**(1999) 03 BOM CK 0120**

**In the Bombay High Court**

**Case No :** Civil Revision Application No. 931 of 1990

Shri Shivaji Runjaji Autade and another — APPELLANT

Vs

Shri Mahadu Sakharam Autade — RESPONDENT

**Date of Decision :** 12-03-1999

**Acts Referred:**

Bombay Court Fees Act, 1959 — Section 6
Evidence Act, 1872 — Section 113
Maharashtra Suits Valuation (Determination of Value of Land for Jurisdictional Purposes) Rules, 1983 — Rule 2
Penal Code, 1860 (IPC) — Section 306
Suits Valuation Act, 1887 — Section 11, 12, 3, 4, 8

**Citation :** AIR 1999 Bom 396 : (1999) 3 ALLMR 604 : (2000) 1 BomCR 876 : (2000) 1 MhLj 536

**Hon'ble Judges :** S.B. Mhase, J

**Bench :** Single Bench

**Advocate :** S.D. Kulkarni, for the Appellant; C.V. Korhalkar, for the Respondent

# Judgement

S.B. Mhase, J.—The order under challenge is dt. 27-7-1990 passed by the learned Civil Judge, Senior Division, Kopargaon, recording the finding on Issue No. 16-A and B which pertain to the jurisdiction of the Court. The Issue Nos. 16-A and 16-B are as follows:

"16-A) Whether the suit is properly valued for the purpose of jurisdiction?

16-B) Whether this Court has jurisdiction to try the instant suit ?"

The trial Court has observed that the suit has been properly valued and the Court has jurisdiction and as stated earlier the said order is under challenge.

2. The Special Civil Suit No. 54 of 1981 has been filed by the plaintiff-respondent initially before the Civil Judge, Senior Division, Ahmednagar, against the defendant-petitioner. The said suit in respect of the Gat No. 308, Gat No. 145, and Gat No. 164 situated at Pohegaon, Taluka Kopargaon. The plaintiff has filed the suit for possession of the property on the basis of title. The plaintiff-

 

respondent has also claimed amount of Rs. 15,000/- by way of income of three years prior to the institution of the suit and has claimed future mesne profits from the date of the suit. The plaintiff has stated the assessment of the lands involved in the said suit as Rs. 18.75 Ps. and there-fore for the purposes of Court fees the value is made 12 and half times of the said assessment i.e. Rs. 234.34 Ps. So also for amount of Rs. 15,000/- being the arrears of income. Thus on the amount of Rs. 15,334/- Court fees stamp of Rs. 1,124/ is affixed. However, for the purposes of jurisdiction of the Court, the plaintiff has valued the land at Rs. 50,000/- and thereby ultimately the suit is valued at Rs. 65,000/-.

3. So far as the valuation of the property for the purposes of Court fees is concerned, there is no dispute between the parties but the main dispute centers around the controversy for valuing the agricultural lands to Rs. 50,000/- for the purposes of jurisdiction of the Court. The claim of the petitioner is that the plaintiff respondent is not entitled to quote or state different value for the purposes of jurisdiction of the Court in respect of the agricultural land, therefore, the objection has been raised.

4. In an application which is at Exhibit 79 in the said suit, the petitioner has contended as the assessment of the land is Rs. 18.75 Ps. it should have been multiplied by 200 times which comes to Rs. 3,750/- and that should have been the value for the purposes of jurisdiction of the Court in respect of the agricultural land, and therefore, the respondent contended the value for jurisdiction of the Court is Rs. 15,000/- plus Rs. 3,750/- i.e. Rs. 18,750/-. However, instead of following this method of valuation, the plaintiff has followed the wrong method and has put up the value of the agricultural land to Rs. 50,000/-. The said application at Exhibit 79 and the issue Nos. 16-A and 16-B were considered and they were rejected by the trial Court.

