
(2011) 10 BOM CK 0052

In the Bombay High Court

Case No : Civil Revision Application No. 76 of 2011

Manju Narendra Gupta

APPELLANT

Vs

Meenakshi Ashok Patil and Others

RESPONDENT

Date of Decision : 10-10-2011

Acts Referred:

Bombay Court Fees Act, 1959 — Section 14(1), 6(4), 8
Civil Procedure Code, 1908 (CPC) — Order 14 Rule 2(1), Order 14 Rule 2(2), Order 7 Rule 10

Citation : (2012) 4 ALLMR 365 : (2012) 4 BomCR 809 : (2012) 1 MhLj 706

Hon'ble Judges : R.M. Borde, J

Bench : Single Bench

Advocate : P.K. Dhakephalkar, instructed by Ashwin Ankhad and Associates, for the Appellant; Atul S. Tungare for respondent Nos. 5 to 8, for the Respondent

Judgement

R.M. Borde, J.—Heard.

2. Rule. Rule made returnable forthwith. With the consent of the parties, revision application is taken up for final hearing at admission stage.

3. Original defendant no. 4 has approached this court taking exception to the order passed by the learned Judge, City Civil Court, Dindoshi Branch, Mumbai in Notice of Motion No. 2067/2010 in S.C.Suit No. 2078/2008.

4. Notice of motion came to be moved by defendant / applicant herein requesting the court to return the plaint presented by the plaintiffs / respondents herein for proper presentation to the appropriate Court, as contemplated by Order VII Rule 10 of the Code of Civil Procedure.

5. Respondent nos. 1 to 5 (here in after referred to as the "plaintiffs") presented suit against respondent nos. 6 to 8 /original defendant nos. 1 to 3 and the appellant and respondent no. 9 / original defendant nos. 4 and 5 claiming perpetual injunction and negative declaration. According to the plaintiffs, they are the owners of 1/3rd undivided share in the suit property which is a plot

admeasuring 1452.1 sq. mtrs out of survey no. 75 Hissa no. 5, CTS No. 694 and 671 situate at village Kandiwali, Mumbai. According to the plaintiffs, the other 2/3rd undivided share belong to two other branches of plaintiffs' family. It is alleged that the cause of action arose in the month of November 2008 when one of the branches, according to the plaintiffs, having 1/3rd undivided share in the suit property and who have been impleaded as defendant nos. 1 to 3 in the suit, denied right, entitlement of the plaintiffs in relation to suit property and asserted their exclusive rights. On assertion that plaintiffs are owner of 1/3rd undivided share in the property, plaintiffs have sought declaration that defendant nos. 1 to 3 are not entitled to sell, transfer etc. suit property and, alienation, if any made by defendant nos. 1 to 3, in favour of defendant nos. 4 and 5, is not binding on plaintiffs and will have no effect on the right, title and interest of the plaintiffs.

6. Defendants appeared and resisted the suit by filing written statement. According to defendant nos. 4 and 5, plaintiffs have no interest in the property. It is contended by defendants that by virtue of agreement dated 31st January, 1988, defendant nos. 1 to 3 who had become exclusive owner of the suit property pursuant to the family arrangement / partition, had agreed to sell and grant development rights in respect of suit property to defendant Nos.4 and 5. It is also pleaded that simultaneously with execution of agreement dated 31st January, 1988, possession has been handed over to defendants. Agreement is also confirmed by the predecessors of the plaintiffs who had signed it as confirming parties. There is a deed of conveyance executed on 27th January, 2003, by virtue of which defendants became owner of the property. The deed of conveyance has been registered with the Sub- Registrar, Assurances, Borivali on 9th May, 2003. On the basis of pleadings of the parties, issues were framed by the trial court and one of the issues framed is in respect of ownership of the plaintiffs and their entitlement to 1/3rd share in the suit property. Issue has also been framed in respect of pecuniary jurisdiction of the court to entertain the suit. It is the contention of defendant that the suit presented by plaintiffs is beyond pecuniary jurisdiction of the Court. The suit has not been properly valued and, as such, plaint shall be returned for proper presentation as contemplated by Order VII Rule 10 of the Code of Civil Procedure.

7. Notice of motion was heard by the Court after extending opportunity to both the parties and the learned Judge of the City Civil Court by order dated 14th December, 2010 was pleased to reject the notice of motion presented by defendant nos. 4 and 5 and held that the suit is properly valued and the plaint is not required to be returned to the plaintiffs as claimed by defendants.

