

(2010) 07 BOM CK 0074

In the Bombay High Court

Case No : Writ Petition No. 4870 of 2009

Sau. Asha Sopan Maithane

APPELLANT

Vs

Ramkrushna Punjaji Wanare and Others

RESPONDENT

Date of Decision : 29-07-2010

Acts Referred:

Bombay Court Fees Act, 1959 — Section 40, 40(1), 6
Civil Procedure Code, 1908 (CPC) — Order 7 Rule 11

Citation : (2011) 4 BomCR 637

Hon'ble Judges : B.P. Dharmadhikari, J

Bench : Single Bench

Advocate : R.L. Khapre, S.A. Mohta, R.G. Kavimandan and D.P. Jaiswal, for the Appellant; A.L. Deshpande, for Respondent Nos. 7, 8, 10 and 11, for the Respondent

Final Decision : Allowed

Judgement

B.P. Dharmadhikari, J.—With the consent of Shri Khapre, learned Counsel for the petitioner and Shri Deshpande, learned Counsel for respondents No. 7, 8, 10 & 11, writ petition is heard finally by making rule returnable forthwith.

2. The petitioner - plaintiff has challenged the order dated 02.09.2009 passed below Exh. 93 by Civil Judge, Senior Division, Khamgaon, upholding the objection to the valuation of Court Fee raised by the respondents and directing him to pay deficit court fee stamp as per provisions of Section 6(iv)(ha) and 6(iv)(d) of the Bombay Court Fees Act, 1959, (hereinafter referred to as the Act).

3. Shri Khapre, learned Counsel has contended that the objection raised before the trial Court is misconceived. The suit as valued at Rs. 4,60,000/- is proper and provisions of Section 6(iv)(d) have been satisfied in the matter. The plaintiff has sought 1/4th share after the partition of agricultural land and its possession. The relief of cancellation of sale deed and declaration and ownership is in relation to instrument to which he is not a party. The direction to pay court fee on 1/4th share of plaintiff on market valuation is, therefore, unsustainable.

4. According to Shri Deshpande, learned Counsel, the order does not call for any interference. He has invited attention to the objection as raised and also to plaint.

5. Both the counsel have relied upon several judgments and I find it convenient to refer to them as and when occasion arises.

6. The plaint as filed shows that he has sought a relief of cancellation of sale deed dated 25.06.1998 with further relief that it should be declared illegal as defendant No. 1 had no right to execute it in favour of defendants No. 7 to 11. Thus, the petitioner - plaintiff is not party to that sale deed. The further relief sought is as the petitioner is by birth owner of suit field, her 1/4th share in it should be declared (accepted) with direction to separate it by effecting partition. She has also prayed for its possession and for enquiry into mesne profits.

7. The sale deed dated 25.06.1998 is for Rs. 4,60,000/- and it describes the property sold as part of an agricultural field having Survey No. 89/1A. The purchasers in that sale deed are defendants No. 7 to 11 and they have filed application under Order 7, Rule 11 of Civil Procedure Code, stating that the suit ought to have been valued as per market value of the property at the time of filing of suit. They have pointed out that its market value then was more than Rs. 40 lakh. The plaintiff objected to that application pointing out that issues are already framed on 06.06.2005 itself and the defendants have been postponing adjudication on one count or the other. They claimed that application has been filed after four years of framing of issues only to harass them. He relied upon valuation declared in sale deed to substantiate the valuation undertaken in the suit.

8. In the impugned order, the trial Court has found that because of prayer for declaration of sale deed as illegal, Section 6(iv)(ha) of the Act gets attracted for relief of declaration of 1/4th share and for possession the provisions of Section 6(iv)(d) of the Act get attracted. As relief of possession is claimed, full ad valorem court fee is payable. Because of these findings, it has issued the impugned direction.

9. The perusal of provisions of Section 6(iv)(d) of the Act shows that when suit filed is for declaration in respect of ownership of any Immovable property, 1/4th of ad valorem fee leviable for a suit for possession on the basis of title of the subject matter is required to be paid. Its last proviso states that when in addition any consequential relief other than possession is sought, such amount of court fee has to be one half of ad valorem fee and when such consequential relief also includes the relief of possession, the amount of fee has to be full ad valorem fee. This section necessitates reference to a provision prescribing court fee for a suit for possession on the basis of title of the subject matter. That subject matter here is agricultural field and the Court fee payable on such suit is provided by Section 6(v) of the Act. This sub-section states that if the suit is for possession of land, house and garden, court fee is payable according to the value of the subject matter and whether the subject matter is land, its value is deemed to be

40 times the survey assessment or 80 times the survey assessment. In present matter, the plaintiff has disclosed valuation at Rs. 4,60,000/-only. For the purpose of declaration, he has pointed out that the survey assessment was Rs. 2.75 per year and hence he has assessed the value at 20 times of this assessment. As this 20 times assessment is less than Rs. 1,000/-, he has declared that valuation for the purposes of partition at Rs. 1,000/- and accordingly court fee has been paid. Correctness of this calculation is not in dispute. Even if 40 times or 80 times the assessment is taken into consideration, it is less than Rs. 1000/ and hence court fee on Rs. 1000/ as paid is legal & proper for relief of partition. For declaration of sale deed as illegal, he has valued the suit at Rs. 1000/ and for its cancellation, he has valued it at Rs. 4,60,000/ i.e. sale consideration. The only contention is, the Court fee ought to have been paid on market value of the property.

