

(2009) 11 GUJ CK 0104

In the Gujarat High Court

Case No : Special Civil Application No. 390 of 2004

Shaikh Kalubhai Ibrahimbhai

APPELLANT

Vs

M.J. Shukla and Another

RESPONDENT

Date of Decision : 26-11-2009

Acts Referred:

Bombay Court Fees Act, 1959 — Section 12(3)
Constitution of India, 1950 — Article 227
Gujarat Court Fees Act, 2004 — Section 6

Citation : (2009) 11 GUJ CK 0104

Hon'ble Judges : K.A. Puj, J

Bench : Single Bench

Advocate : Jagdish M. Shah, for the Appellant; Government Pleader for Respondent 1 and Iqbal M. Malik, for Respondent 2, for the Respondent

Final Decision : Allowed

Judgement

K.A. Puj, J.—The petitioner-original plaintiff has filed this petition under Article 227 of the Constitution praying for quashing and setting aside the order passed by the learned Civil Judge (J.D.), Balasinor on 16.12.2003 below Court Fee Reference No. 9 of 2003 in Civil Suit No. 17 of 1997.

2. This Court has issued the notice on 16.1.2004 and the petition was admitted on 18.3.2004. The interim relief was granted in terms of paragraph 11(B) whereby the impugned order was stayed as well as the proceedings in Civil Suit No. 17 of 1997 were stayed.

3. On behalf of the petitioner Mr. Jagdish M Shah, learned advocate has appeared, on behalf of respondent No. 1 learned A.G.P. Mr. Janak Rawal appeared and on behalf of respondent No. 2 learned advocate Mr. Iqbal M. Malik has filed his appearance.

4. It is the case of the petitioner that the petitioner and respondent No. 2 are brothers and they are sons of Shaikh Ibrahimbhai. After the death of Shri

Ibrahimbhai Shaikh, the petitioner and the respondent being legal heirs inherited the agricultural land bearing Revenue Survey No. 34/2, Block No. 23 and Survey No. 31, Block No. 30 situated in village Kunjara in Balasinor Taluka, District Kheda.

5. It is also the case of the petitioner that respondent No. 2 was disturbing possession of the land inherited by the petitioner on the death of his father and hence the petitioner has filed Civil Suit No. 17 of 1997 before learned Civil Judge (J.D.), Balasinor for permanent injunction restraining respondent No. 2 from disturbing possession and cultivation of the land by the petitioner. In the said suit, the petitioner affixed the Court Fee Stamp of Rs. 30/- as it was the suit for permanent injunction.

6. Respondent No. 1 has, however, made reference being Court Fee Reference No. 9 of 2003 on 27.8.2003. It was averred in the said reference that the petitioner has prayed for injunction to the effect that respondent No. 2 be restrained from taking possession of the land bearing Revenue Survey Nos. 31 and 42 alleging that the petitioner was entitled to one half share for which the suit is valued at Rs. 300/- and the petitioner has paid Court Fee Stamp of Rs. 30/- only which was neither proper nor adequate. It is further averred in the said reference that admittedly the suit was for injunction to restrain respondent No. 2 from taking possession and if respondent No. 2 would take possession by force, the petitioner may suffer loss to the extent of value of the suit land. Considering the description of the suit land and valuation of immovable properties, the suit land may be worth of Rs. 4,00,000/- and the petitioner's proposed one half share may be worth Rs. 2,00,000/-. It is, therefore, claimed that to prevent the loss of Rs. 2,00,000/-, the suit was filed and for the purpose of Court Fees, it falls under Article 7, Schedule I of the Bombay Court Fees Act, 1959 and accordingly the petitioner may be held liable to pay ad-valorem Court Fees on Rs. 2,00,000/- which comes to Rs. 4,300/-, whereas the petitioner has paid Court Fees of Rs. 30/- and hence there is deficit Court Fees of Rs. 4,270/- which the petitioner will have to make good. It is further averred in the reference that the petitioner has valued the suit u/s 6(iv)(j) of the Act. However, this section applies only when two conditions are satisfied namely (i) it being a residuary provision applies, when other provisions of the Act do not apply and (ii) it is applicable when the subject matter of the suit is not susceptible to the monetary evaluation. According to the respondent No. 1, in the instant case both these conditions were not satisfied. Reliance was placed by respondent No. 1 on the decisions of this Court in the case of Cotseeds Corporation Vs. Cotton Corporation of India and Others, , State of Gujarat Vs. Heirs of Ramsinh Laxmansinh and Others, and State of Gujarat Vs. Pradipkumar Gendalal Shah and Others, . The respondent No. 1 has, therefore, prayed in the said reference that the petitioner may be directed to pay deficit Court Fees of Rs. 4,270/-.

7. Learned Civil Judge, vide his order dated 16.12.2003, has accepted the said reference and directed the petitioner to pay deficit Court Fees of Rs. 4,270/-

within 15 days from the date of the said order.

8. It is this order which is under challenge in the present petition.

9. The main grounds raised by the petitioner for challenging the impugned order in this petition are that learned Civil Judge has misread and misconstrued the provisions contained in Section 6(iv)(j) of the Gujarat Court Fees Act. Learned Judge has also not correctly appreciated the prayer made by the petitioner in the suit as it was the suit for permanent injunction. The petitioner is already in possession of his share and the petitioner has only sought protection of his interest in the property. The petitioner has not demanded any share in the property nor the suit was filed for partition of the property. The judgments on which reliance was placed by respondent No. 1 are also not applicable to the facts of the case and hence learned Judge has not correctly appreciated the ratio laid down in those judgments. On the contrary, the petitioner has relied on two judgments which are directly on the points and still they have not been properly considered. The petitioner has placed reliance before the learned Civil Judge on the decisions of this Court in the case of Koli Jagjivan Raja Makwana and Ors. v. State 1993(1) GLR 609 and State of Gujarat v. Daliben Naran and Ors. 1995(1) GLH (UJ) 22. Learned Civil Judge has merely referred to these judgments in his order without appreciating ratio of these two judgments. The impugned order is further challenged on the ground that the suit land is an agricultural land and it is used for cultivation and hence the market value of the land is not to be considered for the purpose of determining valuation of the Court Fees. For this purpose, reliance was placed on the decision of this Court in the case of Girdharlal Lavjibhai Cholera v. Bhogilal Girdharlal and Ors. 1981 GLR 37. The prayer therefore made in the petition is that the order passed by the learned Civil Judge is contrary to the provisions of the Bombay Court Fees Act as well as contrary to the settled legal position and hence the said order is required to be quashed and set aside.

