

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 11432 OF 2014

Mr. Aman Harishkumar Vij.

... Petitioner
(Orig. Deft.No.12)

Versus

Smt. Shantabai Anandrao Patil and Ors.

... Respondents/
(Orig. Pltffs. & Defts.)

Mr. Prasad S. Dani - Senior Advocate i/b Mr. Nilesh Wable for Petitioner.
Mr. S. S. Patwardhan for Respondent No. 1.

CORAM :- M. S. SONAK, J.

Date of Reserving the Judgment : 30 March 2015

Date of Pronouncing the Judgment : 13 April 2015

JUDGMENT :-

1] Rule. With the consent of and at the request of the learned Counsels for the parties, Rule is made returnable forthwith.

2] This petition challenges Order dated 28 October 2014 made by the 16th Joint Civil Judge, Junior Division, Pune, holding that it has pecuniary jurisdiction to try, entertain and decide Regular Civil Suit No.1490 of 2014 instituted by Respondent Nos. 1 to 21 (Original Plaintiffs).

3] The case set out by the Plaintiffs in the suit is that between the years 1972 and 1997, by means of several registered deeds and rectification deeds, the Plaintiffs purchased large property comprising *inter alia* 18 plots, open spaces, internal roads and common areas from the original vendors Bapu Gaikwad and Shankarrao Cornell. The original vendors however, by registered Sale Deeds dated 10 February 2009 and 19 April 2011, have purported to sell to the Petitioner (original Defendant No. 12), a portion of such large property admeasuring totally about 49 Ares corresponding mainly to the areas occupied by open spaces, internal roads and common areas. Such portion has been described as '*suit property*' in the plaint. Apprehending that the Petitioner may deal with the suit property, the Plaintiffs have applied for declaration that they are the absolute owners of the suit property and injunctive relief to restrain the Defendants from interfering with the Plaintiffs possession of the suit property or from creating any third party interest in respect of the same.

4] The Petitioner (original Defendant No. 12) by application dated 26 September 2014 urged the framing of preliminary issue as to pecuniary jurisdiction and for directions to appropriately value the suit and pay deficit court fees. The provisions contained in Order 7 Rule 11 and Section 9A of the CPC were made reference to, in such application. The case as set out

in the said application is that the suit property is '*Non Agricultural Property*' and consequently ought to have been valued at Rs.1,03,59,24,000/-. Further, the Plaintiffs ought to have paid the maximum court fee of Rs.3,00,000/- thereon. Upon such correct valuation and payment of deficit court fees, the Civil Judge, Junior Division at Pune, where the suit is instituted, would cease to have pecuniary jurisdiction in the matter. It was further urged that enquiry be initiated under Section 8 of The Bombay Court Fees Act, 1959 ('said Act') in the matter of valuation of the suit property.

5] By the impugned order dated 28 October 2014, the learned Civil Judge has held that the suit property is an '*Agricultural Property*' and consequently there is no fault, either in the valuation of the suit or in the matter of payment of court fees. Hence, the present petition.

6] Mr. P. S. Dani, the learned Senior Advocate for the Petitioner whilst reiterating the case set out in the application dated 26 September 2014 urged that the Petitioner be permitted to raise a more fundamental objection in the matters of valuation and payment of deficit court fee. In this regard, Mr. Dani submitted that since the plaint contains specific averments to the effect that the two Sale Deeds dated 10 February 2009 and 19 April 2011 are null and void, the suit, in substance, is nothing but a

suit for avoidance of the two Deeds. By means of clever drafting and astute pleadings, the Plaintiffs cannot avoid proper valuation and payment of court fees. If the substance of the suit is taken into consideration, then the valuation of the suit and payment of court fees thereon had to abide by the provisions contained in Section 6(iv)(ha) of the said Act. Further, Mr. Dani submitted that prayer clause (b) of the plaint, which seeks a declaration that the Plaintiffs are absolute owners of the suit property, implicitly seeks declaration that the two Sale Deeds on basis of which the Petitioner claims title to the suit property, are null and void. Besides, in paragraphs 13, 15 and 16 of the plaint, there are clear averments that the two Sale Deeds are null and void. All this, leave no matter of doubt that the suit, in substance, is for the purposes of avoidance of the two Sale Deeds and consequently exigible to court fees under the provisions of Section 6 (iv) (ha) of the said Act.

