
(2017) 02 BOM CK 0076

In the Bombay High Court

Case No : Civil Revision Application No. 23 of 2016

Vasant Kisan Idhol

APPELLANT

Vs

Smt. Manjurabai Kisanrao Idhol

RESPONDENT

Date of Decision : 20-02-2017

Acts Referred:

Bombay Court Fees Act, 1959 — Section 6(iv)(j)

Citation : (2017) 3 AIRBomR 352 : (2017) 3 MhLJ 520

Hon'ble Judges : A.S. Chandurkar, J.

Bench : Single Bench

Advocate : Mr. N. R. Saboo, Advocate, for the Applicant; Mr. U.J. Deshpande, Advocate, for the Non-Applicant

Final Decision : Dismissed

Judgement

A.S. Chandurkar, J.—Admit. Heard finally with consent of counsel for the parties.

2. The issue that arises for determination in this Civil Revision Application is :

Whether the plaint is liable to be rejected under provisions of Order-VII, Rule 11 (b) of the Code of Civil Procedure, 1908?

3. The Applicant-defendant is the son of the Non-applicant-plaintiff. It is the case of the Non-applicant that she was the owner of two agricultural fields and a residential house. The husband of the non-applicant used to remain ill, due to which the applicant had come to the house so as to render him treatment. According to the non-applicant, her husband expired on 1st October, 2012 and that just prior to his death, the applicant had got prepared a Gift-Deed dated 29th June, 2012 without her consent. As per said Gift-Deed, field Gat No. 67 was shown to have been gifted by the Non-applicant in favour of the applicant. On that basis, the non-applicant filed suit for declaration that the Gift-Deed dated 29th June, 2012 was null and void and was not liable to be acted upon. Cancellation of said Gift-Deed was sought with a further prayer that the applicant

be injunctioned permanently from disturbing her possession or from creating third-party rights.

4. On being noticed, the applicant filed his Written Statement and opposed the claim as made. He also filed an application below Exh.48 stating that the claim had been undervalued by the nonapplicant. According to him, as per provisions of Section 6 (iv) (d) of the Maharashtra Court Fees Act, 1959 [for short "the said Act"] as the relief of declaration of ownership was sought, the court fee on the basis of market value of the property was liable to be paid. It was stated that in the said Gift-Deed, the market value had been shown to be Rs. 1,71,000-00 and, therefore, the non-applicant ought to have paid half of the ad valorem court fee on said amount. This application was opposed by the non-applicant and by the impugned order, the trial Court rejected said application by observing that the plaint was properly valued under provisions of Section 6 (iv) (j) of the said Act. Being aggrieved, the original defendant has filed the present Revision Application.

5. Shri N.R. Saboo, learned counsel for the applicant, submitted that in the Gift-Deed dated 29th June, 2012, the market value of the field Survey No. 67 was shown to be Rs.1,71,000-00. As the plaintiff was seeking a declaration that the Gift-Deed was null and void and that the plaintiff was the lawful owner and possessor of the suit property, the plaint ought to have been valued under provisions of Section 6 (iv) (d) of the said Act. He also referred to the third proviso of the aforesaid provision to urge that the claim had been undervalued. In support of his submissions, learned counsel placed reliance upon the judgments in [1] Pushparaj Surajprasad Modh v. Sayyad Altaf Sayyad Wazir and others [2000 (4) Mh.L.J. 492], and [2] G.V. Iyengar and another v. A.R. Sampathkumar and others [2008 (3) Mh.L.J. 621]. He, however, fairly brought to the notice of the Court the judgment of the Gujrat High Court in Sanatkumar Bhikhabhai Patel v. The State of Gujarat and others [(1967) 8 GLR 946], wherein it was held by learned Single Judge of the Gujrat High Court that in a suit of such nature, what was questioned was the transaction of the Gift- Deed and not the title to the immovable property.