5. Mr. S.D. Kulkarni learned Counsel appearing for the petitioner submitted that section 4 of the Suits Valuation Act provides that the value for jurisdiction of such suit shall, be the same as the value for jurisdiction of the Court. He further submitted that even it is assumed that the suit falls under paragraph Nos. (v) and (vi) of section 6 of the Bombay Court Fees Act, 1959 then the plaintiff-respondent should have valued the suit as per the Rules framed by the State Government i.e. Maharashtra Suits Valuation (Determination of the Value for Jurisdiction Purposes) Rules, 1983 and therefore, according to him, as per Rule 2(b) the valuation should have been made up to 200 times of the assessment payable in respect of the land and that comes to Rs. 3,750/- as stated earlier. When it is pointed out to the learned Counsel that the Rules have come into force w.e.f. 1-1-1984 while the suit has been filed in the year 1981, and therefore, these Rules cannot govern the suits filed earlier i.e. prior to coming into force of the said Rules. The learned Counsel submitted that these are the Rules of Procedure i.e. in what manner the valuation of the property shall be made for the purposes of the jurisdiction of the court, and therefore, these rules are retrospective in application and therefore, even though the suit has been filed in

 

the year 1981 these rules will apply to the said suit and the said suit either will have to be transmitted to the Court of proper jurisdiction and/or the Court shall return the plaint to the plaintiff for presenting the same in the Court of appropriate jurisdiction.

6. Shri C.V. Korhalkar, learned Counsel appearing for the respondent submitted that the present suit is governed under paragraph No. (v) of section 6 of the Bombay Court Fees Act, 1959, and therefore, the plaintiff respondent is not bound to put the same value for jurisdiction of the Court as is quoted for the purposes of Court Fees under paragraph of section 6 of the Bombay Court Fees Act, 1959. He submitted that when the suit is under paragraph Nos. (v), (vi) and (x) and Clause (xi) of paragraph of section 6 of the Bombay Court Fees Act, 1959, the plaintiff is entitled to put up the different valuation for the purpose of jurisdiction of the Court than the value for Court Fees. He submitted that u/s 3 of Suits Valuation Act, the State Government is empowered to make rules for determining the value of the land for the purposes of in respect of the suit mentioned in paragraph No. (v), (vi) and Clause (d) of paragraph No. (xi) in section 6 of the Bombay Court Fees Act, 1959. However, as the said Rules were not framed in the year 1981 the plaintiff respondent has valued the suit at Rs. 50,000/- i.e. according to the market value of the land as provided in Shantabai Vs. Kamlakant, , and submitted that the suit has been properly valued for the purposes of the jurisdiction of the Court. He further submitted that rules framed in the year 1983 referred to above are not retrospective, and therefore, the trial Court has rightly rejected the contention raised by the defendant-petitioner and the findings recorded by the trial Court are proper.

7. Section 8 of the Suits Valuation Act is as follows :

"8. Court-fee value and jurisdictional value to be the same in certain suits.--- Where in suits other than those referred to in paragraphs (v), (vi) and (x) and Clause (d) of paragraph (xi) in section 6 of the Bombay Court Fees Act, 1959, Court fees are payable ad valorem under the Bombay Court Fees Act, 1959; the value as determinable for the computation of Court-Fees and the value for purposes of jurisdiction shall be the same."

On analysis of the said section, it will be evident that the suits, mentioned in paragraphs Nos. (v), (vi) and (x) and Clause (d) of paragraph (xi) of section 6 of the Bombay Court Fees Act, 1959 are exceptions to the general rule i.e. where in the suits the Court Fees are payable ad valorem under the Bombay Court Fees Act, 1959 the value as determinable for the computation of the Court Fees and the value for the purposes of jurisdiction shall be the same. In short excepting the above referred suits, all other suits in which the Court fees is payable ad valorem the value for the Court fees and the jurisdiction of the Court shall be the same and therefore it follows that the suits which are covered under paragraph (v), (vi) and (x) and Clause (d) of paragraph (xi) of section 6 of the Bombay Court Fees Act are concerned, the plaintiff is not bound to put up the same value for the purposes of jurisdiction as is put for the purposes of Court Fee. Thus in such suits the value for the Court Fee and the value for jurisdiction of the Court may be different and the plaintiff is entitled to put up different value for the purpose of jurisdiction of the Court.

8. However, what should be the value for jurisdiction of the Court when the suit is covered by paragraphs (v), (vi) and (x) and Clause (d) of paragraph (xi) of section 6 of the Bombay Court Fees Act, 1959. Section 3 of the Suits Valuation Act provides that the State Government may make the Rules for determining the value of the land for the purposes of jurisdiction in the suits mentioned in paragraph (v), (vi) and Clause (d) of paragraph (xi) of section 6 of the Bombay Court Fee Act, 1959. It further provides that the said Rules may determine the value of any class of land or on any interest in the land for the whole or part of local area and may prescribe different value for different places within the same local area. Thus the Legislature desired that the State Government shall make Rules for determining the value of the land for the purposes of jurisdiction of the Court in the suits referred to above. It is pertinent to note that even though this power is vested with the State Government, the State Government has framed the Rules by the notification dated 11-10-1983 namely Maharashtra Suits Valuation (Determination of the Value of Land for Jurisdiction Purposes) Rules, 1983. These rules have come into force on 1-1-1984. Rule 2(b) provides that "in suits for possession of the land and gardens mentioned in paragraph (v) of section 6 of the Bombay Court Fees Act, 1959 for the purposes of jurisdiction, the value of the property shall be determined as namely :

