
(1973) 02 BOM CK 0011
In the Bombay High Court
Case No : A.F.O. No. 309 of 1971

Kishore Premal Dalaya and Others

APPELLANT

Vs

Akali Premaji and Others

RESPONDENT

Date of Decision : 26-02-1973

Acts Referred:

Suits Valuation Act, 1887 — Section 9

Citation : AIR 1974 Bom 133 : (1973) 75 BOMLR 604

Hon'ble Judges : Vimadalal, J

Bench : Single Bench

Advocate : V.N. Ramaratnam, for the Appellant; P.V. Mokashi, K.S. Capoor and M.S. Sanghavi, instructed by Bilawala and Co., for the Respondent

Judgement

1. This is an appeal filed by the original plaintiffs against an order passed by Judge Suresh of the Bombay City Civil Court on the 5th of April 1971 ordering the plaint to be returned to the plaintiffs for presentation to the proper Court on the ground that the subject-matter of the suit exceeded the pecuniary jurisdiction of that Court. The six plaintiffs and the 7th defendant are members of a joint and undivided Hindu family defendant No. 7 being the father of plaintiffs Nos.3 to 6. In the year 1953 defendant No. 7, and the plaintiffs' grandmother one Laxmibai, as well as Premal the father of plaintiffs Nos. 1 and 2 and their uncle Kishanlal, purported to mortgage the suit property which is situated at Dadar in Bombay, and it is the contention of the plaintiffs that the said mortgage was executed without legal necessity and is not binding upon them. The said mortgage was transferred from time to time and further charges were created on the said property in respect of further advances, and defendants Nos 1 to 5 ultimately had the mortgagees' interest in the said property vested in them. The suit property was put up for auction by defendants Nos. 1 to 5, in purported exercise of the powers conferred under the deeds of mortgage and further charges, on the 19th of September 1967, and it was purchased at the auction by the 6th defendant for a sum of Rs. 48,000. It may be mentioned that it is the contention of the plaintiffs that the said property was actually worth as much as

Rs. 96,000/-. It may also be mentioned that all the six plaintiffs were minors at the time of execution of the purported deeds of mortgage and further charges, and it is the contention of plaintiffs that defendant No. 7 was at no time the Karta of their joint Hindu family. The plaintiffs also contend that the said purported mortgage, further charges as well as the alienation at the auction sale were without legal necessity and were fraudulent and the same were not binding upon them. They have, therefore, filed the present suit on 25th October 1967 raying, (a) for a declaration that the purported mortgages and transfers of mortgages in respect of the suit property are void, invalid, inoperative, ineffective and not binding upon them; and (b) for a declaration that the auction sale of the suit property held on the 19th of September 1967 is also void, invalid, inoperative, ineffective and not binding upon them. Prayer (c) appears to be a Deed of Assignment dated 28th December 1967, executed by defendants Nos. 1 to 5 as well as by defendants No. 6, defendants Nos. 8 to 10 purported to acquire the rights of defendants Nos. 1 to 6 in the said property.

2. The plaintiffs had paid a fixed court-fee of Rs.30 in respect of this suit on the ground that the subject-matter thereof was incapable of monetary valuation and was, therefore, liable to that fixed court-fee u/s 6(iv)(i) of the Bombay Court-fees Act, 1959, as it then stood. Thereafter this Court, by its judgment D/-15-10-1968 in L.P.A. No. 44 of 1968 reported in ILR (1970) Born 1341 held that where the subject-matter of a suit was not capable of being estimated in money value, it could not be said that the money value of such suit was less than the money value, it could not be said that the money value of such suit was less than Rs. 25,000/- and such a suit was ordered by Judge S.K. Desai (now Mr. Justice Desai) on 26th March 1969 to be returned to the proper Court. In point of fact, the said plaint was, however not returned and remanded to be returned to the plaintiffs when the amendments effected in the Bombay Court-fees Act, 1959 as well as in the Suits Valuation Act, 1887, by Maharashtra Act 9 of 1970 came into force. The amending Act sought to nullify the effect of the judgment of this Court in L.P.A. No. 44 of 1968 which has been referred to above. The material provisions of the amending Act, as far as the present case is concerned, are that in Section 6 of the Bombay Court-fees Act, 1959, a new clause (ha) was added to Section 6(iv) of the Bombay Court-fees Act, 1959, which provided that in suits for a declaration that any sale, or contract for sale or termination of contract of sale of any property was void, one-fourth of ad valorem fee leviable on the value of the property must be paid by way of court-fee; and clause (i) of the said Section 6(iv) was amended by providing, instead of the fixed court-fee of Rs. 30, an ad valorem fee payable as if the amount or value of the subject-matter was Rs. 300. The said amending Act also substituted a new section in place of the old Section 9 of the Suits Valuation Act, 1887, providing that in cases in which the subject-matter of the suit did not admit of being satisfactorily valued, the suit was to be treated as if the subject-matter was of the value of Rs.300, and as if the court-fees thereon were payable ad valorem under the relevant provisions of the Court-fees Act. The material portion of Section 6(2)(b) of the amending Act

enacted that where any plaint had been directed to be returned by the City Court for the purpose of being presented to the proper Court on the ground that the subject-matter of the suit was not susceptible of monetary evaluation, the said order shall be void and of no effect, and if the same had not been actually been returned before the commencement of the said amending Act, "the City Court shall, without any further application, continue the suit or proceedings from the stage reached immediately before such order was made."

