

(1987) 12 BOM CK 0018

In the Bombay High Court

Case No : Civil Revision Application No. 181 of 1984

Madhukar Kalbande and Others

APPELLANT

Vs

Mangalchand Agrawal and Others

RESPONDENT

Date of Decision : 03-12-1987

Acts Referred:

Bombay Court Fees Act, 1959 — Section 6

Citation : (1988) 2 BomCR 303 : (1988) MhLj 558

Hon'ble Judges : V.A. Mohta, J

Bench : Single Bench

Advocate : V S. Moharil, Anil Padiyar, A. Deshbhratar and E.N. Quazi, for the Appellant;

Final Decision : Allowed

Judgement

V.A. Mohta, J.—This revision arises out of an order passed by the Joint Civil Judge, Junior Division, Yavatmal, directing the applicants (plaintiffs) to pay Court-fee as per section 6(iv)(d) of the Bombay Court-fees Act, 1959 (the Act). Plaintiffs had paid Court-fee of Rs. 30/- u/s 6(iv)(j) of the Act.

2. In order to ascertain which of the two provisions are attracted, it is necessary to set out what in substance is the claim made: The plaintiffs are tenants of a block in a Chawl in Peshve plot, Yavatmal. The property was taken on lease from Dongaonkars who executed a sale-deed dated 28-12-1981, in favour of non applicants Nos. 2 to 4 (defendants Nos. 2 to 4). The house is let out for residential purposes and is governed by the local Rent Control Order, Non-applicant No. 1 (defendant No. 1) was serving as a Civil Surgeon, Yavatmal. He was staying in a Government Bungalow. Defendant No. 2 is his wife, defendant No. 3 is his son and defendant No. 4 is his brother-in-law. The property is in fact purchased by defendant No. 1 but Sale-deed has been taken benami in the name of defendants Nos. 2 to 4 solely with 3 view to make out a case before the Rent Controller for bona fide occupation on the ground that defendants Nos. 2 to 3 have no accommodation to live in the town of Yavatmal. Hence it be declared

that real owner of the property is defendant No. 1 and not defendants 2 to 4 and the plaintiffs are the tenants of defendants No. 1 and not of defendants Nos. 2 to 4.

3. Section 6(iv)(d) reads thus :

"In suits for declaration in respect of ownership, or nature of tenancy, title, tenure, right, lease, freedom or exemption from, or non-liability to, attachment with or without sale or other attributes, of Immovable property, such as a declaration that certain land is personal property of the Ruler of any former Indian State or public trust property or property of any class or community one-fourth of ad valorem fee leviable for a suit for possession on the basis of time of the subject-matter, subject to a minimum fee of eighteen rupees and seventy-five naye paise :

Provided that if the question is of attachment with or without sale the amount of fee shall be the ad valorem fee according to the value of the property sought to be protected from attachment with or without sale or the fee of fifteen rupees, whichever is less:

Provided further that, where the defendant is or claims under or through a limited owner, the amount, of fee shall be one-sixth of such ad valorem fee, subject to the minimum fee specified above :

Provided also that, in any of the cases falling under this clause except its first proviso, when in addition any consequential relief other than possession is sought the amount of fee shall be one-half of ad valorem fee and when the consequential relief also sought include a relief for possession the amount of fee shall be the full ad valorem fee ;"

Section 6(iv)(j) reads thus :---

"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 ad valorem fee payable, as if the amount or value of the subject matter was three hundred rupees";

It will be seen that section 6(iv)(j) is a residuary provision and applies only when the suit does not fall under any other specific provision. Thus, three aspects fall for consideration (i) what is the subject-matter of the suit ? (ii) Is it susceptible of monetary evaluation ? and (iii) is it other wise provided for in the Act ? The trial Court has held that (ii) the suit is about the nature of tenancy in respect of a house, (ii) the said house is susceptible to monetary evaluation ; and hence provisions of section 6(iv)(d) are attracted. In my judgment, there has been an error on the part of the trial Court in not appreciating the real nature of the suit. The suit is not at all about nature of tenancy in respect of a house. The plaintiff had proceeded upon the assumption that he is the tenant qua the said house. He is interested only in clearing a cloud about his right in the property vis-a-vis the

defendants inter se. He is neither a party to the sale deed dated 28-12-1981 nor is he interested in setting aside the said transaction. The very limited relief he is interested in is to avoid the affect of that transaction on him. Thus subject matter of the suit is not the house and the suit is not about the property as such. Declaration sought is neither about ownership in the property nor about nature of tenancy. There is no standard by which the present suit can be valued otherwise than on plaintiffs own valuation. In other words the subject matter is incapable of being valued in terms of money. All that remains to be considered is whether such a suit is otherwise provided for in that Act. Neither section 6(iv)(d) nor any other section is attracted. Thus resort to residuary provision section 6(iv)(j) was rightly taken by the plaintiff and there was no justification whatsoever for the trial Court to direct payment of additional Court-fees.

4. There is one more aspect which can have some impact on the controversy. It is this. The Act is a taxing statute and it is settled legal position that its provisions have to be construed strictly in favour of the subject.

5. Useful reference may be made to some decisions on similar if not the same points to which my attention was drawn by the learned Counsel for the applicant. In the case of Jafferli Alibhai and Another Vs. S.R. Dossa and Co. and Another, it is held that where a creditor files a suit u/s 53 of the T.P. Act seeking a declaration that a deed of assignment executed by the defendant is void against the plaintiff, the subject matter of the suit as framed is not the property comprised in the Deed of Assignment which was sought to be set aside, but is the relief by way of declaration itself, namely, that the deed of assignment was void as against the plaintiff, and hence the same is not susceptible of monetary evaluation and is governed by section 6(iv)(j) of the Act. In the case of Balgonda Appanna v. Ramgonda Shivgonda, 1970 Mh.L.J. 641 this Court held that a suit for declaration by a protected tenant of a field that sale by his landlord was in contravention of the Tenancy Act and hence was not binding on him, could not attract provisions of section 6(iv)(d) of the Act and relevant provision was section 6(iv)(j). In the case of Lalji Haridas Vs. Mulji Manilal Kamdar and Others, it is held that a suit for declaration that the plaintiff was merely a benamidar in various suit transaction and therefore was not liable for the said transaction was not susceptible of any monetary evaluation and attracted Court-fee only under a residuary provision of section 6(iv)(j).

6. To conclude, this revision is allowed. The order passed by the trial Court directing the plaintiff to pay Court-fees as per section 6(iv)(d) is quashed and set aside. I hold that Court-fee of Rs. 30/- was rightly paid. No order as to costs.