7] Mr. S. S. Patwardhan, the learned counsel for Respondent No. 1 - original Plaintiff, submitted that the valuation of the plaint, in the present case, was made in accordance with the Suits Valuation Act, 1887 and the Rules of 1983 made thereunder. Mr. Patwardhan submitted that the suit in the present case was a suit for declaration of ownership and was therefore covered by the provisions contained in Section 6 (d) of the said Act. Mr. Patwardhan further submitted that the onus was upon the Petitioner to

establish that the suit property was indeed a non-agricultural property and that the valuation was not proper. Such onus, the Petitioner having failed to discharge, the learned Civil Judge was entirely right in making the impugned order.

8] Mr. Patwardhan further submitted that this was not a suit for declaration that two Sale Deeds are void, because, such declaration was not at all necessary for the purpose of Plaintiffs' case. The Plaintiffs having consciously decided to seek only prayer for declaration of title to the suit property, it was not open to accept any submission that some relief must be deemed to have been sought for by the Plaintiffs and on the said basis, to require the Plaintiffs to value the suit and pay additional court fees. If, the Civil Judge were to come to the conclusion that the reliefs prayed for by the Plaintiffs are incomplete or cannot be granted in the form in which they have been applied for, the suit may be dismissed on merits. However, that by itself, is not a ground to allege either under-valuation or some deficiency in the payment of court-fees.

9] Both the learned counsels placed reliance upon certain decisions, to which reference shall be made in the course of this Judgment and Order.

10] The rival contentions now fall for determination.

11] The reliefs applied for in the plaint are as follows:

- “(a) The present suit may kindly be decreed with exemplary costs.*
- (b) The Hon'ble Court be pleased to declare that the Plaintiff no.1 to 20 are the absolute owners of the Suit Property.*
- (c) The Defendant nos.1 to 13 through themselves or their agent/s or their representative/s, servant/s or any person/s claiming through them may kindly be prohibited/restrained by a decree of permanent injunction from disturbing and/or obstructing the possession of the Plaintiffs over the Suit Property in any manner whatsoever.*
- (d) The Defendant nos.1 to 13 through themselves or their agent/s or their representative/s, servant/s or any person/s claiming through them may kindly be prohibited/restrained by a decree of permanent injunction from creating any third interests, or entering into any agreement/ transaction/ agreement/ documents or dealing with the Suit Property or any part thereof in favour of any third person/s in any manner whatsoever.*
- (e) Interim and ad-interim relief's in terms of prayer clause (c) and (d) above may kindly be granted during the pendency of the present suit.*
- (f) Any other just and equitable order as deemed fit in the interest of justice and equity may kindly be passed.”*

12] Since Mr. Dani, emphasised upon the pleadings in paragraphs 13, 15 and 16 of the plaint, the same are transcribed below for convenience of reference :

- “13. At the outset, the Plaintiffs submit that the aforesaid documents are illegal, invalid, void ab-initio, no-nest and bad in law. The Plaintiffs submit that as the title in respect of the Said Property including the Suit Property had already been absolutely transferred and/or vested as aforesaid neither Mr. Bapu Sonu Gaikwad nor any person/s claiming through him has any authority and/or right to execute any document in respect of any part of the Suit Property in any manner whatsoever. It is submitted that neither Mr. Bapu Sonu Gaikwad nor any person/s claiming through him had any transferable interest/ right in the Suit Property or any part thereof as the same had already been legally transferred/sold by them for/ against consideration in favour of the Plaintiffs or their predecessor in title as aforesaid. Therefore, no interest and/or right of whatsoever nature has been created in favour of Defendant Nos. 12 and 13 in respect of the Suit Property or any part thereof. Further, the Defendants have no concern whatsoever and/or in respect of the Suit Property or any part thereof in any manner whatsoever.
15. The Plaintiffs submit that as aforesaid Mr. Bapu Sonu Gaikwad and Mr. Shankarrao M. Cornell had absolutely sold and/or transferred the Said Property.

