

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 7873 OF 2009

Balasaheb Piraji Pansare	..	Petitioner
VS.		
Haribhau Raghunath Tilekar & Anr.	..	Respondents

Mr. S. V. Sadavarte for Petitioner.
Ms R. Ambekar for Respondent Nos. 1 and 2.

CORAM : M. S. SONAK, J.
DATE: 24 APRIL 2015

P.C. :-

1] This petition challenges the order dated 29 June 2009 made by the IIIrd Additional Judge, Small Causes Court and Joint Civil Judge, Senior Division, Pune, requiring the plaintiff to value the suit and compute the court fees in accordance with the provisions contained in Section 6(v) of the Bombay Court Fees Act, 1959 (said Act).

2] Mr. Sadavarte, the learned counsel for the petitioner submitted that in the present case, the main relief applied for was that of specific performance and the relief seeking possession was only incidental. Accordingly, Mr. Sadavarte submitted that court fees in such a situation were required to be paid in terms of the provisions contained in Section 6(xi) of the said Act. Since valuation

and court fees have been paid on the said basis, the impugned order is required to be set aside.

3] Ms Ambekar, the learned counsel for the respondent nos. 1 and 2 relying upon the decision of this Court in the case of *Indrapuram Resort Apartments & Anr. vs. Ramniklal A. Jain*¹, submitted that in a situation where there was a specific prayer seeking recovery of possession, court fees are required to be computed in terms of Section 6(v) of the said Act. This having not been done, there is no reason to interfere with the impugned order.

4] Having heard the learned counsels for the parties and perused the record, in my judgment, the impugned order shall have to be interfered with at least to a limited extent. This is not a case where the petitioner was satisfied with seeking merely a decree of specific performance. Rather, the petitioner, has chosen to seek a specific prayer for recovery of possession and that too, by amendment of the plaint. In such circumstances, it cannot be said that the prayer seeking recovery of possession, was merely consequential.

5] In the case of *Dilip Bastimal Jain vs. Baban Bhanudas Kamble & Ors.*², the relief primarily claimed was that of specific

1 2013 (1) Mh. L. J. 99

2 2001 (4) Bom. C.R. 374

performance. There was also relief of declaration that all sale transactions executed by the defendants amongst themselves are illegal and that physical possession of the suit land may be handed over from them to the plaintiff. In the facts and circumstances of the said case, this Court came to the conclusion that in seeking relief of specific performance, it is not even necessary to seek such incidental or consequential reliefs and it would suffice if subsequent purchasers are merely impleaded as defendants in the suit, so as to avail an effective decree of specific performance.

6] In this case however, the petitioner, was not content with merely seeking decree of specific performance. The petitioner, has chosen to amend the plaint, by seeking specific relief of recovery of possession. In these circumstances, the decision, in the case of *Indrapuram Resort Apartments* (supra) is more apposite, since, in the said decision, there was reference to reliefs in the nature of specific performance apart from specific relief seeking recovery of possession.

7] Accordingly, the court fees in the present case were required to be computed in terms of Section 6(v) of the said Act. In so far as valuation is concerned, the same is required to be carried out in terms of the provisions contained in Suits Valuation Act 1887 and

the Maharashtra Suits Valuation (Determination of Value of Land for Jurisdictional Purposes) Rules, 1983.

8] In the present case, the learned Civil Judge, whilst making the impugned order has proceeded on the basis that the valuation has to be on the basis of market value of the suit property. Section 6 (v) of the said Act provides that any suits for possession of land, houses and gardens, the court fees has to be computed according to the market value of the house or garden. However, where the subject matter is land, as in the present case, the value of the subject matter can be the following:

- “(a) where the land is held on settlement for a period not exceeding thirty years and pays the full assessment to Government a sum equal to [forty times] the survey assessment;*
- (b) where the land is held on a permanent settlement, or on a settlement for any period exceeding thirty years, and pays the full assessment to Government a sum equal to [eighty times] the survey assessment; and*
- (c) where the whole or any part of the annual survey assessment is remitted a sum computed under sub-paragraph (a) or sub-paragraph (b) as the case may be, in addition to [eighty times] the assessment or, the portion of assessment, so remitted;*

9] Further, Rule 2 of the Maharashtra Suits Valuation Rules, 1983, provides that in suits for the possession of land, houses and gardens mentioned in paragraph (v) of Section 6 of the said Act, for the purposes of jurisdiction, the value of the property shall be determined as follows :

“(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.”

10] The impugned order, makes no reference to the manner of determination of value of the subject matter in case of lands as provided by them under Section 6 (v) of the said Act as well as Rule 2 of the Maharashtra Suit Valuation Rules, 1983. Accordingly, there is failure to consider such relevant parameter.

11] The impugned order, is therefore required to be modified. The impugned order in so far as it requires the petitioner – plaintiff to value the prayer for recovery of possession is upheld. However, the portion of the impugned order, which states that the valuation and payment of court fees has to be on the basis of market value of the land i.e. the suit property, without reference to the provisions of Section 6(v) of the said Act and Rule 2 of the Maharashtra Suit

Valuation Rules 1983 is set aside.

12] This petition is accordingly disposed of with the following order:

- (A) The impugned order is interfered with to the extent indicated in paragraph 11 above;
- (B) The petitioner is granted period of three months from the date of this order to make valuation of the suit property in terms of appropriate sub clause of Section 6(v) of the said Act read with Rule 2 of the Maharashtra Suit Valuation Rules 1983 and to correct the valuation and pay appropriate court fees thereon;
- (C) In case, direction as aforesaid is not complied with within a period of three months from today, the plaint shall stand rejected;
- (D) The parties to appear before the learned Civil Judge on 7 May 2015 and produce an authenticated copy of this order;
- (E) Rule is made absolute to the aforesaid extent. There shall be no order as to costs;
- (E) All parties to act on basis of an authenticated copy of this order.