
(2014) 06 BOM CK 0164
In the Bombay High Court
Case No : Writ Petition No. 1150 of 2014

Lokesh

APPELLANT

Vs

Janardhan

RESPONDENT

Date of Decision : 27-06-2014

Acts Referred:

Bombay Court Fees Act, 1959 — Section 6
Civil Procedure Code, 1908 (CPC) — Order 7 Rule 11
Court Fees Act, 1870 — Section 7(iv)(c)
Suits Valuation Act, 1887 — Section 8

Citation : (2015) 2 BomCR 158 : (2014) 5 MhLj 789

Hon'ble Judges : A.P. Bhangale, J

Bench : Single Bench

Advocate : P.N. Shende, Advocate for the Appellant; D.G. Paunikar, Advocate for the Respondent

Judgement

A.P. Bhangale, J.—Rule. Heard forthwith by consent of parties.

2. Petitioners (original plaintiffs) filed Special Suit No. 325 of 2013 for declaration, cancellation of sale deed and restoration of possession and permanent injunction before the Civil Judge, Senior Division, Nagpur.

3. Respondents/defendants filed application (exhibit 14) for rejection of plaint under Order VII rule 11 of the CPC on the ground that even though plaintiffs have, inter-alia, sought for relief of restoration of possession the suit property value of which is Rs. 34 lacs, still he has paid court fee only on Rs. 7 lacs. Petitioners/plaintiffs opposed the said application.

4. Learned trial Judge instead of deciding the question as to whether petitioners/plaintiffs have valued the suit for the purposes of jurisdiction of court and for payment of court fees, directed plaintiffs to delete prayer clauses I and IV contained in the plaint. This order is under challenge in this writ petition.

5. Heard learned counsel for the parties at length. Perused plaint, application,

reply thereto and impugned order passed by the trial Court. I have gone through the relevant provisions of the Maharashtra Court Fees Act, Suit Valuation Act and the Code of Civil Procedure.

6. Learned counsel for petitioner has relied upon ruling in *Inderlal Panwormal Vs. Khialdas Shewaram and Others*, to contend that it was not open to the trial Court to revise the valuation which the petitioner has put in its plaint and the case clearly falls within Section 6(iv)(j) of the Act. I have gone through the said ruling. In the case before the Gujarat High Court, it was found that suit before it was not in substance a suit to obtain substantive relief capable of being valued in terms of monetary gain or prevention of monetary loss. The agreement which was obtained from plaintiff was out of coercion and no consideration had passed from the defendant.

7. Relevant paragraph where petitioner/plaintiff has valued the suit for jurisdiction of the Court and for payment of court fee, reads as under:

16. For the purposes of jurisdiction of this Hon''ble Court and in so far as relief for cancellation of sale deed dated 21.04.2006 is concerned the suit is valued at Rs. 7,00,000/- as per consideration mentioned therein and court fees of Rs. 18,430/- is paid. Similarly additional fixed court fees of Rs. 200/- is also paid for the relief's of declaration and permanent and mandatory injunction.

8. Valuation clause in the plaint cannot be vague. It must reflect as to how the suit is valued under the Suit Valuation Act and Rules framed thereunder for the purpose of jurisdiction of the Court and furthermore, as to how the suit is valued under the Maharashtra Court Fees Act for the payment of court fees payable under the relevant and appropriate provisions thereof.

9. Computation of fees payable in certain suits is provided u/s 6 of the Maharashtra Court-Fees Act. It has been provided u/s 6(ha) of the Act that in suits for declaration that any sale, or contract for sale or termination of contract for sale, of any movable or immovable property is void one-half of ad valorem fee leviable on the value of the property is required to be paid. u/s 8 of the Suits Valuation Act, 1887 it is provided that where in suits other than those referred to in paragraphs (v), (vi) and (x) and clause (d) of paragraph (xi) in Section 6 of the Bombay Court Fees Act, 1959 court-fees are payable ad valorem under the Bombay Court-fees Act, 1959 the value as determinable for the computation of court-fees and the value for purposes of jurisdiction shall be the same. Rule 2 of the Civil Court Manual (Rules Made by the High Court under the Bombay Civil Courts Act, 1869) and the Court-Fees Act, 1870 provides as under:

2. In suits for the possession of land, houses, and gardens mentioned in paragraph (v) in Section 6 of the Bombay Court-fees Act, 1959 (Bom. XXXVI of 1959) (hereinafter referred to as "the Court-Fees Act"), for the purposes of jurisdiction, the value of the property shall be determined as follows, namely :

(a) Where the subject-matter is a house or garden, according to the market

value of the house or garden, as the case may be;

(b) Where the subject-matter is a house or garden according to the market value of the assessment payable in respect of the land.

Article 7 of Schedule I contained in the Maharashtra Court-Fees Act, provides for ad valorem fee on 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 of 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.

10. In Tara Devi Vs. Sri Thakur Radha Krishna Maharaj, through Sebaitis Chandeshwar Prasad and Meshwar Prasad and Another, the Supreme Court has held as under:

It is now well settled by the decisions of this Court in Sathappa Chettiar v. Ramanathan Chettiar and Meenakshisundaram Chettiar v. Venkatachalam Chettiar that in a suit for declaration with consequential relief falling u/s 7(iv)(c) of the Court Fees Act, 1870, the plaintiff is free to make his own estimation of the relief's sought in the plaint and such valuation both for the purposes of court fee and jurisdiction has to be ordinarily accepted. It is only in cases where it appears to the court on a consideration of the facts and circumstances of the case that the valuation is arbitrary, unreasonable and the plaint has been demonstratively undervalued, the court can examine the valuation made by the plaintiff by an inquiry and may direct proper valuation of the suit for purposes of jurisdiction of the court and payment of court fees. and can revise the same. The plaintiff has valued the leasehold interest on the basis of the rent. Such a valuation, as has been rightly held by the courts below, is reasonable and the same is not demonstratively arbitrary nor there has been any deliberate underestimation of the relief's....

11. Plaint in paragraph 16 reproduced supra is vague and omnibus. Without observing anything on merit, therefore, it would be expedient to quash and set aside impugned order with direction to the petitioner/plaintiff to amend paragraph 16 of the plaint in order to incorporate detailed pleading for the payment of court fees as to value the suit for purposes of jurisdiction and court fees. In view of the leave so granted, petitioner shall carry out amendment within fifteen days from the date of receipt of this order. Trial Court shall then decide application (exhibit 14) afresh after hearing both the sides bearing in mind observations made in this order.

12. In the result, rule is made absolute in terms of directions in paragraph 10 above with no order as to costs.