"(a) Where the subject matter is a house or garden according to the market value of the house or garden, as the case may be; (b) Where the subject matter is land - a sum equal to two hundred times of the assessment payable in respect of the land."  (only relevant portion is (quoted)

If the value of the land involved in the present matter is calculated it comes to Rs. 3,750/- (18.75 Ps. x 200 times) and the total value of the suit therefore comes to Rs. 18,750/- (Rs. 15,000/- + 3,750/-). Therefore, taking resort to these Rules, the petitioner defendant contended that the value of the subject matter is Rs. 18,750/- and therefore, the Civil Judge, Senior Division, has no jurisdiction to entertain the suit.

9. No doubt, the value for jurisdiction as calculated by the petitioner-defendant is the value of the subject matter for jurisdiction of the Court, if calculated in accordance with the Rules which have come into force on 1-1-1984. But, what is pertinent to be noted is that the suit has been filed in the year 1981 when these Rules were not in force. Not only that but the Rules which were required to be framed by the State Government in view of the provisions of section 3 of the Suits Valuation Act, were also not framed by the State Government and therefore in the absence of said Rules what should be the value of the agricultural lands involved in a suit covered by the paragraph Nos. (v), (vi) and (x) and Clause (d) and paragraph (xi) of section 6 of the Bombay Court Fee Act, 1959. This question was considered by this Court in the judgment reported in Shantabai Vs.

 

Kamlakant, . This Court following the judgment reported in ILR 1882 (8) 757(Cal.) Kirty Churn Mitter v. Aunath Nath Deband AIR 1937(24) Bom. 326 in the case of Govindbhai v. Dahyabhai, has decided :

"In view of section 8, the jurisdictional value of a suit u/s 6(v)(b) Bombay Court Fees Act need not be the same as its Court-fee value.

No rules having been framed u/s 3 for determining the value of suits for purposes of jurisdiction in such suits the principle therefore under the Suits Valuation Act itself will have to be followed. Section 4 and 11 contemplate the market value of the suit property to be the jurisdictional value for certain suits relating to land. Thus for each suit also the market value will be the jurisdictional value."

And therefore, the plaintiff respondent is entitled to put the market value of the land for the purpose of the jurisdiction of Court. The plaintiff has made the valuation of the land involved in the suit at Rs. 50,000/- as stated earlier for the purpose of jurisdiction of the Court. Thus, this scrutiny shows that the suit filed by the plaintiff-respondent in the year 1981 was perfectly and correctly valued for the purposes of the jurisdiction of the Court in view of the ratio laid down in Harilal Vs. Kamal and Others, as per the law prevailing on that day. Therefore, had the contention of the defendant-petitioner been considered by Courts prior to 1-1-1984, the only inference follows is that the plaintiff respondent has properly valued the suit for the purposes of the jurisdiction of the Court as well as for the Court fee, and therefore, in that eventuality the defendant petitioner''s contention should have been definitely rejected.

10. However, the controversy arises as a result of the Maharashtra Suits Valuation (Determination of Value of the Land for Jurisdictional Purposes) Rules, 1983. According to the learned Counsel for the petitioner even though the Rules have been brought into force from 1-1-1984 these Rules are the Rules of procedure which have been framed by the State Government in view of the powers vested in it u/s 3 of the Suits Valuation Act and therefore they are retrospective in application. The learned Counsel in support of his aforesaid submission relied upon the judgment reported in 1996(1) Transport and Accident Cases and pointed out paragraph No. 24 from the said judgment which is as under:

"24. In Gurbachan Singh Vs. Satpal Singh and others, , an amendment to the Indian Evidence Act incorporated in section 113-A was considered with reference to an offence u/s 306, I.P.C., which was committed prior to the amendment. It was held that section 113-A of the Indian Evidence Act does not create any new offence and as such it does not create any substantial right, but it is only the procedural law and as such it is retrospective and will apply to all the cases. Reference was also made to Halsbury''s Laws of England (Fourth Edition) Volume 44 page 570 and the following passage was quoted:

"The general rule is that all statutes, other than those which are merely declaratory or which relate only to matters of procedure or of evidence, are prima facie prospective, and retrospective effect is not to be given to them unless, by express words or necessary implication, it appears that this was the intention of the legislature....."