10. Shri Deshpande, learned Counsel, has relied upon a judgment of learned Single Judge of this Court in the case of Pushparaj Surajprasad Modh Vs. Sayyad Altaf Sayyad Wazir and others, . There the suit instituted was for declaration that the respondents before the High Court are the owners and for mandatory injunction. The objection was raised that suit needed to be valued as per Section 6(iv)(d) of the Act. The objection was overruled and the respondents later filed a review application which was allowed and that order was impugned in High Court. This Court has found that suit was referable to Section 6(iv)(d) of the Act and the court fee paid ought to have been calculated on one half of ad valorem fees. The respondents contended before this Court that reference to provisions of Section 6(v) of the Act was necessary and the court fee was, therefore, determined with reference to that provision. This Court has not accepted that stand and found that the suit was required to be valued on the basis of Sub-clause (d) of Clause (iv) of Section 6 read with Article (i) of Schedule I of the Bombay Court Fees Act, 1959. This Court found that otherwise the provisions of Section 6(iv) would be rendered redundant. As the objection before the trial Court by the respondents is entirely different, this ruling has no relevance. Moreover, here, suit for partition & separate possession is governed by Section 6 Clause (vii) and as suit property is agricultural land assessed to land revenue, it leads one back to Section 6(v) only.

11. The respondents have tried to show its market value of the suit property on the date of institution of suit on which court fee ought to have been computed. The trial Court has referred to provisions of Section 6(iv)(ha) of the Act to uphold this contention. The perusal of said provision shows that when suit is for declaration, any sale or contract for sale of any Immovable property is void, one half of ad valorem fee leviable on the value of the property is required to be paid. The trial Court has accepted that this value of the property has to be its market value on the date of the institution of the suit.

12. The provisions of Section 6 which deal with computation of fees payable in certain suits, the words used are "value of property" and "market value". For the

present purposes, it needs to be noticed that Section 6(v) prescribes Court fee in suits for possession of land, house and gardens. This Clause (v) itself shows that such court fee is payable according to the value of the subject matter. It also stipulates that in case of houses or gardens, its market value is deemed to be value of subject matter and where subject matter is land, a sum equal to 40 times or 80 times the survey assessment, is deemed to be its value. The Scheme, therefore, is apparent and Legislature has specifically used the word market value whenever it wanted to employ that word and wanted the plaintiff to pay court fee on such market value. Section 6(iii) can also be referred to for this purpose and it prescribes court fee on suits for other moveable properties having market value. Its reading shows that court fee is to be paid on its market value that too at the date of presentation of Suit. Hence, the Legislature has given different meaning to word "value" and "market value" and has not used one or the other to imply same thing. In case of agricultural land, the value is deemed to be at either 40 times or 80 times its survey assessment. Hence, language of Section 6(iv)(ha) assumes importance & it does not use the word "market value" but it only uses the word value of the property. It is not in dispute that sale deed dated 25.06.1998 is for Rs. 4,60,000/- and accordingly the petitioner - plaintiff valued his suit at Rs. 4,60,000/-. He is not party to that sale deed.

13. The petitioner has invited attention to the judgment of the Hon''ble Apex Court in the case of Satheedevi Vs. Prasanna and Another, . The consideration there from para 11 shows that Section 7 of Kerala Court Fees and Suits Valuation Act, 1959, lays down different modes for determination of market value of property for the purposes of payment of Court fee. Its Sub-section (1) required the market value of the property to be value determined on the date of presentation of plaint. But it begins with expression "save as otherwise provided". In this background, the Hon''ble Apex Court noted other clauses which provided for payment of court fee & its computation on market value of the property. It then noted Sub-section (2) of Section 7 which stated that market value of agricultural land in suits falling under particular sections shall be deemed to be 10 times the annual gross profits of such land minus the assessment. Section 40 of that Act deals with suits for cancellation of decrees which are not covered by other sections. The Hon''ble Apex Court found that there was departure in said section inasmuch as it did not prescribe the payment of Court fee on the market value of the property. Section 40 required the Court fee to be computed on value of subject matter of the suit. The Hon''ble Apex Court noted that deeming clause contained in substantive clause of Section 40(1) prescribed that such value for payment of court fee shall be deemed to be, if the whole decree or document is sought to be canceled, the amount or value of the property for which decree was passed or the document was executed. If challenge was restricted to part of decree or document, such part constitutes the basis for fixation of court fee. Thus, the Court fee is required to be computed on the value of the property for which the document was executed or decree was passed. The Hon''ble Apex Court has thus stated that this value of property for

which document was executed, was relevant & not its market value. This logic is squarely applicable in present matter also.