8. In order to appreciate the controversies, it would be appropriate to refer the substantive prayers made in the plaint. Those read thus :

a) that this Hon'ble Court may be pleased to hold and declare that the Defendants No. 1 to 3 are not entitled to sell, transfer, alienate or encumber the suit property viz. all that piece or parcels of lands bearing Survey No. 75, Hissa No. 5, C.T.S. No. 694, 671 of Village Kandivali, Taluka Borivli, Mumbai Suburban

District and more particularly described in the Schedule at Exhibit "A" hereto in favour of the Defendants No. 4 and 5 and/or in favour of any person or persons and the transfer and/or alienation if any made by the Defendants No. 1 to 3 in favour of Defendants No. 4 and 5 is not binding on the Plaintiffs and will have no effect on the right, title and interest of the Plaintiffs;

b) that this Hon'ble may be pleased to issue an order and permanent injunction restraining the Defendants, their agents, servants and all persons claiming through them from carrying out any further constructions and/or otherwise putting up, and/or developing any additional building/s, structure/s, erections of any nature on the suit property viz. all that piece or parcels of lands bearing Survey no. 75, Hissa No. 5, C.T.S. No. 694, 671 of Village Kandivalil, Taluka Borivli, Mumbai.¹¹ Suburban District and more particularly described in the Schedule at Exhibit "A" hereto.

c) that this Hon'ble Court may be pleased to issue mandatory order and injunction against the Defendants, ordering and directing the Defendants to pull down and/or to remove, and/or to demolish the construction raised by them on the suit property viz. all that piece or parcels of lands bearing Survey No. 75, Hissa No. 5, C.T.S. No. 694, 671 of Village Kandivali, Taluka Borivli, Mumbai Suburban District and more particularly described in the Schedule at Exhibit "A" hereto.

It is noted in paragraph no. 11 of the plaint as quoted below :-

11. On Sunday, the 10th of November, 2008 the Plaintiffs caught hold of the Defendants No. 1 to 3 and asked them as to how the board of Defendant No. 5 was appearing on the site of the suit property and as to why the Defendants No. 1 to 3 had avoided to give any documents to the Plaintiffs. The Defendants No. 1 to 3 thereupon reacted rudely with the Plaintiffs and told Plaintiffs that they had allowed the suit property to be developed by Defendants No. 4 and 5 in their own right and the Plaintiffs might do their worst.

It is asserted in the plaint that plaintiffs have 1/3rd undivided share in the property. Paragraph no. 18 relates to occurrence of cause of action wherein it is stated that cause of action arose on 10th November, 2008 when defendant nos. 1, 2 and 3 denied right of the plaintiffs in the suit property and asserted their exclusive right to the suit property. Thus, it is evident on perusal of the plaint that plaintiffs asserted 1/3rd share in the suit property and the cause of action arose as the defendants denied plaintiffs' entitlement to 1/3rd share in the property. Negative declaration is also sought to the effect that defendant nos. 1 to 3 are not entitled to sell, transfer, alienate or encumber the suit property in favour of defendant nos. 4 and 5 or in favour of any other person and, any transfer or alienation, if made by defendant nos. 1 to 3 in favour of defendant nos. 4 and 5, is not binding on plaintiffs.

9. While replying the contentions raised in the plaint, it is asserted by defendants that interest is created in their favour in the year 1988 itself when agreement

has been executed by defendant nos. 1 to 3 which is followed by a deed of conveyance which has been registered with the Registrar of Assurances. So far as pecuniary jurisdiction of the Court to entertain the suit is concerned, objection has been raised in the written statement under the heading "Improper valuation, payment of stamp duty and jurisdiction of the Court" which reads thus :

IMPROPER VALUATION, PAYMENT OF STAMP DUTY AND JURISDICTION OF THE COURT

73 It is submitted that the suit has not been valued in accordance with the provision of the Bombay Court Fee Act and accordingly the Court Fee payable have not been paid.

74 The Plaintiffs have stated in Para 22 that the suit is for declaration, permanent and for mandatory injunction. The relief claimed in the suit are not susceptible to monetary evaluation. The Plaintiffs evaluate prayers clause (a), (b) and (c) of the suit at Rs. 1,000/- each u/s 6(iv)(j) of the Bombay Court Fee Act and the Court fees are paid accordingly. However, these defendants submits that the aforesaid statement has been made to misguide the court as the Plaintiffs have prayed in their prayer for this Hon"ble Court to hold and declare as also to grant injunction in respect of the suit property.

