

(2012) 06 BOM CK 0023

In the Bombay High Court

Case No : Writ Petition No. 9189 of 2011

Shri Ramchandra Babaji Thali and Others

APPELLANT

Vs

Shri Bhaskar Babaji Thali and Another

RESPONDENT

Date of Decision : 22-06-2012

Acts Referred:

Bombay Court Fees Act, 1959 — Section 6

Citation : (2012) 5 ALLMR 718

Hon'ble Judges : R.M. Savant, J

Bench : Single Bench

Advocate : Sandesh D. Patil instructed by M/s. Tanu Khatri, for the Appellant; Ranjana Todankar for the Respondent No. 1 and Mr. Vaibhav Gaikwad instructed by y Mr. A.M. Kulkarni, for the Respondent

Judgement

R.M. Savant, J.—Rule, with the consent of the parties made returnable forthwith and heard. The above Petition takes exception to the Order dated 5/10/2010 passed by the learned Joint Civil Judge, Junior Division, Uran by which order, the Application filed by the Petitioners herein who are the original Defendants in Regular Civil Suit No. 61 of 2006 came to be allowed, and the following directions were issued :-

(1) Plaintiff is hereby directed to correct the valuation of the suit i.e. @ Rs. 4000/- per sq.mtrs.

(2) Plaintiff is also directed to pay one fourth of the advoleram fee as a court fee within one month from today.

2. It is not necessary to burden this order with unnecessary facts. Suffice it to say that the said suit has been filed by the Plaintiff claiming his share in the plots allotted by the CIDCO at villages Chanaje and Bokadwira in lieu of the acquisition of the land of the Petitioners' joint family for setting up a new township of Navi Mumbai by CIDCO. The averments relating to the acquisition of the land for CIDCO and the allotment of the plots of land and other benefits are found in Para

I and 4 of the Plaint. The prayer in the suit is to the effect that the Plaintiff's share in the plots of land allotted by the CIDCO under the 12.5 scheme i.e. Plot No. 36 admeasuring 773 sq.mtrs at Nagaon, and plot admeasuring 2950 at village Chanaje Bokadwira should be partitioned and handed over to the Plaintiffs. Substratum of the reliefs claimed in the suit is therefore founded on the acquisition of the joint family properties by the CIDCO and the allotment of lands in lieu thereof by the acquiring body to the joint family.

3. In the said suit an application came to be filed by the Defendants contending that the suit seeking the reliefs claimed is not properly valued. The parties led their respective evidence on the preliminary issue regarding valuation. It was brought on record that at the relevant time when the plots were allowed, the going rate at village Chanaje and Bokadwira was Rs. 4,000/- per sq.mtr. The trial Court therefore by clause (1) of the operative part of the impugned order directed the Plaintiff to revalue the suit properties at Rs. 4,000/-, and by clause (2) directed the Plaintiff to pay one fourth of the advolera fee as a court fee within the time stipulated therein. It is required to be noted that the Plaintiff has valued the suit in terms of the valuation of the share that he was claiming in the plots of land. The Plaintiff valued the plots at Rs. 75,000/- and on the basis of his 1/6th share which was Rs. 12,500/-, the court fee of Rs. 1,805/- was paid.

4. Aggrieved by the order passed by the trial Court the Defendants have filed the instant Petition. However, the Learned Counsel appearing for the Defendants i.e. the present Petitioners made a statement that the Defendants would not like to prosecute the above Petition in so far as clause (1) of the operative part of the impugned order is concerned. The challenge therefore to clause (1) in view of the said statement does not survive.

5. However, in so far as clause (2) of the operative part of the impugned order is concerned, the Learned Counsel appearing for the Petitioners Shri Sandesh Patil would contend that the trial Court has erred in relying upon clause (iv)(d) of section 6 of the Bombay Court Fees Act, 1959, when there is a specific sub-clause (vii) to section 6, covering a claim for a share in the joint family property and other reliefs claimed vis-?-vis a joint family property. The Learned Counsel for the Petitioners to buttress his submission as regards applicability of clause (vii) of Section 6 of the Act would refer to the averments in the plaint to submit that the subject matter of the suit is the share claimed by the Plaintiff in the plots allotted to the joint family.

