(2022) 01 BOM CK 0034

In the Bombay High Court

Case No : Civil Revision Application No. 53 Of 2021

Lilabai Anandrao Mahale And Others APPELLANT

Vs

Ratnabai Rajesh Chaudhari And Others RESPONDENT

Date of Decision : 18-01-2022

Acts Referred:

Code Of Civil Procedure, 1908 — Section 21, 115, Order 7 Rule 11, Order 7 Rule 11(d)
Court Fees Act, 1870 — Section 6(iv)

Citation : (2022) 01 BOM CK 0034

Hon'ble Judges : Vinay Joshi, J

Bench : Single Bench

Advocate : Vijay B. Patil, Subodh P Shah

Final Decision : Partly Allowed

Judgement

Vinay Joshi , J

1. The applicants who were defendant Nos. 1 to 7 in R.C.S. No. 104 of 2021 have called in question the impugned common order dated 15.07.2021

passed by the trial Court below Exhs. 17 and 23. By way of amendment, the applicants have also questioned the correctness of the subsequent related

orders dated 18.08.2021 passed at Exh. 34 and 37. Precisely the applicants (defendants) have objected to the maintainability of the suit on various

counts and thereby urged to the trial Court for rejection of plaint in terms of order VII Rule 11 of Code of Civil Procedure (for short â??C.P.C.â?).

The plaint is sought to be rejected primarily on the ground of under valuation, barred by limitation and for want of cause of action.

2. In order to understand the controversy, it is necessary to go through the plaint, since it is settled law that for the purposes of Order VII Rule 11 of

the C.P.C., the pleadings of the plaint are the only relevant factor for consideration.

3. The house property bearing CTS No. 3220, situated within the limits of Dhule Municipal Corporation, was initially owned by one Bhagwan Chaudhari. In partition, the said property was allotted to the share of his son Shankar Bhagwan Chaudhari, who died in the year 1983. Shankar was survived by his wife Shakuntala, three sons namely Ramesh, Suresh, Rajesh and three daughters. The suit property was transferred by Shankar in the name of his wife Shakuntala. Rather the transfer was effected by way of carrying necessary mutation entries. The plaintiffs are the legal heirs of one of the son of Shankar namely Rajesh, who died in the year 2006. It is the Respondents (plaintiffs) case that they being the legal heirs of Shankar through Rajesh, they have share in the suit property owned by Shankar. According to the plaintiffs, the widow of Shankar, namely Shakuntala, had no exclusive rights, however, by joining hands with her other two sons, Ramesh and Suresh, she illegally alienated the suit property on 03.07.2013, under the registered sale deed jointly in favour of Anandrao (predecessor of defendant Nos. 1 & 2) and defendant Nos. 3 & 4.

4. It is plaintiffs case that they are in possession of back side western portion of the suit house property. Since they had a share in the suit property, they claimed declaration that the sale deed dated 03.07.2013 is not binding on them. Moreover, defendants have obstructed the plaintiffs peaceful possession over the suit property on 26.04.2021, therefore, perpetual injunction has been claimed.

5. During the pendency of the suit, two sets of defendants have moved applications Exh. 17 and 23 for rejection of plaint, in terms of order VII Rule 11 of the C.P.C. Defendant Nos. 1 and 2, vide application Exh. 17, have objected the maintainability of the suit on the count of bar of law of limitation in terms of order VII Rule 11 (d) of C.PC. and on the count of improper valuation of suit, in terms of order VII Rule 11 (d) of C.P.C. Similar grievance was raised by defendant Nos. 3 to 7, vide application Exh. 23. In addition to that they have stated that the plaint does not discloses the cause of action. Additionally it was contended that the execution of sale deed dated 03.07.2013 was well within the knowledge of the plaintiffs, therefore, the suit was false and vexatious.

6. Both applications were resisted by the plaintiffs vide reply in resistance. The

trial Court heard both applications together and vide impugned

common order dated 15.07.2021 pleased to reject the urge for rejection of plaint. The trial Court held that, so far as the prayer of declaration is

concerned, it is a matter of merit, which cannot be adjudicated at this stage. However, it is observed that the suit for simplicitor injunction based on

possession is well within the limitation. It is observed that since the plaint cannot be rejected in part, the prayer for rejection on the said count is not

tenable. However, as regards to under valuation of suit, the trial Court recorded the finding that the plaintiffs ought to have valued the suit as per

Section 6 (iv) (ha) of the Court Fees Act. Accordingly, the trial Court directed the plaintiffs to correct the valuation within a period of one month and

to pay the deficit court fees accordingly. Admittedly the plaintiffs have not challenged the said finding.

7. The record indicates that the plaintiffs have sought extension of one month for compliance of the order, however, the said application was rejected.

Within a couple of days, the plaintiffs have filed another application stating that they would comply the order within two days, stating that though they

have deposited the money with the Stamps Vendor, however, the stamps were not available. The trial Court has allowed the said application, on

which, the suit was amended and the court fee has been paid. Moreover, admittedly thereafter, on account of pecuniary jurisdiction, the suit has been

transmitted to the Court of Civil Judge, Senior Division.