75 It is submitted that the prayers to the suit very clearly crystallizes the dispute under the suit which is to the entitlement of Defendant No. 1 to 3 to sell, transfer and alienate or encumber the suit property in favour of Defendant No. 4 and or in favour of any other person and that the transfer and or the alienation if any made by Defendant no. 1 to 3 in favour of Defendant no. 4 and 5 is not binding on the Plaintiffs and will have no effect on the right, title and interest of the plaintiffs. The injunctions and the appointment of receiver sought are in relation to the suit property thus the subject matter in dispute i.e. the suit property is susceptible of monetary evaluation. Thus the suit should have been valued as per the present market value of the suit property which is substantially higher than the valuation of the suit done by these plaintiffs, thus the suit has been wrongly valued and the valuation appears to be gross under valuation and proper Court fee should have been paid and possibly consequent thereto the suit will fall beyond the jurisdiction of this Hon"ble Court.

76 It is submitted that the government of Maharashtra has published Ready Reckoner for the values of piece and parcel of land in Mumbai under Bombay Stamp Act. If the said values are considered for the suit property then the monetary value of the suit will be far in excess of the monetary jurisdiction of this Hon"ble Court. The value of the suit property admeasuring 2651.03 sq. mtrs as per the value published in the Stamp Duty Ready Reckoner 2008 page 155 under zone/sub zone 79/354 wherein the suit property bearing survey no. 671 and 694 is included is Rs. 6,12,38,793/- (Rupees Six Crore Twelve Lacs Thirty Eight Thousand Seven Hundred and Ninety Three only) @ Rs. 23,100/- (Rupees Twenty three thousand one hundred only) per sq. mtr.

77 In view of the above, these Defendants further submit that the improper valuation of the suit has been done by the Plaintiffs to deprive the court of the proper stamp duty payment. These Defendants submit that this court may determine the amount of fee chargeable under the Bombay Court Fee Act in accordance with section 14(1) of the Bombay Court Fee Act 1959 after instituting an enquiry u/s 8 of the said Act. These defendants therefore submit that the present suit is liable to be dismissed for improper valuation of court fees as the Plaintiffs have paid insufficient court fees in view of reliefs sought by them and by using negative covenants to surpass the mandatory provisions of the Court Fees Act. Hence, the present suit is liable to be dismissed for paying improper court fees.

10. It is the prayer of the revision applicant / original defendant no. 4 that on consideration of the averments in the plaint, plaintiffs are claiming entitlement to the suit property to the extent of 1/3rd share and are claiming declaration of their rights along with consequential relief. As such, the suit is required to be valued in accordance with section 6(iv)(d) of the Bombay Court Fees Act, 1959, whereas plaintiffs have valued the suit as per section 6(iv)(j) of the Act. Another relevant provision for consideration is section 6(iv)(ha) of the Act. The relevant provisions are quoted as below :

6 Computation of fees payable in certain suits - The amount of fee payable under this Act in the suits next hereinafter mentioned shall be computed as follows :-

(iv)(d) for ownership etc. of immovable property etc.

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 title of the subject-matter, subject to a minimum fee of [one hundred rupees] :

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 south to be protected from attachment with or without sale or the fee [sixty rupees], whichever is less:

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 reliefs also sought include a relief for possession the amount of fee shall be the full ad valorem fee :

(iv) (ha) for avoidance of sale, contract for sale, etc-

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;

(iv) (j) for other declarations -

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 [one thousand rupees;]]

Section 6(iv)(d) of the Bombay Court Fees Act, 1959 is in respect of suit for declaration 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 whereas section 6(iv)(j) is applicable wherein declaration is sought with or without injunction or other consequential relief and the subject matter is not susceptible of monetary evaluation. It is the contention of the defendant / applicant herein that it cannot be said that the suit property is not susceptible to monetary evaluation. It is a piece of plot put to non-agricultural use whereupon in fact defendant has constructed building on some portion and the construction activities are going on. The suit is presented after about twenty years of the execution of the agreement and about five to six years after execution of the registered conveyance deed. It cannot be said that plaintiffs were not aware of creation of interest in favour of defendant nos. 4 and 5, however, in order to avoid the liability to pay Court fees, the plaintiffs have asked for negative declaration that defendant nos. 1 and 3 are not entitled to create interest in favour of defendant nos. 3 and 4, when in fact, much prior to presentation of the suit, interest was created. If plaintiffs want avoidance of sale, the suit is to be valued in accordance with section 6(iv)(ha) of the Bombay Court Fees Act, 1959. But merely to avoid payment of Court fees and to choose a particular forum, the suit has been presented seeking negative declaration and injunction.

11. It is the contention of plaintiffs that the suit is for injunction and other consequential reliefs. The subject matter of the suit is not susceptible to monetary evaluation. The suit property was put to agricultural use and the plaintiffs have valued the suit properly. It is also contended by plaintiffs that objection is raised after recording of evidence of plaintiffs has commenced and the plaintiff has in fact examined himself and has also been cross examined. Once the courts proceeds to frame issues and starts recording of evidence, the Court has to pronounce the judgment on all issues after recording evidence and the suit cannot be decided on preliminary issue. In reply to this, it is the contention of defendant / applicant herein that the notice of motion is moved for return of plaint and as provided under Order VII Rule 10 of the Code of Civil Procedure, the plaint can be returned at any stage of the suit.