However, the names of Mr.Bapu Sonu Gaikwad and Mr. Shankarrao M. Cornell were not deleted and/or bricated from the revenue record of the Suit Property. It is submitted that taking undue advantage of the same, Mr.Bapu Sonu Gaikwad has executed bogus, illegal, void-ab-initio and sham document in favour of Defendant no. 12. It is submitted that the Defendant nos. 12 has also got his names mutated in the revenue record of the Suit Property on the basis of the said illegal, no-nest and void documents. It is submitted that it is settled principle of law that revenue entries do not confer any title in respect of the immovable property. Further, the same also cannot take away the lawful title/ownership of any person.

16. *It is submitted that the Defendants are entering into further illegal transactions on the basis of the aforesaid illegal, void documents and mutations. The Plaintiffs submit that the Defendants with malafide intentions are creating further complications by taking undue advantage of the mutation of their names in the revenue record of the Suit Property. The Plaintiffs submit that the Defendant nos. 1 to 13 are also threatening and trying to obstruct the peaceful possession of the Plaintiffs over the Suit Property. In such circumstances, the Plaintiffs are constrained to file the present suit for relief of declaration of ownership and for permanent injunctions.”*

13] Section 6 of the said Act provides for computation of fees payable in certain suits. Mr. Patwardhan, the learned counsel for the Respondent No. 1 (original Plaintiff) has placed reliance upon the provisions contained in Section 6 (iv)(d) of the said Act, which read thus :

“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-ability 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”;

14] Mr. Dani, the learned Senior Advocate for the Petitioner, on the other hand, has placed emphasis upon the provisions contained in Section 6 (iv) (ha) of the said Act, which read thus :

“for avoidance of sale, contract for sale, etc.

In suits for declaration that any sale, or contract for sale or termination of contract for sale, of any moveable or immovable property is void – [one half] of ad valorem fee leviable on the value of the property;”

15] In the present case, there is no relief seeking declaration that the two Sale Deeds are void. The question which therefore arises is whether the suit, in substance, is nothing but a suit seeking declaration that the two Sale Deeds are void, notwithstanding the absence of specific prayer in this regard. Mr. Dani has also urged that in the absence of any relief of declaration that the two Sale Deeds are void, the Plaintiffs are not entitled to obtain any other reliefs as may have been prayed for in the suit. Further, Mr. Dani submitted that the consequence of grant of relief in terms of prayer clause (b) i.e. declaration that the Plaintiffs are owners of the suit

property, might result in the declaration that the two Sale Deeds are null and void.

16] Relying upon the decisions of this Court in the case of *Prism Realty, Pune vs. Govind Yashwant Khalade & Ors.*¹ and *Bai Radhabai Vasudeo Jethabhoy vs. Nandlal Lakhmichand Chanana*² and *Lakhiram Ramdas vs. M/s. Vidyut Cable and Rubber Industries*³, Mr. Dani contended that mere clever drafting or an astute pleadings cannot confer jurisdiction upon a court to try a suit or evade appropriate valuation and payment of court fees.

17] The decision in the case of *Prism Realty* (supra) is of no real assistance to the issue involved in the present case. In the said case, the specific relief applied for was declaration that certain documents were bogus, illegal and not binding upon the Plaintiffs. In this context, this Court, by distinguishing the decision of the Apex Court in the case of *Suhrud Singh alias Sardool Singh vs. Randhir Singh & Ors.*⁴ held that in the light of special provisions contained in Section 6 (iv)(ha) of the said Act, the court fees were required to be computed on the basis that the suit was for declaration that the document in question was void, notwithstanding that

1 2015 (2) Mh. L.J. 472

2 1956 (Vol. LIX) Bombay L.R. 127

3 1963 (Vol LXV) Bombay L.R. 604

4 AIR 2010 SC 2807

the Plaintiffs were not parties to the execution of the said documents. Such issue, does not arise in the present case, because the Plaintiffs in the present case, have not applied for any declaration to the effect that the documents in question are void.

