
(1968) 06 BOM CK 0009
In the Bombay High Court
Case No : Appeal No. 301 of 1965

Shobha Venkat Rao

APPELLANT

Vs

K.R. Mahale

RESPONDENT

Date of Decision : 25-06-1968

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 2 Rule 2, Order 23 Rule 1(1), Order 6 Rule 17
Court Fees Act, 1870 — Section 12

Citation : AIR 1969 Bom 370 : (1969) 71 BOMLR 35 : (1968) ILR (Bom) 1397 : (1969) MhLj 328

Hon'ble Judges : Nain, J

Bench : Single Bench

Advocate : K.T. Varghese, for the Appellant; M.L. Dudhat, for R.W. Adik, for the Respondent

Judgement

Nain, J.—This is an appeal against an order dated 19th August 1965 passed by a judge of the Bombay City Civil Court, holding that the value of the subject-matter of the suit was over Rupees 25,000 and the Court therefore, had no pecuniary jurisdiction to try the suit and ordering that the plaint be returned to the plaintiff for presentation to the proper Court.

2. The plaintiff claims to be a licensee of a restaurant known as Meenakshi Bhuvan and lately known as Central Cafe Udipi, situated in Vishwas Bhuvan, King Edward Road, Parel, Bombay. She appears to have granted a sub-licence in respect of this restaurant to the defendant No. 1 who was running it with the assistance of the defendant No. 2. The plaintiff claims to have terminated the licence of the defendant No. 1 on the ground that he had committed breach of the terms of the sub-licence. She, therefore, filed the present suit against defendants Nos. 1 and 2 only for recovery of possession of the said restaurant and a sum of Rs. 3,500 as arrears of licence fees and future mesne profits. She filed the suit on 3rd March 1959. In the suit she took out a notice for motion and got an interim order for appointment of receiver. When the receiver went to take

possession, he found that the defendants Nos. 3 and 4 were in possession. The plaintiff thereafter joined them as, party defendants to the suit. Defendant No. 3 is the plaintiff's licensor. Defendant No. 4 is a fresh licensee from the defendant No. 3. It appears that in order to spite the plaintiff the defendant No. 1 had handed over possession of the suit premises to the plaintiff's licensor who in turn had put a new licensee in possession.

3. The defendants filed their written statement. No defence as to jurisdiction was taken. Issues were settled in July 1963. It appears from the issues that no issue was raised as to jurisdiction. The suit proceeded to trial. Both parties led evidence and the matter was being pears the defendants relied upon a statement in the evidence by the constituted attorney of the plaintiff indicating that the market value of the property of which possession was sought to be recovered in the suit was over Rs. 25,000. The learned Judge appointed the Registrar of the Court to hold an enquiry and make a report as to whereof was sought to be recovered evidently with a view ultimately to determine he value himself under the provisions of Section 12 of the Court-fees Act, 1870, which was in force at the date of the institution of the suit. The learned Registrar made a report in which he held that the total value of the premises, possession whereof was claimed in prayer (a) of the plaint, was Rs. 30,336.75, namely. Rs. 13, 850 being the value of the premises and Rs. 16,486.75, being the value of the movable property sought to be recovered. The plaintiff field objections to this objections. Probably finding that the learned judge was inclined to accept the valuation made by the Registrar, the plaintiff presented a draft amendment and sought leave to amend the plaint. This draft amendment is at page 103 of the paper-book. By this draft amendment the plaintiff sought to abandon a part of the claim so as to bring the suit within the jurisdiction of the Court. The learned Judge, however did not grant this amendment and ultimately passed the order, which is the subject-matter of this appeal.

4. The first point argued before me by Mr. Varghese on behalf of the plaintiff is that in prayer (a) of the plaint the plaintiff seeks to recover possession of the restaurant with all its fittings., furniture and fixtures and things and articles mentioned in Ex. C to the plaint. Ex. C consists of two lists, one comprising 71 items and the other comprising 44 items. The learned /registrar of the City Civil Court has valued all the movable articles at Rs. 16,486.75. This consists of Rupees 8,570.75 being the value of 71 articles in list No. 1 and Rs. 2,416.00 being the value of 44 articles comprised in list No. 2. This report the Registrar has at the instance of the defendants added list No. 3 consists of five items valued at Rs. 5,500. The plaintiff points out that these articles have not been claimed in the plaint and therefore, the learned Registrar has wrongly included them in the list. This contention of the plaintiff appears to be correct. Mr. Dudhat appearing for the defendants has not been able to point out that the plaintiff claimed these articles in the plaint. This item of Rs.5,500 will, therefore, have to be knocked out from valuation of the learned Registrar. This by itself will reduce the valuation by the Registrar from Rs. 30,336.75 to Rs. 24,836.75, which would

bring it within the jurisdiction of the Bombay City Civil Court.