3. In view of the provisions of the said amending Act, therefore, the Bombay City Civil Court continued to be seized of the present suit in spite of the order dated 26th March 1969 passed by Judge S.K. Desai (as he then was), which S. 6(2)(b) of the amending Act expressly declared to be void and of no effect. The defendants however, sought to raise a preliminary issue whether, even after the amending Act came into force, this could be said to be within the pecuniary jurisdiction of the Bombay City Civil Court, and the suit was placed on the board of Judge Suresh for the trial of that preliminary issue. It was on that preliminary issue that Judge Suresh passed the order under appeal which was dated 5th April 1971, whereby he held that the present suit was governed by the provisions of Section 6(iv)(ha) of the Bombay Court-fees Act, 1959, as amended; that u/s 8 of the Bombay Court-fees Act, 1959, the valuation and determine the correct valuation of a suit; and that Section 6(iv)(ha) of the Bombay Court-fees Act only enabled the plaintiff to pay court-fees on one-fourth of the value of the property, but the value of the suit for the purposed of jurisdiction must necessarily be the whole value of the property. The plaintiffs themselves having valued the suit property at Rs. 96,000, Judge Suresh held that the suit was, therefore, beyond the pecuniary jurisdiction of the Bombay City Civil Court and ordered the plaintiffs once again for presentation to the proper Court. It is from that order that the present appeal has been preferred by the plaintiffs.

4. The first question that arises is whether the amendments effected in the Bombay Court-fees Act, 1959, in so far as they relate to the addition of clause (ha) is Section 6(iv), as well as the amendment in clause (i) and the amendment effected by substituting a new Section 9 for the old section in the Suits Valuation Act, 1887, are retrospective in effect and apply to the present suit which had been filed long before the said amendments on the file of the Bombay City Civil Court on the date on which those amendments came into force but still remained on the file of the Bombay City Civil Court on the date on which those amendments were enacted. In my opinion, to hold those amendments to be retrospective would lead to a clear inconsistency between the provisions of Section 4 of the amending Act and the material part of Section 6(2)(b) of the same Act in the case of suits like the present one. The new clause (ha) as well as the amendment effected in Clause (i) of Section 6(iv) of the Bombay Court-fees Act, 1959, by Section 4 of the amending Act would require the plaintiffs in the present suit to pay ad valorem court-fees, whereas Section 6(2)(b) of the amending Act provides in mandatory terms, without any qualification or requirement in regard to payment of additional court-fees, that in a case like the

present one where the plaint though ordered to be returned to the plaintiffs for presentation to the proper Court had not actually been returned in compliance with the order, the City Court "shall, without any further application, continue the suit". There is nothing in express terms of Section 4 of the amending Act to make the amendments effected thereby retrospective in operation and, in fact, the inconsistency referred to by me should lead the Court to the conclusion that the legislature did not intend the amendments effected by Section 4 of the amending Act to be retrospective in their operation. The intention of the Legislature to give retrospective effect which is referred to in the fourth para. of the Preamble to the amending Act is duly carried out by the provisions of Section 6 of that Act and in my opinion, nothing more than that was intended by the Legislature when it enacted the said para of the Preamble. For the same reasons, the new Section 9 of the Suits Valuation Act, 1887, which was substituted for the old Section 9 of that Act by Section 2 of the amending Act by way of an amendment consequential on the amendment made in Clause (i) of S. 6(iv), is also not retrospective in operation. In view of the mandatory terms of the concluding part of Section 6(2)(b) of the amending Act, a suit in which the relief claimed is incapable of monetary valuation and which fulfils the other conditions thereof, must continue in the City Civil Court, without the plaintiffs being required to pay any additional court-fees. I, therefore hold that as regards court-fees, the present suit continues to be governed by Section 6(iv)(i) of the Bombay Court-fees Act, 1959, as it stood prior to its amendment by Maharashtra Act 9 of 1970, and the view taken by Judge Suresh that the present suit is governed by the new clause (iv) (ha) of Section 6 of the Bombay Court-fees Act, 1959, is erroneous, if the plaintiffs' averment in the plaint that the relief claimed in it is incapable of monetary valuation be correct and is accepted by the Court.