12. Learned Judge of the City Civil Court in the impugned order has observed that it appears from pleadings that the suit is based on apprehension of plaintiffs

that defendant nos. 1 to 3 may create third party rights, might sell the property, and therefore, present suit is filed for declaration that defendant nos. 1 to 3 are not entitled to sell or create third party right. The suit is certainly not for declaration of ownership of plaintiffs. It is also not denied in the plaint that defendant nos. 1 to 3 are not having share in the suit property. Assertion in the plaint is though defendants are having right, they are not entitled to sell the property, so as to prejudice the rights of the plaintiff. Such a relief is not susceptible to monetary evaluation. For the purpose of filing a suit u/s 6(iv)(d), the suit must be for declaration in respect of nature specified in sub-section. This suit is not for declaration of ownership of immovable property or otherwise and therefore it is not necessary for the plaintiff to value the suit u/s 6(iv)(d) of Bombay Court Fee Act. It is also observed in the judgment that there is no dispute that plaintiffs are having 1/3rd share in the property. The learned Judge proceeds on the basis, that plaintiffs' entitlement to 1/3rd share in the property is undisputed. Defendant nos. 4 to 5 have categorically denied entitlement of plaintiffs to 1/3rd share in the property and as such issue has been framed in that regard. Issue is framed by the trial court as "whether plaintiffs prove that they have 1/3rd share in the suit property." Thus, in effect, suit presented by plaintiffs is for declaration in respect of 1/3rd share. In paragraph no. 11 of the plaint, there is assertion that defendant nos. 1 to 3 have denied share of the plaintiffs. Thus, it is wrong to contend that entitlement of the plaintiffs to 1/3rd share is uncontraverted. Plaintiffs have claimed relief in the plaint in such a manner to avoid payment of Court fees and to bring the suit within pecuniary limits of the City Civil Court. It is the contention of the defendants that as per Ready Reckoner, the value of the property is to the tune of Rs.6,12,38,793/- (Rs. Six Crore Twelve Lac Thirty Eight Thousand Seven Hundred and Ninety Three only) whereas the suit is valued by plaintiffs at Rs. 1,000/-. Plaintiff in his deposition has admitted that the value of the suit property can be around Rs. 5,00,00,000/(Rs. Five Crores). Thus, it cannot be contended that the suit is not susceptible for monetary evaluation.

13. Reliance is placed on a judgment in the matter of Radhabai Vasudeo Jethabhoy v. Laxmichand Chanans reported in 1956 Bombay 649. In the reported matter, the suit was presented by the landlady against the person in occupation of Room No. 2 on the second floor. The landlady was in possession of the flats on fourth and fifth floors and also a room on second floor. In May 1951, plaintiff went out of Bombay leaving one Gopalji in occupation of the premises. It is contended that when she returned back in July 1951, she found Room No. 2 on the second floor occupied by defendant and fourth and fifth floor occupied by defendant in another suit. Those persons claimed to be tenant in occupation and further claimed that they are paying rent amount to Gopalji. One would have expected that with these averments the plaintiff would pray for a decree for possession, but instead the prayers in the plaint are for a declaration that the defendant is not entitled to reside in Room No. 2 on the second floor and for a mandatory injunction directing the defendant to remove himself from the said

premises. In these circumstances, while allowing the objection taken by defendant in respect of pecuniary jurisdiction of the suit, the Court observed in paragraph no. 2 of the judgment thus:

2 Now, in my judgment in Suit No. 1875 of 1948 dated 10-2-1949 I held :

The plaintiffs cannot by merely so drafting their prayers as to exclude or include reliefs which can or cannot be granted by a Court, confer on the Court jurisdiction to try the suit. It is necessary to consider what the cause of action in the plaint is and what is the substantive relief which the plaintiffs would be entitled to if they succeed in the suit, in order to determine whether the Court has jurisdiction, irrespective of what prayers the draftsman has thought fit to put in the plaint." I have therefore to look at the plaint to discover what is the true nature of the suit. It is obvious that upon the averments in the plaint, the defendant is in possession and since it is alleged that he is a trespasser, obviously the appropriate prayer is a prayer for possession and that is the relief to which the plaintiff would be entitled, if she succeeds.

