
(1955) 09 BOM CK 0056

In the Bombay High Court

Case No : Civil Revision Application No. 1588 of 1953

Pandurang Laxman Mohite

APPELLANT

Vs

Kaluram Bahiru Bhikule

RESPONDENT

Date of Decision : 13-09-1955

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 14 Rule 2, 115
Provincial Small Cause Courts Act, 1887 — Article 15, 15, 25

Citation : AIR 1956 Bom 254

Hon'ble Judges : Gajendragadkar, J

Bench : Single Bench

Advocate : P.V. Nijsure and K.V. Joshi, for the Appellant; K.J. Abhyankar, for the Respondent

Judgement

1. This revision at application must be allowed on a point of jurisdiction. It is one of those cases where the learned Judge of the Court of Small Causes at Poona has not cared to deliver any judgment though the issues framed before him were partly of fact and partly of law, and the only assistance I can get from his judgment is from the reference made by the learned Judge to certain authorities against the findings recorded by him below. the issues.

The issues also have not been properly framed because the point of jurisdiction which Mr. K. V. Joshi has raised before me on behalf of the petitioner has not formed the subject matter of the issues though the said point was specifically raised by the petitioner in his written statement.

2. The question of jurisdiction arises in this way. On 4-7-1952, an agreement of sale took place between the parties. The plaintiff is the purchaser and the defendant is the vendor. The property which was the subject matter of the agreement was a house in Poona. It was agreed to be purchased by the plaintiff for Rs. 12,000/-. Rs. 1,000/- was paid as earnest money.

The period stipulated for the performance of the contract was four months. The

contract had further provided that, in case the vendor was unable to perform his part of the contract, the vendee would be entitled to a refund of the earnest money paid by him at the time of the contract. It appears that, after the contract was made, the purchaser came to know that the house was likely to be acquired by the Poona Municipality for the purpose of widening the road.

The purchaser then gave notice to the defendant making this allegation and informing the defendant that unless this matter was clarified the purchaser would not be bound to purchase the property. He received no reply from the vendor and so the present suit was filed to recover the amount of earnest money with interest accruing on it.

The defence was that the defendant was willing and ready to perform his part of the contract and that the plaintiff was not justified in claiming any rescission of the contract at all. It was not admitted by the defendant that the house was likely to be acquired by the Municipality and the defendant specifically stated that in form and in substance this was a suit for specific performance of the contract and for its rescission and so the Court of Small Causes would have no jurisdiction to entertain the suit.

3. The learned Judge no doubt framed two issues on the pleadings of the parties. The first issue was whether there was any material defect in the title of the property as alleged by the plaintiff and the second issue was whether the agreement was void as alleged by the plaintiff. No issue as to jurisdiction was, however, framed, and, as I have just indicated, beyond recording findings below the issues no reasons have been given by the learned Judge in support of his findings.

Mr. Joshi contends that the learned Judge was bound to have framed an issue of jurisdiction and he has naturally commented adversely on the casual manner adopted by the learned Judge in deciding this suit. The issue of jurisdiction did obviously arise on the written statement and it seems to me that it was the duty of the learned Judge to have raised this issue and decided it one way or the other.

Mr. Abhyankar is naturally in a somewhat unfortunate position. He, however, tried his best to justify the decision of the learned Judge on the ground that in substance the learned Judge has done justice between the parties. Mr. Abhyankar argued that the plaint filed by his client should not be very strictly construed and if the effect of the plaint is considered in a general way it would be possible to hold that the plaint is not one for the enforcement of the contract at all.

Mr. Abhyankar had to concede that, in the prayer clause contained in para 6 of the plaint, the plaintiff has specifically prayed that the contract of 4-7-1952 should be declared as void and the amount claimed should be decreed. Mr. Abhyankar has relied upon the allegations made in para 2 of the plaint and his argument has been that the contract became void as a result of the defect in title which was discovered, and so, apart from the term of the contract for as refund

of the earnest money, the purchaser became entitled to claim that amount back.

Mr. Abhyankar has very strongly relied on the decision of this Court in *Lallubhai Rupchand Vs. Mohanlal Sakarchand*, . It is no doubt true that in this case it has been held that, if the property which is the subject matter of an agreement of sale is discovered to be .subject to acquisition proceedings, that would introduce both a material and a latent defect in the title of the vendor, and Mr. Abhyankar has referred me to the evidence in this case which shows that the Poona Municipal Corporation has decided to acquire this house for the purpose of widening the road.

The fact that the decision has not been enforced and the property has not been actually acquired so far would make no difference in law, says Mr. Abhyankar. There is considerable force in this argument. But this argument has no relevance on the question of jurisdiction. The question of jurisdiction must ultimately be decided solely by reference to the plaint and it seem? to me that it would be putting an unduly generous construction on the plaint to hold that this was not a claim to enforce the contract of sale. In para 1 the terms of the agreement have been specifically set out in the plaint.

One of the terms as set out in this paragraph was that, if defect in title was discovered and it appeared that the vendor was unable to perform his part of the contract, the purchaser would be entitled to a refund of the amount of earnest money paid by him. Para 2 then describes the circumstances under which, according to the plaintiff, the contract became void, or, in the alter-native, voidable. That again is significant.

The plaintiff did not come to Court with a clear and unambiguous allegation that the contract became void straightway after he learnt that the property was going to be acquired by the Poona Municipal Corporation. Alternatively he. alleged that the contract became voidable and the institution of the present suit showed that he had avoided the contract. Then we have the prayer clause to which I have already referred.

Beading the plaint as a whole, it seems to me difficult to come to the conclusion that this was a claim made apart from and independently of the contract. The plaintiff wanted the Court to decide that the contract had become void and on that basis the plaintiff wanted a decree for the refund of the earnest money in terms of the contract itself. Such a claim would inevitably attract the provisions of Article 15 of the Schedule to the Provincial Small Cause Courts Act. This is a suit for specific performance and for rescission of the contract and as such it is outside the jurisdiction of the Court of Small Causes.

4. The result is no doubt to be regretted; but since the point raised is one of jurisdiction, I do not see how I can avoid reaching the conclusion that the plaint has been entertained by the Court of Small Causes without Jurisdiction. I, would accordingly set aside the decree passed toy the learned Trial Judge and direct that the plaint should be returned to Mr. Abhyankar for presentation to the

proper Court.

5. Costs of the revisional application will be costs in the suit.

6. Revision allowed.