referred to for the sake of brevity as the "Bombay Act") provide as follows.

"The Civil Judges shall be of two classes. Jurisdiction of Civil Judge (Senior Division): The jurisdiction of a Civil Judge (Senior Division) extends to all original suits and proceedings of a civil nature.

Jurisdiction of Civil Judge (Junior Division): The jurisdiction of a Civil Judge (Junior Division) extends to all original suits and proceedings of a civil nature wherein the subject-matter does not exceed in amount or value ten thousand rupees." The proviso to Section 24 is not material for the purpose of the present case. Paragraph 2 of Section 24, in my opinion, lays down the test for determining the Court which shall have jurisdiction to try a particular suit. That test is whether the value of the subject-matter exceeds Rs. 10,000/- or does not exceed it. If the answer to the question is in the affirmative, a Civil Judge (Junior Division) shall have no jurisdiction to try such a suit. It shall have to be tried by a Civil Judge (Senior Division) who has the residuary original jurisdiction. If the answer is in the negative, a Civil Judge (Junior Division) shall have jurisdiction to try that suit. Either a Civil Judge (Junior Division) can hear it or a Civil Judge (Senior Division) who has unlimited jurisdiction can also hear it provided the suit is within his ordinary territorial jurisdiction. The difficulty arises when no answer can be given to the question whether the subject-matter exceeds Rs. 10,000/- or does not exceed Rs. 10,000. In my opinion, what is incapable of monetary evaluation cannot be said either to exceed Rs. 10,000 or not to exceed Rupees 10,000. What is incapable of monetary evaluation cannot even by a fiction or by any wild imagination be said to be below Rs. 10,000 in value or above it. If, therefore, in a given case, as in the present case, on account of the fact that the value of the subject-matter is incapable of monetary evaluation, no answer can be given to the aforesaid question - which court has the jurisdiction to try it? In my opinion, a Civil Judge (Junior Division) has jurisdiction to try all suits of a civil nature in which it can be definitely predicated that the value of the subject-matter in dispute between the parties does not exceed Rs. 10,000/-. All other suits must necessarily, therefore, go to the Civil Judge (Senior Division) who exercises, as stated hereinabove, all other original civil jurisdiction including the residuary original civil jurisdiction except the jurisdiction which has been conferred upon Civil Judge (Junior Division) by paragraph 2 of Section 24 of the Bombay Act.

11. Therefore, in my opinion where the value of the subject-matter is either indisputably incapable of monetary evaluation or where it is found by the Court, upon a dispute having been raised in that behalf by the parties, to be incapable of monetary evaluation, the jurisdiction to entertain and try it lies with Civil Judge (Senior Division) alone. For the purpose of analogy the provisions of Section 8 and Section 26 of the Bombay Act may be looked at. The test which has been laid down in Section 26 for the purpose of appeals is different. It provides as under.

"In all suits decided by a Civil Judge of which the amount or value of the subject-matter exceeds ten thousand rupees the appeal from his decision shall be direct to the High Court."

The test which Section 26 contemplates is a positive test and in order to determine the question whether an appeal directly lies to the High Court or not,

the question to be asked is whether the value of the subject-matter exceeds ten thousand rupees. That is not the test which Section 24 contemplates. Section 24 contemplates a negative test. As stated above, the jurisdiction of a Civil Judge (Junior Division) depends upon the determination of the fact whether the value of the subject-matter does not exceed ten thousand rupees. That is the question which a Civil Judge (Junior Division) has to task himself while determining whether he has jurisdiction to try a particular suit or not. A close scrutiny of the scheme of Sections 24 and 26 lays open two different tests which those sections contemplate for the purpose of determining, in case of a suit or a civil proceeding, the forum which has jurisdiction to try it and in case of an appeal, the forum which shall entertain and decide it. If an attempt is made to apply both these tests to suit in which the value of the subject-matter is incapable of monetary evaluation, what shall be the position? So far as the suits in which the subject-matter in dispute between the parties is capable of monetary evaluation are concerned, Section 24 of the Bombay Act, as I have stated above, confers jurisdiction upon a Civil Judge (Senior Division) because the negative test conferring jurisdiction upon a Civil Judge (Junior Division) by the said section is not satisfied in respect of such suits. So far as an appeal from such a suit is concerned, it will lie to the District Court u/s 8 of the Bombay Act because the positive test by which jurisdiction has been conferred upon the High Court by Section 26 of the Bombay Act to hear appeals is not satisfied. Section 8 of the Bombay Act is in the following terms:

"Except as provided in Sections 16, 17 and 27, the District Court shall be the court of Appeal from all decrees and orders passed by the subordinate Courts from which an appeal lies under any law for the time being in force."