There can be little doubt that the ingenuity of the draftsman of the plaint has been utilized in an attempt to give this Court jurisdiction by excluding such a prayer which is the proper prayer and by including a prayer for injunction. No precedent from any of the recognized text books on pleadings has been produced that in a suit of this nature, the proper relief to be prayed for is not a prayer for possession, but prayer for a mandatory injunction. This is not all.

Similarly in the instant matter, though defendant nos. 4 and 5 are put in possession of the property in the year 1988 itself and even five to six years prior to presentation of the suit a deed of conveyance was also executed in their favour, plaintiffs ingenuously filed the suit claiming declaration that defendant nos. 1 to 3 are not entitled to create third party interest in favour of defendant nos 4 and 5 and, if such interest is created, said transaction will not bind the plaintiffs. Observations made by the learned Single Judge of this court in the judgment (supra) aptly apply to the instant case.

Reliance is placed on a judgment in the matter of Dr. G.V. Iyengar and Shri Mohanlal Sukhramdas Gogia Vs. Shri A.R. Sampathkumar and Others, . In the reported matter, the suit was presented by plaintiff seeking declaration that he is entitled to possess the suit house as legal heir of original owner. Plaintiff also sought certain consequential relief in the nature of perpetual injunction etc. The Court while dealing with the objection regarding pecuniary jurisdiction, observed in paragraph nos. 8 and 10 of the judgment as below :

8 The next question is about pecuniary jurisdiction. It may be noted that prior to the amendment of 1989 a pecuniary jurisdiction of the City Civil Court was not exceeding fifty thousand rupees. Therefore, only suits and proceedings of civil nature valued at not more than Rs.50,000/- could be entertained by the City Civil Court. By the amendment in 1989, the limit of pecuniary jurisdiction was removed. However, that amendment has not been implemented and as a result

unlimited pecuniary jurisdiction has not been vested in the City Civil Court as yet and even now the pecuniary jurisdiction of the City Civil Court is limited to Rs.50,000/- only. If the value of the suit or the proceeding is more than Rs.50,000/-, naturally, the City Civil Court cannot entertain the suit. The question is whether in the present suit, the suit can be valued upto Rs. 50,000/- only. The plaintiff has not shown the value of the property anywhere in the plaint, while according to the defendants, the value must be more than Rs.60 lacs. Of course, it is difficult to say what would be the exact value of the property at the time of filing suit but it can be determined by appointing a valuer. The valuation of the property becomes material and relevant for the purpose of valuation of the suit for the purpose of jurisdiction as well as payment of Court fee. Section 6(iv)(d) of Bombay Court Fees Act reads as follows :-

(d) 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 title of the subject-matter, subject to a minimum fee of [one hundred rupees]: 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 [sixty rupees], whichever is less:

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 reliefs also sought include a relief for possession the amount of fee shall be the full ad valorem fee:

From this, it is clear that where a suit is filed for declaration in respect of ownership or nature of tenancy, title, right, lease, freedom or exemption from, or non-liability to, attachment with or without sale or other attributes of immovable property, one-fourth of ad valorem fee leviable for a suit for possession on the basis of title of the subject-matter, has to be paid and if any consequential relief other than the possession is sought, the amount of court fee shall be one-half of ad valorem fee and when the consequential reliefs also include relief of possession, the amount of fee shall be the full ad valorem fee. Entry 1 to Schedule I to the Bombay Court Fees Act prescribes the ad valorem fees and the method of calculation.

10 Admittedly, in the present case, the suit pertains to the right to possess a bungalow situated within Mumbai City. It is impossible to believe that the bungalow is not susceptible of monetary evaluation. If the contention of the plaintiff would be that the defendants, without any legal right or title, were interfering in his possession or that they wanted to dispossess him without

following procedure of law, it could be said that the claim in the suit is not susceptible of monetary evaluation. However, in the present case, the plaintiff seeks declaration that he is entitled to possess suit house as a legal heir of the original owner Dr. Gopal Ayengar. With this declaration, he also seeks certain consequential reliefs in the nature perpetual injunction, etc. Section 6(iv)(d) does not provide for suit for declaration in respect of ownership only. It deals with the declaration of different types of claims and rights in respect of immovable property and in the present case, the plaintiff claims the legal right to possess the immovable property as an heir of the original owner and therefore, the case must fall under clause (d). Because he is seeking declaration with consequential reliefs, he will be required to pay half of the ad valorem fee. It is impossible to believe that such a claim is not susceptible of monetary evaluation. Clause (j) would be applicable only if the dispute is not susceptible to monetary evaluation and also if otherwise there is no provision for payment of Court fee in respect of such dispute. As the dispute in the present case is susceptible of monetary evaluation and it is specifically provided for in clause (d) of section 6(iv), it must be held that section 6(iv)(j) has no application and the suit has to be valued for the purpose of court fee u/s 6(iv)(d). Naturally the valuation for the Court fee and the valuation for pecuniary jurisdiction will be same. I refrain myself from entering into the question as to what is the value of the property because that question has not been addressed to by the trial Court. Naturally, the trial Court will have to enter into an enquiry as to the valuation of the suit as provided in sections 8 to 14 of the Bombay Court-fees Act.