8. The learned counsel appearing for the applicants /defendants took me through the pleadings and submitted that since the suit property was received

by Shankar in partition, it was his exclusive property. Shakuntala being his widow, has every right to alienate the same and therefore, the claim raised

by the plaintiffs is not maintainable. It is argued that prior to the sale deed, the plaintiffs have issued a public notice about anticipated sale, therefore,

the plaintiffs were well aware about the sale deed of the year 2013. According to the defendants, the suit is hopelessly barred by the law of limitation,

since it was filed after seven years from the execution of the sale deed.

9. Moreover, it is argued that without claiming declaration of ownership suit is not maintainable. On the point of valuation, it is contended that the

plaintiffs have sought for cancellation of sale, therefore, the plaintiffs ought to have valued the suit and paid the requisite Court fees. Besides that, certain technical objections about non compliance of the order within specified time has been raised, which would be dealt later on.

10. The learned counsel for the defendants relied on several decisions to impress that the provisions of Order VII Rule 11 of C.P.C. are mandatory in

nature. This is an independent remedy wherein, the Court is empowered to summarily dismiss the suit at the threshold, which is not maintainable for

the grounds stated under Rule 11 of Order VII of the C.P.C. Moreover, some reported judgments have been cited to state that the issue of limitation

can be considered for the purpose of Order VII Rule 11 (d) of the C.P.C. Besides that defendantsâ?? learned counsel would submit that when the

trial Court came to the conclusion that the suit was improperly valued, then, it was not justified in entertaining the other objections regarding the bar of

limitation, want of cause of action etc. He would submit that when once the Court found that it has no pecuniary jurisdiction to try and entertain the

suit, the other issues ought not have been dealt with. In this regard, he relied on the decision of this Court in the case of Akola Janta Commercial Co-

Operative Bank Limited vs Prema Satish Purohit and Others reported in 2017 DGLS (Bom.) 1019.

11. As against this, respondents/plaintiffs learned counsel would submit that so far as the heirs of Shankar are concerned, it was their ancestral

property. At the time of execution of sale deed the other sons of Shankar namely Ramesh and Suresh have consented for the same. However, the

plaintiffs who are the legal heirs of Rajesh were kept in dark. He took me through a copy of the sale deed, which bears a specific reference that the

plaintiffs are in possession of the back side portion. He would submit that since the plaintiffsâ?? possession is an admitted factors, they have an

independent right to seek injunction to protect their possession. It is submitted that the defendantsâ?? ought to have raised a specific objection

regarding the jurisdiction of the Court. It is submitted that in terms of Section 21 of the C.P.C., unless there has been a consequent failure of justice,

such objection cannot be entertained. It is argued that the applications Exh. 17 and 23 were for rejection of plaint in terms of Order VII Rule 11 of the

C.P.C. After rejection of said applications, the defendants have filed pursis (Exh. 30) stating that the Court ought to have decided the aspect of

jurisdiction at the earliest. Moreover, the respondents denied non compliance of the Court order about valuation within time.

12. So far as, non discloser of cause of action is concerned, undoubtedly the cause of action is bundle of facts on which the claim has been made. The

entire plaint has to be read as a whole to find out the accrual of cause of action. It reveals that the defendants have not in specific terms raised

objection about want of cause of action but contended that the suit is false and frivolous. Learned counsel for the applicants/defendants primely tried

to specify that the plaintiffs have no right in the property and therefore, the suit is baseless. However, it is a matter of merit, which cannot be

prejudged at the time of deciding the application under Order VII Rule 11 of the C.P.C.

13. The trial Court has upheld the objection regarding improper valuation of the suit and accordingly, passed appropriate order directing to correct the

valuation within stipulated period and to pay the requisite Court fee. The said order was also later on complied with and the suit has been transmitted

to the Court of Civil Judge Senior Division, on account of pecuniary jurisdiction. In the wake of such admitted position, it remains to be noted as to

whether the trial Court was justified in dealing with the other objections, when it has held that on account of pecuniary jurisdiction, the suit is to be

transferred to the appropriate Court. The said issue was covered by the decision of this Court in the case of Akola Janta Commercial Co-Operative

Bank Limited (supra). It is observed that when the Court of Civil Judge, Junior Division, held that it has no pecuniary jurisdiction and on correction of

valuation suit is liable to be transferred to the Court of Civil Judge, Senior Division, then the Court was not justified in entertaining the other objections

and those are to be entertained by the Court having pecuniary jurisdiction. The relevant observations in paragraph No.4 of the judgment, reads as

below :

â??4. Having perused the impugned order, I find that the challenge raised by the applicant deserves acceptance. Under provisions of Order VII Rule

11(b) of the Code, the trial Court held that the suit was not properly valued and directed the plaintiff to correct the valuation. After the valuation of the

suit claim was corrected, the Court of Civil Judge, Junior Division ceased to have pecuniary jurisdiction to entertain the suit. As a result of such

valuation, the suit was liable to be transferred to the Court of Civil Judge, Senior Division. The learned Judge of the trial Court having held that the

Court of Civil Judge, Junior Division had no pecuniary jurisdiction to entertain the suit, the said Court was not justified in entertaining the other

objection with regard to jurisdiction of the civil Court to entertain the suit. This objection was required to be entertained by the Court having pecuniary

jurisdiction to decide the suit which was the Court of Civil Judge, Senior Division. The impugned order to that extent therefore suffers from a

jurisdictional error and is required to be corrected in exercise of revisional jurisdiction under Section 115 of the Code.â??