A comparison of the provisions of Section 8 with the provisions of Section 24 makes it quite clear that whereas in respect of original suits and civil proceedings a Civil Judge (Senior Division) is the repository of all residuary jurisdiction, in case of appeals it is the district Court which is the repository of all residuary jurisdiction. A Court of Civil Judge (Junior Division) and the High Court are not the repositories of residuary jurisdiction but they are the Courts which exercise jurisdiction in specified matters, that is to say, in matters which in respect of the value of the subject-matter are capable of answering the tests respectively laid down for them in Sections 24 and 26. In my opinion, therefore, a suit in which the value of the subject-matter is incapable of monetary evaluation is exclusively triable by a Civil Judge (Senior Division) u/s 24 of the Bombay Act though an appeal from decree passed by him in such a suit lies to the district Court u/s 8 read with Section 26 of the Bombay Civil Courts Act.

12. My attention has been invited to a few decisions. There is no direct decision bearing on the question. All the decisions except one are under the Hindu Marriage Act. They indeed go to a greater or lesser extent to support and fortify the proposition which I am laying down. In *Gangadhar Rakhmaji Vs. Manjula Gangadhar*, a Division Bench of the High Court of Bombay was considering

Section 28 of the Hindu Marriage Act, 1955 and Section 8 of the Bombay Act. In that case, the husband had filed a petition for divorce or in the alternative for judicial separation against his wife. It was tried and ultimately dismissed by the Civil Judge, Senior Division, Ahmednagar. An appeal against the decree passed in that petition was preferred to the High Court of Bombay. The question of the competency of that appeal arose before the Division Bench. Section 28 of the Hindu Marriage Act, 1955 contains provision for appeals and the material portion of that Section is as under:

"All decrees and orders made by the Court in any proceeding under this Act may be appealed from under any law for the time being in force."

The expression "any law for the time being in force" occurring in Section 28 of the Hindu Marriage Act, 1955 took the High Court of Bombay to the consideration of Section 8 of the Bombay Act. Having considered the scheme of Section 8 of the Bombay Act the High Court of Bombay laid down that appeal lay to the District Court u/s 8 and not to the High Court u/s 26 of the Bombay Act. This result which is recorded by the High Court of Bombay in the aforesaid case will follow if the test, which I have evolved in the present case, is applied. The High Court of Bombay, however, did not evolve any test and did not seek to apply any. All that they have observed while deciding the question is that the forum of appeal from the order or decree of the Court of the Civil Judge, Senior Division, under the Bombay Civil Courts Act is the Court of the District Judge of the District.

13. The next decision to which may attention has been invited is the decision of a Single Judge in Valliammal Ammal Vs. Periaswami Udayar, . It was also a case under the Hindu Marriage Act, 1955. Petitions presented under the Hindu Marriage Act were decided by a subordinate Judge. On appeals to the High Court from the decrees passed in those petitions by the Subordinate Judge the question which arose before the Madras High Court was whether appeal lay to the High Court or to the district Court. The learned Judge considered the scheme of Section 28 of the Hindu Marriage Act, 1955 and held that it gives to a party a right to appeal but does not prescribe the forum of appeal. He further held that the forum was left to be determined by "any law for the time being in force" as laid down by Section 28 of the Hindu Marriage Act. Obviously, therefore, Section 28 of the Hindu Marriage Act took the learned Judge to the consideration of Section 13 of the Madras Civil Courts Act. The relevant part of Section 13 of the Madras Civil Courts Act is in the following terms.

"Regular or special appeals shall when such appeals are allowed by law lie from the decrees and orders of the District Court to the High Court. Appeals from the decrees and orders of Subordinate Judges and District Munsifs shall when such appeals are allowed by law, lie to the District Court, except when the amount or value of the subject-matter of the suit exceeds Rs.10,000 in which case the appeals shall lie to the High Court."