Similarly, in the instant matter also it cannot be said that the suit claim is not susceptible to monetary evaluation.

14. Learned counsel for respondents / original plaintiffs contends that the stage of raising objection to jurisdiction of the Court has already passed and once the Court proceeds to record evidence, the Court has to complete recording of evidence and pass the judgment answering all the issues. It is stated that Order XIV Rule 2(2) of the CPC gives discretion to the Court to dispose of the suit only on the issue of law and to try the said issue first. It is not mandatory for the Court to decide the question of jurisdiction or other issues relating to maintainability of the suit as preliminary issue. Even if the Court decides to try the issue of jurisdiction as preliminary issue, it has to be done at the earliest stage and once the trial is proceeded, it is not open for the Court to decide the suit only on the preliminary issue and refuse to answer all the issues involved in the suit. Reliance is placed on a judgment of learned Single Judge of this court in the matter of Kusumkant T. Nagda v. Mariam Bi Ebrahim reported in 2005 (3) In paragraph no.

9 of the judgment, the Court observed thus : 9 Even under Order 14 Rule 2 of the Code of Civil Procedure, the trial Court could have considered the question of jurisdiction as a preliminary issue although all other issues have been framed only if it had found it related to the issue of law only. In such circumstances, all

other issues are to be settled later, after the issue of jurisdiction is determined. In the present case, the trial Court has not adopted even this procedure as laid down under Order 14, Rule 2 and instead the trial Court has framed all issues including the issues relating to the merits of the case. The parties have been permitted to lead evidence in regard to all issues. It is only at the stage of writing the order that the trial Court has confined its decision to only first issue, that of jurisdiction. In my view, it is clearly an erroneous procedure adopted by the Court. The trial Court ought to have decided all issues since evidence had been led on all issues which had been framed together. The stage of deciding the preliminary issue u/s 9-A had long gone by and it was, therefore, erroneous on the part of the trial Court to return the plaint without deciding the other issues framed by it.

In the reported decision, the Court had recorded evidence on all the issues and recording of evidence was over and, the Court, instead of writing judgment and answering all issues, proceeded to dispose of the suit only on preliminary issue. In the instant matter, however, recording of evidence is not complete and the notice of motion that has been moved is for return of plaint on the ground of want of jurisdiction. Similar is the case decided by the Division Bench of this Court in the matter of Jagdish H. Thatte v. Municipal Corporation reported in 2007 (1) Bom.C.R. 577. Reference made to the Division Bench was as below :

While deciding the suit finally after parties have led evidence on all issues when a Court comes to the conclusion that it lacks jurisdiction to hear and decide the suit, whether it is necessary for the Court to decide other issues on merits at the time of or before passing the order of return of plaint.

While answering reference, the Court has observed in paragraph nos. 10 and 11 of the judgment thus :

10 A perusal of sub-rule (2) of Rule 2 of Order XIV makes it clear that when issue of law and of fact arise in the same suit and the Court is of the opinion that the case or any part thereof may be disposed of on issue of law only, it may try that issue first when that issue relates to (a) jurisdiction of the Court; or (b) the bar to the suit created by any law for the time being in force. Thus, it is not disputed that issue of jurisdiction of the Court can be tried as a preliminary issue. But, now in view of Order XIV, Rule 2(2) of the said Code it gives discretion to the Court. It is not mandatory on the Court to decide the question of jurisdiction or other issue relating to the maintainability of the suit as preliminary issue. If we carefully read the wording of the issue that has been referred to this Division Bench for consideration, it is very clear that it contemplates the situation where the Court has decided not to try the issue with regard to jurisdiction as preliminary issue and parties have in fact led evidence on all the issues and the suit is ready for final judgment. It is also needless to say that in view of the provisions of Order VII, Rule 10, plaint can be returned at any stage. It obviously means that it can be done so even while deciding the suit finally. The main question is whether it is necessary for the Court to record finding on all issues

when the Court has not followed the course contemplated under Order XIV, Rule 2(2) of the said Code.