14. The learned counsel appearing for the plaintiffs would submit that the said decision was an ex-parte decision, as well as the Court has not

considered the provisions of Section 21 of the C.P.C. I am not in agreement with said submission because, the view taken by this Court was purely a

question of law. It touches to the competence of the Court in deciding other objections, when the Court came to the conclusion that it has no pecuniary

jurisdiction. In the wake of said decision, it was improper on the part of the Civil Judge, Junior Division in dealing with other objections. Therefore,

modification to that extent is necessary. It is not appropriate to deal with the rest of the issues, which are to be left for fresh adjudication to the Court

of competent jurisdiction.

15. Much has been argued on the point that the suit is barred under law, meaning thereby the law of limitation. It is totally factual aspect whether the

question of limitation can be decided at this juncture or it is mixed question of law and fact. Since the trial Court has recorded a finding without

jurisdiction, it cannot be upheld in view of above discussion.

16. On the point of technical compliance, the trial Court vide its first common order dated 15.07.2021, directed the plaintiffs to correct the valuation

and pay the requisite Court fee within a period of one month. The record indicates that on 16.08.2021, the plaintiffs have moved an application (Exh.

31) seeking one monthâ??s extension for making necessary compliance. The said application though rejected on the very day, however, the trial

Court has allowed another successive applications (Exh. 34 and 37) and accepted the compliance. It reveals that on 17.08.2021, the plaintiffs have

moved an application (Exh. 34) stating that he is ready to make compliance, for which he has deposited money with some stamp vendor, however, due

to non availability of stamps, he sought time till next date and then on the following day i.e. on 18.08.2021, he made due compliance by depositing

requisite Court fees.

17. The learned counsel for the defendants argued that the trial Court vide order dated 15.07.2021 has directed to make necessary compliance within

one month i.e. on or before 14.07.2021, which was not made. It is submitted that when once the trial Court has rejected an application (Exh. 31)

seeking further time, then the trial Court was not justified in granting another application (Exh. 37) on the next date and acceptance of compliance. On

the other hand, the plaintiffsâ?? learned counsel would submit that the day on which the order has been passed i.e. 15.07.2021, has to be excluded

while computing the period of one month and thus, the plaintiffs application (Exh. 31) dated 16.08.2021 seeking time, was well within limitation. It is

submitted that on 17.08.2021 the plaintiffs have deposited money with stamp Vendor, but due to technical difficulty, he could not get the stamps and

therefore, there was due compliance of the order. It is submitted that merely on technicalities the failure of justice shall not be allowed. In this regard,

he relied on the decision of Supreme Court in the case of Bahrein Petroleum Co. Ltd. Vs. P.J. Pappu and Another AIR 1966 SC 634 wherein, it is

observed that merits and judgment rendered, should not be liable to be reversed purely on technical grounds, unless it had resulted in the failure of

justice.

18. Admittedly the trial Court has granted one month time on 15.07.2021. True, on 16.08.2021, the plaintiffsâ?? application seeking extension was

rejected, however, on the following day, the plaintiffs moved another application (Exh.34) which was allowed on 18.08.2021. Moreover, another

application (Exh. 37) tendering due compliance was allowed and compliance has been accepted. It requires to be noted that the trial Court has not

passed any order of rejection of plaint in terms of Order VII Rule 11 of C.P.C. by noting non-compliance after stipulated period. However, the

compliance was accepted, meaning thereby, the period is deemed to have been extended by the trial Court by invoking its inherent jurisdiction.

Therefore, on mere technicalities, the compliance made in pursuance of directions of Court cannot be nullified.

19. In the result, the order rejecting defendants application for rejection of plaint, on account of improper valuation, in terms of Order VII Rule 11 of

C.P.C., would not be faulted with, since it was complied. So far as rest of the objections are concerned, in view of the view expressed by this Court in

case Akola Janta Commercial Co-Operative Bank Limited (supra), the said objections are required to be dealt afresh by the Court of competent

jurisdiction.

20. In the result, following order is passed :

ORDER

a. Revision Petition stands partly allowed.

b. The impugned order dated 15.07.2021 as regards to valuation of suit is deemed to have been complied and thus, rejection of said objection is

maintained.

c. So far as, rest of the objections are concerned the findings recorded by the learned trial Court to that effect are set aside.

d. The Court of Civil Judge, Senior Division, where the suit is transmitted shall consider these objections afresh and decide them in accordance with

law.

e. It is clarified that this Court has not considered other objections on merits.

f. Revision Petition stands disposed of in above terms.