Section 13 of the Madras Civil Courts Act (hereinafter referred to as the Madras Act" for the sake of brevity) contemplates appeals to the District court and design it is a Court of residuary appellate jurisdiction. What have been excepted jurisdiction. What have been excepted from its jurisdiction are appeals arising from suits in which the value of the subject-matter exceeds Rs.10,000. Section 13 of the Madras Act lays down a positive test for determining the forum of appeal as Section 26 of the Bombay Act lays down. Having considered Section 13 of the Madras Act the Madras High Court in that case has laid down the following principles:

"In regard to a matrimonial dispute, it cannot be stated that the subject-matter of the dispute exceeds Rs.10,000. That is a matter which is not capable of valuation. It would, therefore, appear that if a Subordinate Judge were given jurisdiction under the Act, an appeal from his decision would u/s 13 of the Madras Civil Courts Act lie only to the District Judge. As the decision in the matrimonial disputes under Ss. 9, 10, 11, 12 and 13 of the Hindu Marriage Act should be deemed to be a decree, a further appeal would lie from the decision of the District Judge on appeal."

The principle which the Madras High Court has evolved, in order to determine the forum, is that a claim which is incapable of monetary evaluation cannot be said either to exceed Rs.10,000 or not to exceed it. This principle supports the test which I have evolved for the purpose of determining the true impact of Section 24 of the Bombay Act.

14. The third decision to which may attention has been invited is the decision of the Full Bench of the Allahabad High Court in Paras Ram Vs. Janki Bai, . It was also a case under the Hindu Marriage Act, 1955. In that case an order was made by the First Civil Judge Kanpur at the instance of the wife u/s 24 of the Hindu Marriage Act, 1955 in a petition filed by the husband against his wife u/s 10 of the said Act. An appeal was preferred against that order to the High Court of Allahabad. The question which arose was whether appeal lay to the District Court or to the High Court. That question was referred to the Full Bench. It may be stated at this stage that the appellant in that suit had valued his claim at Rs.250. however, the Full Bench of the Allahabad High Court held that that valuation was of no consequence and it proceeded to consider the question as if the claim was incapable of monetary valuation. The learned Judges considered Section 28 of the Hindu Marriage Act which obviously took them to the consideration of Section 21 of the Bengal. Agra and Assam civil Courts Act, 1887 (hereinafter referred to as the "U.P.Act"). Section 21 of the U.P.Act lays down that an appeal from an order of a Civil Judge shall lie to "(a) the District Judge where the value of original suit in which the order was made does not exceed ten thousand rupees, and (b) the High Court in any other case". All appellate civil jurisdiction including residuary civil appellate jurisdiction u/s 21 of the U.P. Act has been conferred upon the High Court except in cases where the value of the subject-matter in dispute between the parties does not exceed Rs.10,000 in

which case civil appellate jurisdiction has been conferred upon the District Court. Section 8 and 26 of the Bombay Act, when read together, confer all appellate jurisdiction including residuary appellate jurisdiction upon the District Court except in cases where the value of the subject-matter exceeds ten thousand rupees in which case the jurisdiction has been conferred upon the High Court. Sections 8 and 26 of the Bombay Act and Section 13 of the Madras Act are different from Section 21 of the U.P. Act inasmuch as the former two Acts confer residuary civil appellate jurisdiction upon the District Court while the U.P. Act confers residuary civil appellate jurisdiction upon the High Court. However, in order to determine the forum the principle which the Full Bench of the Allahabad High Court has evolved is the same which I am trying to apply to the present case. The Full Bench has laid down the principle in the following terms:

"When no value was fixed on the petition and when there was no law also not below or not exceeding a certain sum ought to have been fixed, it cannot be said that the value of the petition did not exceed Rs.10,000. the subject-matter of the petition was not capable of pecuniary valuation and it could not be said that it exceeded any sum of money. Consequently, the appeal from an order passed in a proceeding started on the petition lay to this Court. It would lie to the Court of the District Judge only if it could be predicated that the valuation of the petition did not exceed Rs.10,000. in the case of a subject-matter not capable of pecuniary valuation it could not be said that it does not exceed any sum of money. The residuary power to entertain any appeal vests in the High Court not only when the value of the suit exceeds Rs.10,000 but also when the subject-matter of the suit is incapable of pecuniary valuation."

It is the very same principle which I am trying to apply in order to determine the forum for entertaining and trying and original civil suit u/s 24 of the Bombay Act. If the subject-matter is incapable of monetary evaluation the case is triable by a Court which has residuary jurisdiction.