Thus, relying upon the above referred portion from the Halsbury''s Laws of England, he submitted that all Statutes are prospective in its application unless they are specifically mentioned retrospective but to that Rule the Statutes which are merely declaratory or which relate only to the matter of procedure or evidence are exceptions and therefore, all those procedural statutes are retrospective in application. He also referred to the Maxwell 12th Edition page 222.

"The presumption against retrospective construction has no application to enactments which affect only the procedure and practice of the courts. No person has a vested right in any course of procedure but only the right of prosecution or defence in the manner prescribed for the time being, by or for the Court in which he sues, and if an Act of Parliament alters that mode. "Alterations in the form of procedure are always retrospective, unless there is some good reason or other why they should not be."

So relying on this, he tried to persuade me, that unless and until there is specific intention on the part of the Legislature to make the procedural statutes as prospective in application said statutes are presumed to be retrospective. As the present Rules have been framed in view of the provisions of section 3 of the Suits Valuation Act, they are retrospective in application. Therefore, according to the learned Counsel even though the suit has been filed in the year 1981 these Rules being retrospective in its application will be applicable to the said suit of 1981, and therefore, the plaintiff-respondent will have to put up the valuation for the jurisdiction of the Court as prescribed under the Rules of 1983 and ultimately the Civil Judge, Senior Division will have to transmit the plaint to the Civil Judge, Junior Division and/or return the plaint to the plaintiff for the purposes of resenting the same before the appropriate Court. No doubt, the declaratory, procedural and/or statutes which provide procedure for evidence are retrospective in its application unless there is specific intention on the part of the Legislature to an enact them prospectively. However it may be mentioned that the learned Counsel any how missed the provisions of section 12 of the Suits Valuation Act. That shows the intention of the Legislature in respect of the Rules framed under Part I and Part II of the Suits Valuation Act. Section 12 of the Suits Valuation Act is as follows :

"12. Proceeding pending at commencement of Part-I or Part-II.

Nothing in Part I or II shall be construed to affect the jurisdiction of any Court :

(a) With respect to any suit instituted before the Rules under Part-I applicable to valuation of the suit to take effect, or Part II has come into force, as the case may be

 

OR

(b) With respect to any appeal arising out of any such suit."

Thus, section 12 of the Suits Valuation Act provides for the effect of the Rules framed by the State under Chapter I or Chapter II of the Suits Valuation Act and this section specifically provides and protects the suits which are instituted by the parties before promulgation or coming into force of the Rules framed under Chapter I or Chapter II of the Act. And, therefore, this section makes it clear that the Rules framed by the State Government under Part 1 or Part II of the Suits Valuation Act are to apply prospectively and they shall not apply retrospectively. This is the Legislative intent clear from the provisions of section 12 of the Act. The Rules 1983 have been framed by the State Government in consultation with the High Court as provided in section 3 and 5 of the Suits Valuation Act. These Rules are pertaining to Part II of the Suits Valuation Act, and therefore, these Rules as provided u/s 12 of the Suits Valuation Act will have application from 1-1-1984 onwards and they cannot be made applicable to the suits which have been filed and/or were pending prior to 1-1-1984 when the Rules were not framed u/s 3, and therefore in all such suits which are instituted prior to 1-1-1984 and which were pending on the said date, be governed for the purposes of the Court Fees and the jurisdiction of the Court as provided u/s 8 and not in accordance with the Rules of 1983. In short, all those pending suits as on 1-1-1984 will not be affected and governed by the Rules and those suits will proceed in the Court where they have been instituted.

In the result, the contention raised by the learned Counsel for the petitioner that the Rules have been framed in the year 1983 and brought into force w.e.f. 1-1-1984 are retrospective is without any merit and it is hereby rejected.

In the result, there is no substance in the Civil Revision Application and it is hereby rejected.

Rule discharged.

In the facts and circumstances of the case there shall be no order as to costs.

The Additional Registrar (Judicial) of this Court is hereby directed to circulate the copies of this judgment to all the Civil Judge, Junior Divisions and the Civil Judge, Senior Divisions for the purposes of information.

11. Revision dismissed.