11 While answering the issue in question, one has to bear in mind the object with which that Rule 2(1) has been substituted by the CPC (Amendment) Act, 1976, w.e.f. 1-2-1977. It is substituted to provide that, although a suit can be disposed of on preliminary issue, the Court shall ordinarily pronounce judgment on all issues. This is obviously in order to avoid piecemeal trial and protraction of litigation. It may happen that in a given case issue with regard to jurisdiction of the Court or bar to the suit created by any law for the time being in force may not be tried as a preliminary issue and allowed to be tried along with other issues, and after parties adducing evidence fully, at the final stage the trial Court may come to the conclusion that it lacks jurisdiction and as such may dismiss the suit on that ground or direct to return the plaint to the plaintiff for presentation to the proper Court. In such a case, if the said order is challenged in the Appellate Court, and the Appellate Court comes to the conclusion that the finding recorded by the trial Judge with regard to jurisdiction or tenability of the suit is not correct then the Appellate Court would necessarily be required to remand the matter if no findings on other issues are recorded by the trial Judge. Naturally, then I that event there would be protraction of litigation. So, considering this aspect and to avoid to undergo gamut of litigation again, amendment has been introduced, whereby, it is made clear that notwithstanding that a case may be disposed of on a preliminary issue the Court shall subject to the provisions of sub-rule (2) pronounce judgment on all issues. So, this is in fact the mandate laid down by the amended provision. If we carefully consider the provisions of Order XIV Rules 2(1) and (2) together, then, it is absolutely clear that once the course contemplated under sub-rule (2) of Rule 2 of Order XIV of the said Code is not followed by the Court then the Court must necessarily follow the other course which says that the Court shall record the findings on all the issues. If, even after not adopting the course contemplated under sub-Rule(2) of Rule 2 of Order XIV, Court is allowed to dispose of the matter merely on one issue of jurisdiction or maintainability, even after full trial of the suit, then it would amount to allowing the Court to proceed against the letter and spirit of the amended mandatory provision of Order XIV Rule 2(1). So, once the parties and the Court have chosen not to try the issue with regard to jurisdiction or maintainability of the suit as a preliminary issue and on the contrary evidence is led on all the issues and the matter is fixed for final order or judgment then it is necessary for the Court to record findings on all the issues. If the Court is allowed to pas final order without giving finding on other issues and dispose of the matter simply on the point of jurisdiction at such stage, the very purport of the provision of Order XIV, Rule 2 would be defeated. We are, therefore of the considered opinion that the view taken by the learned Single Judge of this Court in a case Kusumkant T. Nagda Vs. Mariam Bi, is correct.

Reference has been answered by the Court holding that it is not open for the Court to dispose of the matter merely on the issue of jurisdiction or

maintainability, after full trial of the suit, which would amount to allowing the Court to proceed against the letter and spirit of the amended mandatory provision of Order XIV Rule 2 (1). The issue referred to was whether the Court, after recording evidence of the parties, can proceed to decide the suit only on one issue when the Court had recorded evidence on all the issues. While answering issue, the Division Bench recorded that it was incumbent upon the Court to answer all the issues involved in the suit. In the instant matter, since the notice of motion is moved for return of plaint, as provided by Order VII Rule 10 of the Code of Civil Procedure, the Court can return the plaint at any stage of the proceeding, the Court is competent to entertain the application and decide the same.

Reference can also be made to the Division Bench judgment of this Court in the case of Satpuda Tapi Parisar Sahakari Sakhar Karkhana Ltd. v. Jagruti Industries and another reported in 2008 (5) Bom.C.R. 484. There were two questions referred to the Division Bench, namely, (1) whether an application for framing of issue regarding jurisdiction whether pecuniary or territorial can be framed at a latter stage and whether the Court is obliged to decide that issue then as preliminary one? And (2) whether the object of introduction of Section 9-A in the Code can be made applicable to the applications that may be filed at latter stage of the suit? While answering the issues referred, the Division Bench in paragraphs-34 and 36 of the judgment has observed as under:

34. No statute can provide for all situations when legislature enacts a law. It may neither be feasible nor comprehensible to legislate a law which could operate as a straight-jacket formula for all classes, situations and stage of proceedings. It is also neither permissible nor proper for the Court to provide a strait-jacket formula regulating exercise of statutory powers. The provisions of Section 9A of the Code are prefaced with a non-obstate clause. These provisions, as applicable in the State of Maharashtra, are required to be enforced in preference to any other provisions contained in the Code and even any other law for the time being in force. When the provisions of Section 9A can be invoked is reflected in the language of the Section itself. In consonance with the law aforestated in different judgments of this Court, it is essential that an application for injunction or for vacating injunction or grant of such other relief or even an application for setting-aside the orders as spelt out under these provisions, should be pending before the Court. In the proceeding, an objection in regard to the jurisdiction of the Court ought to be taken by the parties who desire to have such issue determined at the initial stage itself. In that event, the Court is expected to deal with the application by framing a preliminary issue of jurisdiction and after granting the parties an opportunity even to lead evidence to decide such an issue at the first instance and not to defer it for determination along with the suit. Thus, it is obvious that once ail application for the relief of injunction, appointment of Court receiver, stay, etc; has been finally decided by the Court in accordance with law, the rigours of Section 9A would lose their significance and statutory application. Thereafter, the test applicable would be that of Order 14, Rule 2 of the Code,

