

(2013) 02 BOM CK 0092

In the Bombay High Court

Case No : Writ Petition No. 9150 of 2012

Mrs. Roopa Kailash Ganatra and Another

APPELLANT

Vs

Mrs. Reena Sabherwal and Others

RESPONDENT

Date of Decision : 05-02-2013

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 7 Rule 11
Constitution of India, 1950 — Article 227

Citation : (2013) 2 ABR 713 : (2013) 2 ALLMR 877 : (2013) 2 BomCR 574 :
(2013) 2 MhLj 663

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

Bench : Single Bench

Advocate : Rajesh S. Patil, for the Appellant; Siddharth R. Ronghe, for the Respondent

Judgement

R.M. Savant, J.—Rule, with the consent of the learned counsel for the parties made returnable forthwith and heard. The Writ Jurisdiction of this Court under Article 227 of the Constitution of India is invoked against the order 13/09/2012 passed by the learned 19th Civil Judge, Junior Division, Pune, by which order the application Exhibit 51 filed under Order VII Rule 11 of the CPC came to be partly allowed and the Plaintiffs were directed to value the suit as per the provisions of Sections 6(iv)(d) and 6(iv)(h-a) of the Bombay Court Fees Act, 1956 and pay deficit court fee within 15 days from the date of the said order.

2. The facts necessary to be cited for adjudication of the above Petition can be stated thus:-

The Petitioners are the original Plaintiffs who have filed the suit in question challenging the Will of one Narinder Singh Chowdhary who is the father of the Petitioner No. 1, Respondent No. 1 and Respondent No. 4. The said Narinder Singh Chowdhary it seems died on 21/01/2012. The Petitioner No. 1 was informed and also handed over a copy of the said Will of the late Narinder Singh Chowdhary who was his father, in terms of the said Will a substantial share of the

property of the said Narinder Singh Chowdhary has gone to the Respondent Nos. 1 and 4. The Petitioner No. 1 along with the other Petitioners therefore filed the suit in question i.e. Regular Civil Suit No. 3190 of 2012. In the context of the controversy which arises in the above Petition it would be convenient to reproduce the prayers in the suit in question which read thus:-

(a) It be declared that the alleged Will dated 22/12/2010 and the alleged amended Will dated 4/4/2011 alleged to have been executed by late Mr. Narinder Singh Chowdhary are being vitiated by fraud.

(b) It be declared that the alleged Will dated 22/12/2010 and the alleged amended Will dated 4/4/2011 alleged to have been executed by late Mr. Narinder Singh Chowdhary are cancelled and set aside.

(c) The defendants be restrained permanently by issuing permanently injunction from acting/claiming upon the alleged Will dated 22/12/2010 and the alleged amended Will dated 4/4/2011 alleged to have been executed by late Mr. Narinder Singh Chowdhary.

A reading of the prayers therefore discloses that the Plaintiffs have sought a declaration that the alleged Will dated 22/12/2010 of late Mr. Narinder Singh Chowdhary is vitiated by fraud. The Plaintiffs have accordingly sought cancellation and setting aside of the said Will.

3. The Respondent Nos. 1 and 4 herein who are also related to the said late Mr. Narinder Singh Chowdhary, being the daughters of the said Narinder Singh Chowdhary, filed an application under Order VII Rule 11 of the Code of Civil Procedure. It was the case of the Respondents who are the Defendants in the Suit in question that the reliefs claimed by the Plaintiffs have been undervalued and the Plaintiffs are required to pay the court fees as per the Bombay Court Fees Act.

4. In the light of the said application filed by the Respondent Nos. 1 and 4 herein, the Trial Court took up for consideration the said application invoking Order VII Rule 11 of the Code of Civil Procedure. The Trial Court by the impugned order dated 13/9/2012 has partly allowed the said Application. Whilst allowing the said application, the Trial Court has observed that the Plaintiffs in the said suit have sought the reliefs about their share and that positive result in the suit in favour of the Plaintiffs would result in a right being accrued in their favour in the property of the said late Mr. Narinder Singh Chowdhary. The Trial Court, thereafter adverted to Sections 6(iv)(d) and 6(iv) (h-a) of the Bombay Court Fees Act and considering the relief which was sought by the Plaintiffs which the Trial Court was of the view would result in the Plaintiffs acquiring a right in the property, held that the Plaintiffs had not properly valued the suit in question and directed the Plaintiffs to value the suit as per the provisions of the said Sections 6(iv)(d) and 6(iv)(h-a) of the Bombay Court Fees Act. As indicated above, it is the said order which is impugned in the present Petition.