10. Mr. Rawal, learned AGP appearing for respondent No. 1 on the other hand has supported the order passed by the learned Civil Judge.

11. Having heard the learned advocates appearing for the parties and having considered their pleadings as contained in the plaint as well as the petition, the Court is of the view that learned Civil Judge has committed error in law as well as on facts and hence the impugned order deserves to be quashed and set aside. The prayer made by the petitioner in the plaint of the suit is only for the purpose of protecting his interest in the suit land. The petitioner has not asked for any relief pertaining to the partition of the land nor asked for possession as wrongly considered by learned Civil Judge. The petitioner is already in possession of the suit land and the prayer is made to seek protection of the possession of the said land. The petitioner's case is therefore squarely covered by the decision of this Court in the case of State of Gujarat v. Daliben Naran and Ors. (supra) wherein this Court has observed that the suit for protection of interest in a property is different from one seeking a share or partition in it. If the suit is for mere

injunction, the valuation of the suit at Rs. 300/- and consequential Court Fees at Rs. 30/- is proper and justified. Even in the case of Koli Jagjivan Raja Makwana and Ors. v. State (supra) wherein this Court has taken the view that the plaintiffs being co-owners are already in joint possession of the suit premises and the sole relief claimed is to separate their shares from that of the respondents so that they may have exclusive possession of their share in the jointly owned suit fields. The Court has, therefore, accepted the contention of the plaintiffs for the purpose of Court Fees and the suit was held to be not governed by Section 12, sub-section 3 of the Bombay Court Fees Act but the same was governed by Section 6, Clause V(a) of the Court Fees Act and hence the claim for additional Court Fees was declared as untenable and the Court has quashed and set aside the order challenged in the said petition.

12. Even otherwise the suit land is an agricultural land and on this point this Court in the case of Girdharlal Lavjibhai Cholera v. Bhogilal Girdharlal and Ors. (supra) has held that when the land in question is assessed for the purpose of agriculture, then the value would be twelve and a half times the assessment since Sub-clause (a) of Clause (v) of Section 6 of the Bombay Court Fees Act would be applicable. It is clear from the language of Clause (vii) and Explanation to Clause (vii) that what the legislature prescribes is the test of assessment to land revenue for a particular purpose, and not the actual user of the land. The value of the land in the market is totally immaterial. The potentiality for future non-agriculture purpose may affect the value of the land but so long as the land is not assessed to land revenue for purposes other than those of agriculture, it will still be land assessed to land revenue for purposes of agriculture and by virtue of the Explanation to Clause (vii) read with Sub-clause (a) of Clause (v), it can only be the value for the purpose of court fees at twelve and a half times the survey assessment.

13. The judgments relied on by respondent No. 1 before the learned Civil Judge have no application to the facts of the present case. In Cotseeds Corporation, Rajkot v. Cotton Corporation of India, Bombay and Ors. (supra), the subject matter in dispute was non-supply of goods contracted to be delivered by the defendant Corporation. In substance the dispute was with regard to the performance of contract of sale by the defendant Corporation to the plaintiff. According to the plaintiff, it was entitled to receive the goods as per the agreement to sell. The plaintiff prayed for declaration that it is entitled to receive the balance quantity of cotton seeds and the defendant Corporation be restrained from delivering cotton seeds to others unless the plaintiff is supplied the balance quantity of cotton seeds. On these facts, the Court took the view that the phrase "susceptible of monetary evaluation" means "capable of or admitting of monetary evaluation". The Court considered the suit essentially for specific performance of the contract and hence the court has taken the view that the court fees is payable u/s 6(xi)(a) and not u/s 6(iv)(j). This is not the case here. In the present case, the petitioner is already in possession of the suit land and he only seeks protection of his land. Similarly, the decision of this Court in the

case of State of Gujarat v. Heirs of Ramsinh Laxmansinh and Ors. (supra) is also not applicable to the facts of the present case as in that case the subject matter of the relief prayed for was to prevent monetary loss to the plaintiff. If the injunction as prayed for is granted, the plaintiff will be in a position to prevent monetary loss in the shape of amount of compensation which otherwise would be paid to defendants Nos. 1 to 13. What amount of compensation is to be paid is a matter which can be ascertained easily by making inquiry from the Land Acquisition Officer. The court therefore took the view that by no stretch of reasoning it can be said that the subject matter of the suit is not capable of being evaluated in terms of money. In the present case, the dispute is not with regard to prevention of any monetary loss to the plaintiff. The plaintiff has not asked for any possession as he is already in possession of his share of the suit land. When any protection is sought for, it cannot be considered at par with asking for possession of the land. Hence the said decision has also no application to the facts of the present case.

14. In view of the above discussion and considering the legal position on this issue, the Court is of the view that learned trial Judge has not correctly decided the issue raised before him by respondent No. 1 in the Court Fee Reference No. 9 of 2003. The impugned order is therefore quashed and set aside. The petition is allowed. Rule is made absolute with no order as to costs.