

(1951) 02 BOM CK 0007
In the Bombay High Court
Case No : O.C.J. Suit No. 1685 of 1950

Urmilabai

APPELLANT

Vs

Jehangir B. Pastakia and Another

RESPONDENT

Date of Decision : 26-02-1951

Acts Referred:

Bombay City Civil Court Act, 1948 — Section 12, 3
Civil Procedure Code, 1908 (CPC) — Section 16

Citation : AIR 1953 Bom 75 : (1952) 54 BOMLR 763

Hon'ble Judges : Tendolkar, J

Bench : Single Bench

Advocate : M.P. Laud, for the Appellant; Lulla and C.J. Shah, for the Respondent

Judgement

(1) These are three mortgage suits in respect of mortgages of properties which are outside Greater Bombay, and the claims made in each one of these suits are within the pecuniary limits of the jurisdiction of the City Civil Court. As it was contended on behalf of defendant No. 1 that these suits were cognizable only by the City Civil Court and, therefore, this Court had no jurisdiction to entertain, try and dispose of these suits, I directed that all the suits should be placed on board for the determination of the issue: "Whether having regard to the provisions of the Bombay City Civil Court Act, 1948, this Court has jurisdiction to try the suit."

(2) So far as the decisions of this Court go, it is well-established that under Clause XII of the Letters Patent this Court had, prior to the passing of the Bombay City Civil Court Act, 1948, jurisdiction to entertain suits on a mortgage of an Immovable property provided the relief asked for was only an order for sale and not for foreclosure. The plaints as drafted in these three suits contained an alternative prayer for foreclosure; but Mr. Laud for the plaintiff has given up that prayer in all the suits, and I must deal with the plaints as if they were suits for sale only.

(3) The question for determination is whether at the time of the passing of the Bombay City Civil Court Act, 1948, that Court has been invested with jurisdiction to try

mortgage ,suits in respect of properties situate outside Greater Bombay, where the amount claimed is within the limits of the pecuniary jurisdiction of the City Civil Court. Section 3 of the said "Act deals with the jurisdiction of the City Civil Court. The first part provides that "the Provincial Government may establish for the Greater Bombay, a Court to be called the Bombay City Civil Court." It is clear from this that the territorial limits of the jurisdiction of the City Civil Court are "the Greater Bombay." The section then proceeds to say that "Notwithstanding anything contained in any law such Court shall have jurisdiction to receive, try and dispose of suits and other proceedings of a civil nature not exceeding ten thousand rupees in value (which is now raised to Rs. 25,000) and arising within the Greater Bombay except suits and proceedings which are cognizable "Then there are four exceptions: (a), (b), (c) and (d). Exception (c) which is relied upon by the defendants is, "by the High Court under any special law other than the Letters Patent." What is contended on behalf of defendant No. 1 is that these suits were tribal by the High Court under the Letters Patent prior to the enactment of the Bombay City Civil Court Act, 1948; and, therefore, they are not excluded from the jurisdiction of the City Civil Court u/s 3. That no doubt may be true. But the plaintiffs do not contend that these suits are excluded from the jurisdiction of the City Civil Court, by virtue of any of the exceptions set out in Section 3. What they do contend is that they are excluded from the jurisdiction of the City Civil Court by reason of Section 16 of the Civil Procedure Code. That section provides inter alia by Clause (c) thereof that

"Suits for sale in the case of a mortgage upon an Immovable property shall be instituted in the Court with in the local limits of whose jurisdiction the property is situate."

If that section was applicable to the City Civil Court, there can be no doubt whatever that the City. Civil Court could not entertain the present suits. Defendant No. 1, however, urges that by reason of the words "notwithstanding anything contained in any law" which are to be found in Section 3 of the City Civil Court Act, the application of Section 16 of the CPC is excluded. I do not find it possible to accept this contention, because, if it were accepted, it would lead to absurd results, which, I cannot conceive as having been within the contemplation of the Legislature, Section 16 inter alia relates to suits for recovery or partition of Immovable property; and if the contention of defendant No. 1 was right, the City Civil Court for Greater Bombay would have jurisdiction to entertain suits for recovery or partition of Immovable property situated in any event throughout the State of Bombay, although out-side Greater Bombay. Such obviously could not have been the intention of the Legislature. The City Court is one of the many Courts of civil jurisdiction throughout the State. It is specifically constituted for Greater Bombay; and it cannot conceivably be that the Legislature intended to confer upon that Court jurisdiction in respect of land outside the limits of its territorial jurisdiction, which is Greater Bombay. In my opinion the words "notwithstanding anything contained in any law" in Section 3 of the City Civil Court Act, 1948, do not exclude the application of Section 16 of the Civil

Procedure Code; and in respect of the suits mentioned in Section 16, the City Civil Court can only have jurisdiction if the property is situated within the limits of Greater Bombay. It has, therefore, no jurisdiction to entertain, try and dispose of suits for sale in case of a mortgage upon an Immovable property situated outside Greater Bombay, although the amount claimed may be within the limits of the pecuniary jurisdiction of that Court. It is only if the City Civil Court has such jurisdiction that a question would arise of the jurisdiction of this Court having been taken away by reason of Section 12 of the City Civil Court Act. Therefore, this Court continues to have jurisdiction to entertain, try and dispose of suits for sale in the case of a mortgage upon an Immovable property situated outside Greater Bombay, even though the amount claimed may be less than Rs. 25,000 (which is the present limit of the pecuniary jurisdiction of the City Civil Court). I, therefore, answer the issue in the affirmative.

(4) Defendant No. 1 must pay the plaintiffs' costs of the trial of this issue, as defendant No. 2 has not raised this issue by his pleadings.

(5) Answer in the affirmative.