18] The decisions in the cases of *Bai Radhabai* (supra) and *Lakhiram Ramdas* (supra) were cases where relief of possession was not specifically prayed for in order to evade payment of court fees upon a normal suit seeking recovery of possession, but rather relief of mandatory injunction requiring the Defendant to remove himself from the premises was made, in order to justify payment of lesser court fees. In this context, this Court held that where the prayer clause is cleverly worded but in effect it amounts to a prayer for possession, it is the duty of the courts to see that requisite court fees are paid for on the basis that the suit, in substance, is one for recovery of possession and not mere injunction.

19] In this case however, the Plaintiffs are quite clear in the structure of their plaint, in that, they make reference to the two Sale Deeds in question, but do not seek any declaration that the same are null and void. It is the specific case of the Plaintiffs, as articulated by their counsel Mr. Patwardhan that they do not need any declaration that the two Sale Deeds are void and the Plaintiffs would be satisfied with the declaration that they

are the absolute owners in respect of the suit property. In fact, Mr. Patwardhan placed reliance upon the decision of the Hon'ble Apex Court in the case of *Prem Singh & Ors. vs. Birbal & Ors.*⁵ to contend that when a document is void *ab initio*, a decree for setting aside the same would not be necessary as the same is non est in the eyes of law, as it would be a nullity. This is hardly the occasion to decide upon the question as to whether a structure of the suit as framed is proper or not. This is also not the occasion for deciding whether the reliefs as prayed for in the plaint are complete in themselves or whether the reliefs as prayed for can never be granted by the Civil Courts in the absence of specific prayer seeking declaration that the two Sale Deeds are null and void. If ultimately, the Civil Court comes to the conclusion that the basic structure of the suit is defective, or that the reliefs as prayed for cannot be granted or that there is omission to seek some important relief, without which no other relief as prayed for can be granted, the same might result in dismissal of the suit. However, that by itself is no ground to hold that the suit, in substance, is one seeking declaration that the two Sale Deeds are void. This is a case where consciously, the Plaintiffs have chosen not to seek declaration that the two Sale Deeds are null and void. Therefore, the Plaintiffs are very clearly prepared to face the consequences of their conscious decision. In such circumstances, it cannot be said that this is a case of clever drafting

5 (2006) 5 SCC 353

or astute pleadings, only for the purposes of evading payment of court fee or conferring jurisdiction upon a court, which it otherwise may not possess. The decisions in the cases of *Bai Radhabai* (supra) and *Lakhiram Ramdas* (supra) are distinguishable, in as much as the relief of seeking recovery of possession was camouflaged by seeking a mandatory injunction, requiring the Defendant to remove himself from the premises in question.

20] It is settled position in law that the nature of the suit has to be determined by the averments in the plaint and plaint alone. The defence that may be raised by the Defendants, is quite irrelevant in such a context. A fiscal statute like the Court Fees Act is required to be construed strictly. In case of any doubt or ambiguity, the statute has to be construed in favour of the subject. The principle is that if a person to be taxed comes within the letter of the law, he must be taxed, however great the hardship may be. Conversely if a person does not come within the letter of the law, is free to frame the structure of his suit, as would visit him with minimum burden of court fees. Further statutes like the Court Fees Act, really do not deal with the substantive rights and therefore, in the matters of construction of such statutes, the interpretation normally applicable in case of statutes dealing with procedure, has to be preferred. In a situation where the plaint is not ambiguous and the Plaintiffs expressly claim reliefs in a particular format, it is not for the court to force upon the Plaintiffs a frame of a suit which they

are not willing to adopt. Considerations of the frame of the suit for the purposes of court fee and for that purposes of decision on the merits of the suit, have to be kept severally apart. If the court, upon consideration of the matter on merits, comes to the conclusion that the frame of the suit is defective or if the reliefs as prayed for cannot be granted for want of further consequential reliefs then it is for the Plaintiffs to bear such consequences. However, in determining the court fee payable, the court should not be influenced by consequences which might, in its opinion, follow from the Plaintiffs action.