5. Mr. Cooper on behalf of defendants Nos. 8 to 10 has, however, contended that now that the judgment of Judge S.K. Desai (as he then was) dt. the 26th of March 1969 has become void and of no effect in view of the express terms of the opening part s. 6(2)(b) of the amending Act, it is open to him to contend that the plaintiff's suit, as framed, is not incapable of monetary evaluation, and that on a proper valuation of the subject-matter thereof this suit is beyond the pecuniary jurisdiction of the Bombay City Civil Court. He has further contended that the Court is not bound to accept the plaintiffs statement in regard to the court-fees payable on a suit and that u/s 8 of the Bombay Court fees Act, 1959, if the Court is of opinion that the subject-matter of a suit has been wrongly valued, or if an application is made to the Court for the revisions of any valuation made by the plaintiff the Court has the power to revise the same and determine the correct valuation. Mr. Cooper has contended that the present suit is governed by Article 7 of Schedule I of the Bombay Court-fees Act. 1959 in so far as the plaintiffs seek to obtain relief which is capable of being valued in terms of monetary gain or prevention of monetary loss and, so valued, the subject-matter of the suit for the purpose of the suits Valuation Act would be far in excess of Rs. 25,000. In support of his contention Mr. Cooper has relied on an unreported judgment of my

brother Kantawala dated 7th September 1970 in A.O. No. 290 of 1969. In the plaint in the case before my brother Kantawala, there was only one substantive prayer and that was for a declaration that the several purported mortgages and further charges did not affect the right of the plaintiffs in the properties described in annexure "A" to the plaint in the said suit. there was no question in the said case of setting aside an auctions ale nor was any relief claimed by way of permanent injunction. It seems the plaintiffs in the said case took out a Notice of Motion for interlocutory relief and the question of jurisdiction was raised in the course of the arguments on that Motion. My brother Kantawala held that court-fees were payable on the said in accordance with the provisions of Article of Schedule I of the Bombay Court-fees, Act 1959 and that the value of the subject-matter of the suit for the purpose of the suits Valuation Act was far in excess of Rs. 25,000 and the Bombay City Civil Court had therefore no jurisdiction to entertain and try that suit. he further held that the trial Court was justified in passing an order returning the plaint for presentation to the proper Court and that as the trail Court had no jurisdiction to entertain and try the suit the plaintiffs were not entitled to seek any interlocutory relief on the Motion. As against that decision, Mr. Ramanathan for the plaintiffs relied upon a decisions of a single Judge of the Gujarat High Court in the case of Chandrakant Ratanshi Kothari Vs. Ratanshi Damji Kothari and Others, but apart from the fact that I would be bound to follows the decision of my brother Kantawala which is not distinguishable on facts, from the case before me as far as prayer (a) is concerned, the suit in the case of Gujarat High Court was a suit for general partition in which two mortgages were challenged as not binding by praying for a declaration to that effect. It was held (para 31) that, having regard to the subject-matter of the suit which was a suit for partition of the entire property of the joint family the plaintiff could not be asked to pay court-fees in regard to the declamatory relief claimed on the basis of the mortgage amount. That is not the frame of the present suit and in my opinion the ratio of the decisions of the Gujarat High Court in Chandrakant Kothari's case does not apply to the present case. It is also important to bear in mind that the present suit is not merely a suit for a declaration that the mortgages and further charges in question are void, invalid inoperative ineffective and not binding on the plaintiffs, but the plaintiffs have also prayed in prayer (b) for a declaration that the auction sale held by the mortgagees is void invalid, inoperative, ineffective and not binding upon the plaintiffs. In my opinion, the first prayer is precisely of the nature of the prayer in the case before my brother Kantawala and I would be bound to follow the view taken by that learned. judge in regard to its valuation both for court-fees as well as for jurisdiction. In my opinion however the present case is a fortiori one which comes within Article 7 of \\schedule I of the Bombay clearstory relief claimed in prayer (b) in regard to the auction sale not being binding upon the plaintiffs is clearly one which is capable of being clued in terms of monetary gain or prevention of monetary loss. In that view of the matter, the present suit if not one to which the concluding portion of \\section 6(2)(b) of the amending Act can apply. In paragraph 10 of the plaint the plaintiffs have themselves valued

the suit property at Rs. 96,000 and it is not disputed that the plaintiffs, between them, have a five sixth share therein. The sum of Rupees 48,000/- which the property fetched at the auction sale cannot be taken into account for that purpose for it went to the mortgages and not to the mortgagors or their representatives. Under Article 7 of Schedule I of the Bombay Court-fees Act 1959, the subject-matter of this suit must therefore be valued at Rs. 80,000 and court-fees are payable ad valorem on that amount and I hold that the valuation of the suit for the purpose of jurisdiction would also be Rs. 80,000/- u/s 8 of the suit Valuation Act 1887. In that view of the matter the plaintiffs, and I confirm the order passed by him that the plaint be returned to the plaintiffs for presentation to the proper Court though on different grounds. The plaintiffs must pay the defendants costs of this appeal.

6. Order accordingly.