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IN THE HIGH COURT OF JUDICATURE AT MUMBAI
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 1885 OF 2006
ALONG WITH
CIVIL APPLICATION No. 1526 of 2006

Rajesh Lalitrai Bhuta and another .. Petitioners

Vs.

Mr.Dushyant Lalitrai Bhuta and others .. Respondents

Mr. Bipin Joshi, Advocate for the Petitioners.

Mr.D.P. Desai, Advocate for the Respondent No.1.

CORAM : R.G.KETKAR, J.
DATED : 18th NOVEMBER, 2015

P.C. :

. Heard Mr. Bipin Joshi, learned Counsel for the petitioners and Mr.D.P. Desai, learned Counsel for the respondent No.1 at length.

2. By this Petition under Article 227 of the Constitution of India, original defendants No. 1 & 2 have challenged the judgment and order dated 16/02/2006 passed by the learned Judge, City Civil Court, Mumbai on preliminary issue in S.C. Suit No. 64 of 2004. By that order, the learned trial Judge answered the preliminary issue namely 'Whether this Court i.e. "City Civil Court" has pecuniary jurisdiction to try the Suit of the plaintiff?' in affirmative.

3. In support of this Petition, Mr.Joshi strenuously

contended that respondent No.1, hereinafter referred to as plaintiff instituted Suit for following prayers.

a) that, this Hon'ble court may be pleased to declare that, the plaintiff is the Karta and manager of the Hindu Undivided family/Joint Hindu Family of the late Sbri Lalitrai D.Bhuta and further that, the plaintiff is entitled to receive, spend, deal with and manage the properties and income of the Hindu Undivided Family, of which late Shri Lalitrai D.Bhuta was Karta and the Plaintiff after the demise of Late Shri Lalitrai D.Bhuta.

b) that the Defendants themselves their respective agents, servants and person/s acting for them or any of them be restrained by an order and permanent injunction of this Hon'ble court in any manner whatsoever directly or indirectly preventing obstructing or objecting or interfering with the Plaintiff to act as Karta and to receive, spend, deal with and/or to manage, income and/or the properties including the Bhuta Niwas more particularly described in Exhibit 'D' hereto belonging to the Hindu Undivided family of which late Shri Lalitrao D.Bhuta was the karta and manager and after his demise, the Plaintiff, and that they be further permanently restrained from receiving, spending, dealing with and/or managing income and properties of the Hindu Undivided Family of which late Shri Lalitrai D.Bhuta was Karta and manager and after his demise, the Plaintiff, with written consent of the Plaintiff.

4. In paragraph 31, plaintiff asserted that the claim in the Suit is not susceptible to the monetary valuation and accordingly valued the claim under Section 6(iv)(f) of the Maharashtra Court Fees Act (for short 'Act'). Mr.Joshi submitted that Section 6(iv)(f) is not applicable in the facts and circumstances of the present case. He submitted that Section 6(iv)(f) is applicable only when no direct monetary attribute is attached to the declaratory relief. Section 6(iv)(f) of the Act deals with declaration as to Suits such as relationship

between the parties namely husband or wife is sought or declaration about legitimacy of children or about citizenship rights or about an adoption is sought. As against this, plaintiff ought to have valued the Suit under Section 6(iv)(d) as basically, the plaintiff is claiming declaration of his ownership rights or title in the immovable property. Irrespective of movable or immovable property, Section 6(iv)(f) has nothing to do with monetary attribute. In the present case, the plaintiff has prayed for reliefs in terms of prayer clauses (a) and (b) and they are relating to the immovable property. The learned trial Judge, therefore, was not justified in answering preliminary issue in the affirmative and in favour of the plaintiff. If the Suit is properly valued under Section 6(iv)(d), it will certainly exceed pecuniary jurisdiction of the City Civil Court.

5. On the other hand, Mr. Desai supported the impugned order. He submitted that by prayer clause (a), plaintiff has sought declaration that he is the Karta and Manager of the Joint Hindu Family of late Lalitrai D.Bhuta. The said relief is independent of any monetary attribute. The plaintiff has rightly valued the Suit under Section 6(iv)(f) of the Act. Mr.Desai further submitted that the petitioners have instituted probate proceedings in this Court in the year 2004 wherein it is asserted that market value of the suit property in the year 2004 is Rs.23 lacs. He therefore, submitted that even as on today, the Civil Court will have a pecuniary jurisdiction to

entertain and try the Suit.

6. In order to appreciate the controversy between the parties, it is necessary to consider the provisions of Sections 6(iv)(d) and 6(iv)(f) which read thus :

Section 6(iv)(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 or 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 (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 (sixty rupees), whichever is less:

Provided further that, whenever the defendant is or claims under or through a limited owner, the amount of fee shall be (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 proviso, 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.

Section 6(iv)(f) for other status without monetary attribute

In suits for declaration of status to which no direct monetary attribute is attached such as a declaration that the plaintiff is a married husband or wife of the defendant or divorced husband or wife of the defendant or a declaration about legitimacy of children or about

citizenship rights or about an adoption (one hundred twenty rupees):

Provided that where injunction or other consequential relief is also sought in such case, the amount of fee shall be (one hundred fifty rupees).

7. By prayer clause (a), the plaintiff has sought declaration that he is Karta and Manager of the Joint Hindu Family of late Shri Lalitrai D.Bhuta and that he is entitled to receive, spend, deal with and manage the properties and income of the Hindu Undivided Family. By prayer clause (b), plaintiff has sought injunction restraining the defendants from causing any obstruction and/or objection or interference with the plaintiff's right to act as a Karta and to receive, spend, deal with and/or to manage, income and/or the properties.

8. In view of prayers made in the plaint, it cannot be said that prayers fall in Section 6(iv)(d) of the Act. The plaintiffs have not claimed any declaration of his ownership rights or title in any property and has claimed declaration as a status of Karta of Joint Hindu Family.

9. In the impugned order, the learned trial Judge has observed that whether the plaintiff has correctly valued the Suit or not has to be considered from the assertions made in the plaint. After considering the assertions made in the plaint, in paragraph 9, the learned trial judge held that Suit is for declaration of status to

which no direct monetary attribute is attached. In the light of the aforesaid discussion, I do not find that the learned trial Judge has committed any error in passing the impugned order. Hence, Rule is discharged. In the circumstances of the case, there shall be no order as to costs.

10. In view of disposal of the Writ Petition, Civil Application No. 1526 of 2006 does not survive and the same is disposed of accordingly.

(R.G.KETKAR, J.)