21] In the context of payment of appropriate court fee on a memorandum of appeal, the Supreme Court in the case of *Nemi Chand & Anr. vs. The Edward Mills Co. Ltd. & Anr.*⁶, has held that for the purposes of deciding whether the memorandum of appeal was properly stamped according to the subject matter of the appeal, it was not open to the court to canvass the question whether the suit with the second prayer for the appointment of a receiver eliminated from it, fell within the mischief of the proviso to Section 42 of the Specific Relief Act 1877. The Supreme Court observed that such question relates to the merits of the appeal and not to its proper institution.

6 AIR 1953 SC 28

22] Accordingly, in the facts and circumstances of the present case, the submissions of Mr. Dani that the present suit is essentially a suit to declare that the two Sale Deeds are void, cannot be accepted.

23] Normally, in such matters, valuation disclosed by the Plaintiff or the amount of court fees upon the relief claimed in the plaint should be accepted as correct. This however, does not preclude the court from examining if the valuation on the averments in the plaint is arbitrary or capricious. If, on the perusal of the plaint, the court is *prima facie* satisfied that the Plaintiff has not been fair and valued the suit and the reliefs arbitrarily, the court is not precluded from directing the Plaintiff to value the suit properly and to pay appropriate court fees thereon. In the present case, the Plaintiffs have made the averments in paragraph 18 of the plaint, in respect of valuation and payment of court fee. The same read as under:

“18. The Suit Property being agricultural land assessed to the land revenue. The plaintiffs submit that the present suit has been valued at Rs.142/- i.e. the 200 times of the assessment of the Suit Property for the purpose of relief of declaration. The plaintiff has also prayed for permanent injunctions and therefore the plaintiffs have valued the present suit at Rs.1000 + Rs.1,000/- for the purpose of permanent injunctions. Thus the plaintiff has valued the present suit at Rs.142/- + 1,000/- + 1,000/- and has paid appropriate court fees stamp fees

thereon. In case any additional court fees is required to be paid by the plaintiff then the plaintiff is ready to pay the same as and when directed by the Hon'ble Court."

24] The suit as framed, seeks declaration that the Plaintiffs are absolute owners of the suit property [prayer clause (b)]. In addition the plaint seeks relief of injunction as against Defendant Nos. 1 to 13, which includes the Petitioner. In terms of Section 6(iv)(d), suit for declaration in respect of ownership for title is exigible to court fee of one-fourth *ad valorem* fee leviable for a suit for possession on the basis of title of the subject matter, subject to minimum fee of one hundred rupees. The third proviso provides that 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 are also sought to include relief for possession, the amount of fee shall be full *ad valorem* fee. Further, Section 6(v) deals with suits for possession of lands, houses and gardens. This in turn, has to be read and construed with the provisions of the Suits Valuation Act, 1887 and the Rules made thereunder.

25] In the aforesaid circumstances, it cannot be said that the valuation and payment of court fees is either arbitrary or capricious, so as to warrant a direction for revaluation and payment of deficit court fee. There is no clear material available on record to indicate that the suit property was non

agricultural property. The Plaintiffs, in paragraph 18 of the plaint have averred that the suit property is agricultural property. This statement has been denied by the Petitioner - Defendant No. 12 who has claimed that the present market value of the suit property is in the range of Rs.20,760/- per sq. meter. On all such aspects, the onus was really upon the Petitioner to produce cogent material, which onus, the Petitioner has failed to discharge. Section 8 of the said Act applies in a situation where the court is of the opinion that the subject matter of any suit has been wrongly valued or if an application is made to the court for revision of any valuation made. In such situation, the Court may revise the valuation and determine correct valuation and may hold such enquiry as it thinks fit for such purpose. This provision does not contemplate the holding of an enquiry, no sooner an application is made to the court for revision of any valuation made. The Petitioner is required to make out a *prima facie* case that revision of valuation is warranted.

26] Accordingly, Rule is discharged. In the facts and circumstances of the case, there shall be no order as to costs.

27] It is clarified that the observations made in this judgment and order are for the limited purpose of deciding whether the valuation of the suit and payment of court fee thereon was in any manner deficient. Accordingly,

the learned Civil Judge to decide the suit on merits, without being influenced by the observations made in this judgment and order for the aforesaid limited purposes.

(M. S. SONAK, J.)

Chandka