

(2015) 09 BOM CK 0126

In the Bombay High Court

Case No : Writ Petition No. 5828 of 2014

Pramod Prakashchandra Banait

APPELLANT

Vs

Avinash Prakashchandra Banait and Others

RESPONDENT

Date of Decision : 09-09-2015

Acts Referred:

Citation : (2015) 09 BOM CK 0126

Hon'ble Judges : A.S. Chandurkar, J

Bench : Single Bench

Advocate : P.A. Markandewar, for the Appellant; R.S. Sundaram and H.I. Kothari, Advocates for the Respondent

Final Decision : Allowed

Judgement

A.S. Chandurkar, J—Rule. Heard finally with consent of learned counsel for the parties.

The petitioner who is the appellant in R.C.A. No. 437/13 is aggrieved by the order dated 28/07/2014 passed below Exhibit-18 directing him to pay court fee on an amount of Rs. 1,10,00,000/- with further direction to file the appeal before the appropriate forum.

2. The respondent No. 1 herein along with his mother had filed Spl. C.S. No. 165 of 2000 seeking relief of permanent injunction in favour of his mother that her possession should not be disturbed. Prayer for mandatory injunction on his behalf was made against the present petitioner so as to direct him to execute sale deed of the suit property. This relief was coupled with prayer for possession. The trial Court by judgment dated 05/10/2013 partly decreed the suit. The petitioner was directed to execute sale deed in favour of respondent No. 1 after receiving consideration of Rs. 1,10,00,000/- and he was further directed to deliver vacant possession of the suit property. The suit was dismissed against respondent No. 2 herein. Being aggrieved the petitioner filed R.C.A. No. 437 of 2013. The following note was appended to said appeal which reads thus :

" The original suit was valued at Rs. 10,00,300/-, Rs. 10,00,000/- for possession and Rs. 300/- for permanent injunction. Due to death of plaintiff No. 1 the relief of injunction did not survive so relief granted is confined to possession valued at Rs. 10,00,000/-. Hence the valuation of this appeal is restricted to this valuation. Therefore this appeal in this court. "

3. The respondent No. 1 filed an application vide Exhibit-18 praying that the appeal be dismissed for want of jurisdiction on the ground that the petitioner had undervalued the appeal to bring it within the jurisdiction of the District Court. It was stated that as the value of the suit property was Rs. 1,10,00,000/-, the appeal was required to be filed before the High Court. This application was opposed by the petitioner and the Appellate Court by order dated 28/07/2014 directed the petitioner to pay court fee on the amount of Rs. 1,10,00,000/- and thereafter file the appeal before the appropriate forum. This order is impugned in the present writ petition.

4. Shri P.A. Markandeywar, learned counsel for the petitioner submitted that the petitioner had rightly filed the appeal before the District Court. According to him, the suit as filed was valued by the original plaintiff for Rs. 10,00,000/- in respect of prayer for mandatory injunction and possession. The claim for injunction was further valued at Rs. 300/-. It was submitted that during pendency of the suit, the original plaintiff No. 1-mother had expired and hence the petitioner was not required to claim any relief in the matter of permanent injunction. Therefore the appeal was valued at Rs. 10,00,000/- which give jurisdiction to the District Court. He submitted that the aspect of jurisdiction for the purposes of court fee was different than the aspect of valuation for the purposes of jurisdiction. The forum for filing the appeal would be dependent on the basis of valuation of the suit. He therefore submitted that the Appellate Court was not justified in directing the petitioner to pay court fee on the amount of Rs. 1,10,00,000/-. In support of his submission, learned counsel placed reliance on the following judgments :

(i) Dilip Khasbage Vs. Leeladhar Ganorkar, Dilip Durge and Ankush Durge, (2011) 2 ALLMR 688 : (2011) 2 BomCR 612 : (2011) 1 MhLj 969 .

(ii) Bans Gopal Singh vs. Sheo Bardan Singh and others A.I.R. (31) 1944 Oudh 276 .

(iii) Nemi Chand and Another Vs. The Edward Mills Co. Ltd. and Another, AIR 1953 SC 28 : (1953) 4 SCR 197

(iv) Sagar Dattatraya Sakhare Vs. Sanjay Waman Sathe, (2014) 5 ABR 380 : (2014) 4 MhLj 676 .