15. The last decision to which may attention has been invited is the decision of the High Court of Bombay in *Indumatiben Chimanlal Desai Vs. Union of India and Another*, . In that case, one Indumatiben Desai filed against the Union of India and another a civil suit for a permanent injunction to restrain the defendants from attaching, continuing to attach, selling, dealing with or disposing of the suit property for realising Income Tax dues payable by her late husband. She stated that the subject-matter in the suit was incapable of monetary evaluation. She presented the plaint to the City Civil Court at Bombay. A contention was raised before the City Civil Court at Bombay that that Court had no jurisdiction to entertain and try the suit. The City Civil Court at Bombay ultimately held that the suit was not within its pecuniary jurisdiction and, therefore, returned the plaint for presentation to the proper Court. An appeal was filed from that order in the High Court of Bombay. Mr. Justice Nam who heard the appeal considered Section 3 of the Bombay City Civil Courts Act, 1948 which provides that the City Civil Court shall have jurisdiction to receive, try and dispose of all suits and other

proceedings of a civil nature not exceeding Rs.10,000 in value and arising within Greater Bombay except suits and proceedings which are cognizable by the Small Cause court. The pecuniary jurisdiction of Rs.10,000 was later on increased to Rs.25,000. In paragraph 14 of the report this is what the learned Judge has observed on the scheme of Section 3 of the Bombay City Civil Courts Act, 1948.

"If, according to the plaintiff, her suit is not capable of being estimated in money value, it cannot be predicted or stated that the suit will not exceed Rs.25,000 in value. In order to be able to state that the suit does not exceed Rs.25,000 in value, the plaintiff should be able to estimate the money value of the suit. If she has not been able to estimate the money value, the City Civil Court will have no jurisdiction and the suit must be filed in the Bombay High Court on its Original Side by virtue of the residuary jurisdiction under clause 12 of the Letters Patent."

The learned Judge having approved the principle laid down by the Full Bench of the Allahabad High Court in *Paras Ram Vs. Janki Bai*, has applied it to that case. He has also considered Clause 12 of the Letters Patent of the High Court of Bombay and held that the residuary jurisdiction vests in the High Court on its Original Side.

16. The consideration of all the aforesaid decisions to which my attention has been invited fortifies me in my conclusion that a Court which is invested with a specific jurisdiction or a Court whose jurisdiction has been defined in specific terms by a statute can entertain suits or appeals which definitely answer the requirement prescribed by the statute for the exercise of its jurisdiction. Where the definite terms of the jurisdiction of a Civil Court are not satisfied, the case, whether it is an original suit or an appeal, must go to the Court of residuary jurisdiction. In this case, since the value of the subject-matter is, as I have held, incapable of monetary evaluation, it must go to the Court which exercises residuary original civil jurisdiction u/s 24 of the Bombay act. That Court is the Court of the Civil Judge (Senior Division).

17. Mr. Vyas has, however, raised one more short and untenable contention before me. He has contended that the plaintiffs have valued the subject-matter for the purpose of jurisdiction of the Court and that it is not open to a Court of law to revise it. This argument is *ex facie* fallacious. Except where the law grants to the plaintiff a character of liberty to put down any valuation for the purpose of jurisdiction, every other valuation put down by the plaintiff can be revised by the Court either *suo motu* or on a dispute having been raised by the defendant in that behalf. For the purpose of court-fees, Section 8 of the Bombay Court-fees Act, 1959 makes a specific provision to meet a situation of this kind. For the purpose of jurisdiction if a dispute as a valuation touching its jurisdiction is raised, the Court, in my opinion, has inherent jurisdiction to decide such a question. The contention raised by Mr. Vyas, therefore, in that behalf fails and is rejected.

18. For the reasons stated in this judgment and not for the reasons stated by the

learned Trial Judge in his judgment the present suit is triable exclusively by the Civil Judge (Senior Division) in that view of the matter, this Civil Revision application, in substance, will have to be dismissed. However, the order which the learned trial Judge has made requires to be properly shaped and worked. He could not have made an order dismissing the suit and also returning the plaint for presentation to the proper court. It is a contradictory order. I, therefore, set aside that part of the order of the learned trial Judge by which he has dismissed the suit and confirm that part of his order by which he has directed that the plaint be returned for presentation to the proper Court.

19. Subject to the aforesaid modification, the Civil Revision Application is dismissed and Rule is discharged. In the circumstances of the case, there shall be no order as to costs.

20. The impugned order was made by the Civil Judge (Junior Division) attached to the Court of the Civil Judge (Senior Division) at Rajkot. The suit will have, therefore, to be only transferred to the file of the civil Judge (Senior Division) for being tried and decided by him according to law and in light of the observations which I have made in this Judgment. I, therefore, direct, by an order of this Court, that the present suit shall be transferred to the file of the Civil Judge (Senior Division) at Rajkot for being decided by him. I need not add that it will be open to the learned Civil Judge (Senior Division) to transfer it, if he thinks fit, to the file of the Joint Civil Judge (Senior Division) if there is any.

21. Rule discharged accordingly.