where the Court is to form an opinion as to whether along with other issues, the issue relating to the jurisdiction or bar to the maintainability of the suit under any other law should or should not be treated as preliminary issue. Whether it should be decided preferably at the initial stage or along with all issues relating to the merits of the case, is injudicial discretion of the Court. This judicial discretion of the Court is then in no way controlled by the provisions of Section 9A of the Code as the stage indicated by the legislative mandate u/s 9A is over. Similar power obviously could be exercised by the Appellate Court as well. We have already noticed that the consistent view of this Court has been that there is no conflict between the provisions of Section 9A and Order 14, Rule 2 of the Code. On their correct and harmonious interpretation, the said provisions are intended to achieve the same object i.e. expeditious disposal of the preliminary issue relating to the jurisdiction of the Court.

36. In view of the above discussion, we answer the questions as follows:

(i) An application for framing of issue relating to jurisdiction of the Court can be filed at any stage of the proceedings in the suit. The provisions of Section 9-A of the Code are attracted only when the conditions stated in that provision are satisfied at the time when question of jurisdiction is raised before the Court. Once the stage contemplated u/s 9-A of the Code is over (i.e. the application for interim orders has been decided), then these provisions lose their mandatory character and significance. Whereafter the application for framing an issue relating to jurisdiction and its determination in accordance with law would be controlled by the provisions of Order 14, Rule 2 of the Code.

(ii) However, if an application for grant or vacation of reliefs specified u/s 9-A of the Code has already been decided by the Court of competent jurisdiction, in that event, the proceedings in the suit would be controlled by the provisions of Order 14, Rule 2 of the Code. The formation of opinion and exercise of discretion by the Court cannot be regulated by any strait-jacket formula and essentially it must be left in the discretion of the Court, depending on the facts and circumstances of a given case. The Court will obviously exercise such jurisdiction applying the well accepted canons of civil jurisprudence. In other words and construed objectively, the provisions of Section 9-A are not mandatory and subject to what has been stated above, it may not be necessary for the Court to decide the issue at the threshold. If the application for interim relief is pending, Section 9-A of the Code will operate with - all its rigour and irrespective of the stage of such application.

Thus, there can be no dual opinion that as regards the proposition that once the stage for determination of issue as preliminary one as required u/s 9A of C.P.C. is over, the further proceedings of the matter are covered by the provisions of order XIV rule 2 of C.P.C. It would be within the discretion of the Court to decide any of the issue as preliminary issue or to take up the said preliminary issue for consideration along with other issues after recording evidence of the parties. In the instant matter, the Court has exercised discretion and before completion of recording of the evidence, took up notice of motion presented by the defendant

for return of plaint and decided the same. Even on touchstone of permissibility to render decision on preliminary issue under order XIV rule 2 of C.P.C., I am of the view that the Court was within its bounds in taking up the issue and rendering decision thereon.

15. It is also contended by respondents that the issue of pecuniary jurisdiction was raised by defendant nos. 4 and 5 and the same was dealt with by the Court while dealing the notice of motion relating to grant of injunction. However, on perusal of relevant material it is found that the issue in that regard was not framed and was not considered and the question before the Court was whether to allow the application seeking injunction or not. Objection raised in that regard therefore, does not merit consideration.

16. For the reasons recorded above, I am of the considered view that plaintiffs have not valued the suit properly. Valuation of the jurisdiction of the suit would be beyond the pecuniary jurisdiction of the City Civil Court and the plaint shall have to be returned. Objection raised by defendants to the pecuniary jurisdiction of the Court to entertain the suit needs to be upheld. Revision application is therefore allowed. Order passed by the learned City Civil Court, Dindoshi, Mumbai in Notice of Motion No. 2067/2010 in S.C.Suit No. 2078/2008 is quashed and set aside. The City Civil Court shall proceed to pass appropriate order directing return of plaint in conformity with the provisions of Order VII Rule 10 and 10(a) of the Code of Civil Procedure. Rule is accordingly made absolute. In the facts and circumstances of the case, there shall be no order as to costs.

17. At this stage, learned counsel appearing for the respondents seeks interim protection so as to enable the respondents to approach higher court. The applicant is directed not to create third party interest for a period of fifteen days from today.