5. On behalf of the Petitioners i.e. the original Plaintiffs Shri Patil, the learned counsel appearing for them, would contend that the suit in question has been filed simpliciter for a declaration that the Will in question of the late Mr. Narinder Singh Chowdhary was vitiated by fraud, and cancellation of the said Will Deed is a consequential relief to the declaration which has been sought by the Plaintiffs. The learned counsel would contend that grant of prayers in the present Suit would not result in any benefit to the Plaintiffs in so far as the property is concerned as the Plaintiffs would ultimately have to file a separate suit seeking their share in the property contingent upon the result in the present suit.

6. Per contra, Shri Ronghe, the learned counsel appearing for the Respondents i.e. the original Defendants, would seek to reiterate the case of the Defendants in the application filed by them invoking Order VII Rule 11 of the Code of Civil Procedure, and would contend that the Trial Court was right in observing that a positive result in the suit would result in the Plaintiffs acquiring right in the property of the said late Mr. Narinder Singh Chowdhary. The learned counsel sought to rely upon the Judgment of this Court reported in Shri Abdulsattar Gulabbhai Bagwan Vs. Shri Vaibhav Lxmangiri Gosawi and Others, in support of his contention that since the Plaintiffs have sought cancellation of the Will Deed, the Plaintiffs would have to value the suit under Sections 6(iv)(h-a) of the Bombay Court Fees Act.

7. Having heard the learned counsel for the parties, I have bestowed my anxious consideration to the rival contentions of the parties. As indicated above, the suit in question has been filed for a declaration as regards the Will dated 22/12/2010 of the late Mr. Narinder Singh Chowdhary as being vitiated by fraud. In so far as declaratory suits are concerned, the relevant provision of the Bombay Court Fees Act is Section 6(iv)(j) which reads thus:-

6(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, 3[ad valorem fee payable, as if the amount or value of the subject-matter was 4[one thousand rupee;]]

In all suits under clauses (a) to (i) the plaintiff shall state the amount at which he values the relief sought, with the reasons for the valuation

8. The Trial Court it seems was carried away by the fact that decreeing of the suit in favour of the Plaintiffs would result in accrual of a right in the Plaintiffs to the property. In my view, the said approach of the Trial Court was erroneous. The Trial Court ought to have seen that the suit in question was for declaration in respect of the Will in question. The Trial Court has misdirected itself by considering the likely consequences of the Plaintiffs succeeding in the suit for the purposes of valuation. In so far as declaratory suits are concerned, the same are covered by Section 6(iv)(j). In so far as Section 6(iv)(d) is concerned, the said provision concerns the suits which have been filed for declaration of ownership

etc., and in so far as Section 6(iv)(h-a) is concerned, the said provision applies to a suit which has been filed for avoidance of sale, contract of sale etc. The said provisions would have no application in the teeth of the fact that in the present suit the relief sought is a declaration in respect of the Will Deed. There is no declaration of ownership sought or there is any relief claimed which would result in avoidance of sale or contract of sale. The Trial Court has misdirected itself by coming to a conclusion that decreeing of the suit in question would result in accrual of a right in the Plaintiffs to the property. The Trial Court has by a long drawn process sought to apply the provisions of Section 6(iv)(d) and 6(iv)(h-a) of the Bombay Court Fees Act. The Trial Court has failed to take into consideration the fact that even if the declaration in respect of the Will Deed is ultimately issued the Plaintiffs would have to file an independent proceeding for claiming their right in the property or share in the property. It is in such a suit that the provisions of Section 6(iv)(d) of the Bombay Court Fees Act may probably become applicable.

9. In so far as the judgment in the case of Abdulsattar Gulabhbhi Bagwan (supra) is concerned, the facts in the said case are clearly distinguishable from the facts of the present case and inasmuch as what was under challenge in the said case was a sale deed executed by a party. Such is not the case in the instant Petition.

10. In my view, therefore, the Trial Court has erred in partly allowing the said application Exhibit-51 and directing the Plaintiffs to correct the valuation and pay the deficit court fees. The Plaintiffs have paid correct court fees in the light of the reliefs that they have sought in the suit u/s 6(iv)(j) of the Bombay Court Fees Act. The impugned order is therefore required to be quashed and set aside, and is accordingly quashed and set aside. The Trial Court would proceed with the suit in question on the basis that the said suit has been properly valued and the Plaintiffs have paid appropriate court fees. Rule is accordingly made absolute in the aforesaid terms with parties to bear their respective costs.