(v) Kazi Syed Saifuddin Vs. Kasturchand Abhayrajji Golchha, (1999) 2 ALLMR 113 : (2000) 4 BomCR 582 : (1999) 2 MhLj 675 .

5. Per contra Dr R.S. Sundaram, learned counsel respondent No. 1 supported the impugned order. It was submitted that the forum of the appeal could not be

chosen by the appellant and it would depend upon the decree as passed by the trial Court. As the trial court had held the suit property to be valued at Rs. 1,10,00,000/-the appeal would lie before the High Court. It was submitted that the court fees could fluctuate depending upon the decree passed by the trial Court. It was submitted that the appellant could not be permitted to value the appeal for purposes of jurisdiction at Rs. 10,00,000/- as was done in the suit. It was therefore submitted that the Appellate Court was justified in passing the impugned order. Learned counsel placed reliance on the following decisions :

(i) Deepak Chaturaji Tabhane Vs. Smt. Sunanda Tanmane, Shekhar Laxman Tanmane and Smt. Chhaya Tanmane, (2010) 4 BomCR 499 : (2010) 112 BOMLR 3219 .

(ii) Nirmal Quality Products Vs. Contey Industries and Another, (1995) 2 BomCR 540 .

6. I have heard the learned counsel at length and I have given thoughtful consideration to their submissions. The suit as filed was valued for the purposes of jurisdiction and court fees at Rs. 10,00,300/- The relief of possession was valued at Rs. 10,00,000/- and the relief of injunction was valued at Rs. 300/-. The trial Court partly decreed the suit and directed the petitioner to execute sale deed of the property after receiving consideration of an amount of Rs. 1,10,00,000/-. In the appeal filed by the petitioner he has restricted his claim with regard to relief of possession valued at Rs. 10,00,000/- and has paid court fees accordingly.

7. In so far as the relief for permanent injunction is concerned, same was not granted by the trial Court on account of death of plaintiff No. 1 and the petitioner has therefore not sought any relief in that regard. The only issue therefore that requires consideration is in respect of valuation of the appeal. While according to the petitioner the appeal was required to be valued on the basis of claim as made in the suit, according to the respondent as the trial court had fixed the sale consideration at Rs. 1,10,000/-, appeal was to be valued on that basis.

8. The Full Bench of this Court in Kazi Syed Saifuddin (supra) has held that once a suit is valued and jurisdiction of the Court is determined when the suit is instituted, same would be the valuation for the subsequent proceedings in the suit. Said valuation would govern the appeal and for the purposes of forum of appeal same criteria would apply. It was further held that the forum of appeal is determined with reference to value of the suit and not the amount decreed. Jurisdiction is determined by valuation in the plaint and not by result of the suit. The law as laid down by the Full Bench has been referred to in Dilip Khasbage (supra) while holding that valuation for the purposes of jurisdiction and court fees are two different factors. Similarly in Sagar Sakhare (supra) same view has been taken following the law laid down by the Full Bench. The Supreme Court in Nemi Chand (supra) has held that a memorandum of appeal has to be stamped according to value of the subject matter of dispute in appeal and the relief

claimed in the memorandum of appeal determines the value of the appeal for purposes of court fee.

It is thus obvious that what is material is the valuation of the suit in the plaint and the jurisdiction has to be determined in that context. Result of the suit would not govern determination of forum of the appeal.

9. The decisions in Deepak Tabhane (supra) and Nirmal Quality Products (supra) do not support the stand as taken by the respondent that the appeal as filed before the District Court was not tenable on account of the decree as passed. As noted above, the jurisdiction of the appellate forum is determined on the basis of valuation of the suit and on that basis it is held that the appeal has been properly instituted.

10. The Appellate Court in the impugned order has observed that as the trial Court had determined the valuation of the property at Rs. 1,10,00,000/- the appellant was required to pay court fee on said amount. Considering the law as laid down by the Full Bench in Kazi Syed Saifuddin (supra), valuation of the appeal would be governed by the valuation put for the relevant relief by the plaintiff when the suit was filed. On that basis therefore the appeal was properly valued both for the purposes of jurisdiction as well as for court fees.

11. In view of aforesaid discussion, the impugned order directing the petitioner to pay court fees on the basis of the decree passed by the trial Court cannot be sustained. The same is accordingly set aside. The appeal has to be entertained on merits. Writ petition is allowed in aforesaid terms with no order as to costs.