5. This, however, leaves out of consideration the claim of the plaintiff in prayer (b) for Rs. 3,500 as arrears of license fees. If this is added, the claim would again exceed Rs.25,000. It is for this reason that the plaintiff presented the draft amendment at page 103 of the paper-book whereby she intended to abandon two parts of her claim, namely, recovery of 44 articles covered by list No. 3 valued at Rs. 2,416.00 and a sum of Rs. 1200 out of the claim of Rs. 3,500 for arrears of licence fees covered by prayer (b). The abandoning of these two parts of her claim would have brought the suit within the jurisdiction of the City Civil Court. This amendment was, however, not allowed on the ground that if the Court had no jurisdiction to entertain an application to amend the plaint.

6. I have examined the draft amendment and I find that it was necessary for the plaintiff to amend the plaint in terms thereof. The only purpose of the amendment was to abandon a part of her claim. Order 23, Rule 1 (1), Civil P. C. provides that at any time after the institution of a suit, the plaintiff may abandon a part of his claim. The plaintiff was, therefore, within her right to abandon a part of the plaint or any permission of the Court. She could have done so voluntarily by a unilateral act of herself. She could have made a statement to the Court and the Court would normally record the statement and proceed to try the suit with regard to the remaining part of the claim. The draft amendment should actually have been treated as such statement. Unfortunately the provisions of O. 23, R. 1 (1), Civil P. C. do not appear to have occurred to the plaintiff's Advocate and in fairness to the learned Judge I must say that they were not pointed out to him.

7. Mr. Dudhat has argued before me that once the learned Registrar had made a report and according to that report even if Rs. 5,500 are taken out of the valuation, the claim in suit would still exceed Rs. 25,000, the Court would, therefore, have no jurisdiction over the suit and was therefore, not competent even to record a statement of the plaintiff abandoning a part of the claim. I am afraid, this contention is not correct. After the report the Court has to hear the parties on the report and the objections to it and to give a finding on the valuation and jurisdiction. As long as the Court has not given a finding that it had no jurisdiction and the plaint should be returned for presentation to proper Court, it is seized of the matter because the Court has the right to decide the question of its own jurisdiction even if the decision ultimately be that it has no jurisdiction. As long as the Court is seized of the matter, it is open to a party at any time to abandon a part of the claim by a unilateral act by making a statement to that effect which the Court must record if thereafter the suit is within jurisdiction, the Court should proceed to hear it. If this position were not correct, it would only mean that the Court must make an order returning the plaint for presentation to the proper Court and the plaintiff must withdraw the plaint, amend it by abandoning a part of his claim and represent it to the same Court. The only consequence of such procedure would be that the suit must be numbered as a new suit and under the conditions prevailing to-day be heard after another six

years and if evidence has already been recorded, as it has been done in this case, the suit must be re-tired. From the words of order 23, Rule 1 (1) I do not think that such consequence is inevitable. Order 2, Rule 2 (2) is not the only provision in the CPC for voluntary relinquishment of claims or parts of claims. In many opinion, before the Court had passed an order returning the plaint for presentation to the proper Court, it was open to the plaintiff to abandon any part of her claim under Order 23, Rule 1 (1), Civil P. C., so as to bring it within the jurisdiction of the Court. In such event it would not be necessary for the Court to return the plaint to the plaintiff for presentation to the proper court. This is the procedure that the learned Judge ought to have adopted and since he has not done so, his order must be set aside. Mr. Varghese on behalf of the plaintiff has made such statement before me abandoning the parts of his claim covered by the draft amendment at page 103.

8. Mr. Varghese has also taken up a contention that u/s 6(v) of the Court-fees Act, 1870, the plaintiff has to pay court-fee on he market value of the property which he is seeking to recover. According to him, as he was a licensee of the defendant No. 3 and the licence was only up to 30th April 1965, it is the value of his right to the property on which he will have to pay Court fee and such value will not exceed Rupees 6,500 which is the amount at which the relief was originally valued. However, in view of the fact that the suit now falls within the jurisdiction of the City Civil Court, Mr. Varghese has not pressed this point and it is not necessary for me to record any finding on that point.

9. In view of what I have stated above, I remand the suit to the City Civil Court for further proceedings not inconsistent with this judgment. As the evidence has already been completed and the learned Judge before whom it as taken has retired, I direct that the matter should be placed before some other Judge of the City Civil Court who may proceed with the suit from the stage at which his predecessor left it under the provisions of Order 18, Rule 15, Civil P.C. Costs of this appeal will be costs in the suit.

10. Suit remanded.