14. The other precedent relied upon by the petitioner is in the case of *Suhrid Singh @ Sardool Singh v. Randhir Singh*, where the Hon''ble Apex Court has summarized plaint prayers and noted that Court fees of Rs. 95.50 was paid for the relief of declaration, Rs. 117/- for the relief of joint possession and Rs. 42/- for the relief of permanent injunction. The trial Court found that prayers in the plaint sought cancellation of sale deed and, therefore, ad valorem court fee as per sale consideration was payable. The appellant before the Hon''ble Apex Court contended that suit was not for cancellation of any sale deed and court fee paid by him was proper. The High Court had dismissed his revision observing that if his prayers were granted, it would tantamount to cancellation of sale deeds. The Hon''ble Apex Court has stated that only relief of declaration sought was that sale deeds were void and not binding on coparcenary. In this background, the provisions of Court Fees Act, 1870, particularly provisions of Section 7(iv)(c) were noted. In para 6, the Hon''ble Apex Court has found that if executant of the document wants its annulment, he has to seek cancellation of that document. If a non-executant wants annulment of a deed, he has to seek a declaration that the deed is invalid, non-est or illegal or that it is not binding on him. Because of this difference in the legal scheme and prayers made, the Hon''ble Apex Court found that the Court fee was payable u/s 7(iv)(c) of that Act. It, therefore, allowed the appeal and set aside the order of trial Court and High Court. It is to be noted that in facts before me, admittedly, the petitioner - plaintiff is not party to the sale deed dated 25.06.1998.

15. Judgment in the case of *Jaffer Ali Alibhai and Another Vs. S.R. Dossa and Co. and Another*, states that Court fees is a taxing statute and its provisions are to be construed in favour of subject-litigant. In *Golapmoni Roy and Others Vs. Nanigopal Roy and Others*, in a suit for partition when plaintiff prayed for declaration that certain deed of Trust to which he is not party is void, the Calcutta High Court held that he has to pay fixed court fee and not ad valorem fee. In *Chellakannu Vs. Kolanji*, the plaintiff himself was party to that document and, therefore, the High Court has held that he has to first obtain relief of cancellation of sale deed. In *Suresh and Others Vs. Chand and Others*, the relief sought was of declaration of one half ownership on the basis of registered will and second relief was of cancellation of sale deed. In *Mishrilal Tarachand Lodha Vs. State of Maharashtra and Others*, the Court fee is held not payable on amount of interest granted by the High Court while filing appeal. All these judgments, therefore, show that it is the language of charging provision which has been held to be decisive.

16. In present matter, as already noticed, the provisions of Section 6 make a difference between market value and value of the property. The provisions of Section 6(v) of the Act specifically state that when suit is for possession of house and garden, market value thereof is the value for the purposes of court fee.

Legislature has in Section 6(iv)(ha) not used the word "market value". The one half of ad valorem fee leviable thereunder is on the value of the property & obviously the value has to be looked into the subject document. Incorporation of Section 6(v) in Section 6(iv)(d) of Act and not in this Section 6(iv)(ha) is deliberate. If objection of the defendant is to be upheld, such reference to it was essential to attract payment of court fee as per market value if such document or contract relates to a house or garden. Its non incorporation brings forth the distinction envisaged by the legislature in assessment of court fees in suits regulated by Section 6(iv)(d) & Section 6(iv)(ha) of Act. The sale deed in present matter in relation to which declaration is sought by plaintiff is for Rs. 4,60,000/-. It is, therefore, apparent that he is seeking declaration in relation to a document which is valued at Rs. 4,60,000/-. The valuation as undertaken in plaint for said purpose of Section 6(iv)(ha), therefore, is not erroneous.

17. The petitioner plaintiff however has valued suit at Rs.4,62,000/ i.e. Rs. 460000/ + 1000/- + 1000/-. He has to pay separate and independent court fee on all these three heads. If total court fee paid by plaintiff is found less as per provisions of Section 6(iv)(d), (ha) & (vii), he shall pay the deficit court fee within 15 days of receipt of certified copy of this judgment. Subject to this, the direction given by the trial Court to value the suit correctly being unsustainable, is quashed and set aside. Writ Petition is thus allowed. Rule made absolute accordingly. However, in the facts and circumstances of the case, there shall be no order as to costs.