6. Per contra, it is submitted by the Learned Counsel for the Respondent No. 1 - original Plaintiff that since the CIDCO has allotted the plots in question and since the Plaintiff is claiming ownership of part of the said plots, clause (iv)(d) of section 6 of the Act would be applicable.

7. Having heard the Learned Counsel for the parties I have bestowed by anxious consideration to the rival contentions. As mentioned herein above, the substratum of the suit is founded upon the fact that the lands owned by the joint

family were acquired, and in lieu thereof, the acquiring body has allotted the plots in question. The plaint, as indicated above, discloses that the Plaintiff is claiming his share in the plots allotted to the joint family from whom the lands were acquired. In view of the controversy involved it would be apposite to refer to clause (iv)(d) of section 6 of the Act which in convenience sake is reproduced herein under:

(d) for ownership etc. of immovable property, etc. In suits for declaration in respect of ownership, or nature of tenancy, title, tenure, right, lease, freedom or exemption from, or non-liability to. attachment with be without sale or other attributes, of immovable property; such as a declaration that certain land is personal property of the Ruler of any former Indian State or public trust property or property of any class or community-one-fourth of ad valorem fee leviable for a suit for possession on the basis of title of the subject matter subject to a minimum fee of 2 [one hundred rupees].

Provided that if the question is of attachment with or without sale the amount of fee shall be the ad valorem fee according to the value of the property sought to be protected from attachment with or without sale or the fee of 3 [sixty rupees] whichever is less:

Provided further that, where the defendant is or claims under or through a limited owner, the amount of fee shall be 4 [one third] of such ad valorem fee, subject to the minimum fee specified above:

Provided also that, in any of the cases falling under this clause except its first provision, when in addition any consequential relief other than possession is sought the amount of fee shall be one half of ad valorem fee and when the consequential reliefs also sought include a relief for possession the amount of fee shall be the full ad valorem fee;

A reading of clause (iv)(d) of Section 6 of the Act discloses that the said clause would apply if the declaration of ownership is claimed and declaration in respect of nature of tenancy, title, tenure etc. is claimed which have been mentioned therein. The said categories can be said to be illustrative in so far as the said clause (iv)(d) is concerned.

8. A reading of clause (vii) of Section 6 of the Act discloses that the said clause as it were an all encompassing clause covering various claims and reliefs which can be sought in respect of a joint family property. The said clause therefore can be said to be an exclusive clause applicable to a case where the joint family property is involved. The said clause being an exclusive clause deals with the reliefs claimed qua the joint family property, the question would be whether clause (iv)(d) of Section 6 can be applied. The said clause (iv)(d) was applied as it seems that the attention of the trial Court was not drawn to clause (vii) of section 6 of the Act. In my view, there was no warrant to apply clause (iv)(d) of section 6 of the Act which can be said to be only a residuary clause in the teeth of clause (vii) which directly covers the suit in question. On an interpretation

therefore of the provision of the Act, the direction contained in clause (2) of the operative part of the impugned order cannot be sustained. The said direction would have to be set aside and the same would have to be substituted by directing the Plaintiff to pay ad voleram fees as per clause (vii) of section 6 of the Act on the basis that the valuation is done in terms of clause (1) of the impugned order. Hence the direction contained in clause (2) of the operative part of the impugned order dated 05/10/2010 is accordingly set aside and the Plaintiff is directed to pay deficit court fees within a period of three months from date. This is on the basis that the Plaintiff has already complied with the impugned order in the interregnum. In view of the change of valuation of the suit in question, the trial Court would pass appropriate directions for returning the plaint to the Plaintiff for being presented before the appropriate Court. Rule is accordingly made absolute in the aforesaid terms with parties to bear their respective costs.