6. Shri U. J. Deshpande, learned counsel for the non-applicant, supported the impugned order. He referred to the averments in the plaint to submit that the non-applicant was in possession of the suit property and that threats of dispossession were being given by the applicant. He submitted that the cause of action for filing the suit was the fraudulent execution of the Gift-Deed and, therefore, the suit had been rightly valued under provisions of Section 6 (iv) (j) of the said Act as the subject matter in dispute was not susceptible to monetary evaluation.

7. I have heard the learned counsel for the parties at length and perused the documents filed on record.

8. As per the averments in the plaint, it has been pleaded that the entire suit property was in cultivating possession of the plaintiff. On 29th June, 2012, the

defendant had got executed a Gift-Deed from her without her consent and by playing fraud. On that basis, suit came to be filed seeking declaration that the Gift-Deed was null and void and that the plaintiff was, in fact, the lawful owner and possessor of the suit field. A decree for permanent injunction seeking to protect her possession and from creating any third party rights was also sought. The claim was valued under provisions of Section 6 (iv) (j) of the said Act.

9. Under provisions of Section 6 (iv) (d) of the said Act, if a declaration in respect of ownership or nature of tenancy, title etc. of immovable property is sought, then 25th of the ad valorem fee leviable for a suit for possession on the basis of title has to be paid. As per the third proviso, when any consequential relief other than possession is sought, then the amount of fee would be half of the ad valorem fee. Under provisions of Section 6 (iv) (j) of the said Act, where declaration is sought with or without injunction or other consequential relief and the subject matter in dispute is not susceptible to monetary evaluation and which is not otherwise provided for under the said Act, the court fee payable is Rs.1,000/-.

10. As noted above, the averments in the plaint indicate that the non-applicant is not seeking possession of suit property. The relief sought by her is for declaration that the Gift-Deed dated 29th June, 2012 was null and void. What has to be seen while considering the question of appropriate valuation is the "subject matter in dispute". In the present case, the subject matter in dispute is the alleged fraudulent execution of the Gift-Deed dated 29th June, 2012. There is no consideration passed for execution of said Gift-Deed. The expression "subject matter" would mean the bundle of facts that have to be proved in order to entitle the plaintiff to the relief claimed as observed in *Vallabh Das v. Madanlal and others* [AIR 1970 SC 987].

In the judgment of the Gujrat High Court in *Sanatkumar Bhikhabai Patel* [supra], the suit therein was filed to avoid a Gift-Deed. The submission that the subject matter of the suit was not immovable property but the transaction of the Gift-Deed itself was accepted. It was held that the valuation of the suit would be under provisions of Section 6 (iv) (j) of the Act.

11. In *Pushparaj Surajprasad Modh* [supra], the plaintiffs had sought declaration that they were the owners of the suit property. On that basis, it was held that the valuation was required to be made as per Section 6 (iv) (d) of the said Act. Similarly, in *G.V. Iyengar and another* [supra], a declaration was sought that the plaintiff was in possession as a legal heir of the deceased allottee and was also a member of the Society. It was found that the declaration sought was as a legal heir and it was, in fact, a declaration of ownership. The said decision is, therefore, clearly distinguishable and not applicable to the facts of the present case.

12. In *Balgonda Appanna v. Ramgonda Shivgonda* [1970 Mh. L.J. 641], a somewhat identical issue was considered. The plaintiff, who claimed to be in

possession of the suit lands as tenant, filed suit challenging the sale-deed executed by some family members with regard to the suit land. It was held that the plaintiff had not sought declaration of his ownership but was agitating his right to continue in possession by challenging the sale-deed. It was held that if the subject matter of dispute was the right to continue in possession by challenging the sale-deed, the said right would not be capable of monetary evaluation. It was, therefore, held that the provisions of Section 6 (iv) (d) of the said Act would not apply.

13. In view of aforesaid discussion, I find that the trial Court has rightly considered the nature of relief sought by original plaintiff. The valuation of the suit is proper. There is no jurisdictional error committed by the trial Court while passing the impugned order. The Civil Revision Application is, therefore, dismissed with no order as to costs.