IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.149 OF 2014

Shri Jayant Bhimsen Joshi & Ors. ... Appellants

Vs.

Shri Raghavendra Bhimsen Joshi & Ors. ... Respondents

Mr.Rajendra V. Pai a/w A.R. Pai a/w Ms.N.N. Thakkar i/b Mrs.Bina R. Pai for the Appellants
Mr.G.S. Godbole a/w Sheetal Patil i/b S.S. Panchpor for Respondent No.1

CORAM: **MRS.MRIDULA BHATKAR, J.**

ORDER RESERVED ON: **12th OCTOBER, 2015**
ORDER PRONOUNCED ON: **23rd OCTOBER 2015**

ORDER:

1. This Appeal from Order is directed against the order dated 27.9.2013 passed by the 5th Joint Civil Judge, Senior Division, Pune granting ad-interim injunction against defendant Nos.1 to 4. The defendants have filed this appeal against the said order. However, pursuant to the amendment in Maharashtra Civil Courts Act, in 2015, which came into effect from 1.9.2015, the pecuniary jurisdiction of the District Court to entertain an appeal under section 28(A) of the Maharashtra Civil Courts Act is increased upto Rs.1 crore, inter alia, an oral application is made to transfer this appeal to the District Court. This oral application is opposed vehemently by the appellants on the ground

that the appeal is valued exceeding Rs.1 crore and, therefore, it cannot be transferred. The plaintiff, a son of the first wife of late Bharatratna Bhimsen Joshi, has filed the suit for declaration, partition and injunction, against his real and step brothers and sisters claiming 1/7th share in the property valued to Rs.49 lakhs and accordingly, the Court fee was paid on the said valuation. A will dated 22.9.2008 executed by late Bharatratna Bhimsen Joshi is challenged alongwith the sale deeds and the gift deeds which were executed by him during his lifetime. Thus, transfer of this matter to the District Court is disputed on the ground of proper valuation of the suit due to amended section 28(c) of the Maharashtra Civil Courts Act.

2. Mr.Pai, the learned Counsel for the appellants, has submitted that the plaint is a specimen of a clever and astute drafting. The averments and the prayers made in the suit cannot be taken on its facevalue but the real reliefs claimed in the plaint are required to be considered to determine the exact valuation of the subject matter. He submitted that under section 28C, “all appeals in which the amount or value of the subject matter does not exceed one crore rupees and pending before the High Court, shall stand transferred to the concerned District Court” and, therefore, it is necessary for the High Court before transferring this appeal to ascertain what is the value of the subject matter. The plaintiff, in para 17 of the plaint, has valued the entire property as Rs.3,40,00,000/- as he has prayed for various reliefs in his prayer clauses (c), (d) and (e). The

description and valuation of the properties are specified in schedule (i) to (iii) of the plaint, where the plaintiff prays that the sale deeds and gift deeds are to be declared as void and not binding on him. Therefore, he prays for avoidance of sale and contract of sale of the two flats, then, as per section 6(iv)(ha) of the Maharashtra Court Fees Act, it is to be paid ¼th of the ad-valorem on the value of the property. The appropriate court fees is paid on the declaratory reliefs under section 6(iv)(j) of the Maharashtra Court Fees Act as the declarations are not susceptible to monetary value and it is to be valued for Rs.1,000/-. However, the properties mentioned in schedule are monetarily susceptible as the break-up of the value of each property is given, and it is necessary for the plaintiff to pay ad-valorem court fees. Learned Counsel calculated the value of the subject matter for Rs.3,40,00,000/- that is the total value for which the declaration is sought and additionally, Rs.47 lacs i.e., 1/7th share claimed by the plaintiff in the property so that prayer is also to be valued for the purposes of valuation of the subject matter. In order to support his submissions on this point, he relied on the judgments in **Shamsher Singh vs. Rajinder Prashad & Ors.**[1]**; Cotseeds Corporation vs. Cotton Corporation of India & Ors.**[2]**; Pushpaben Vishwambarlal Khetan & Ors.vs. Heena Narendra Patel & Ors.**[3] and **Laxmidas N. Madhvani vs. Madhvani Private Ltd.**[4]

1 AIR 1973 SC 2384
2 1988 GLH(2) 140
3 2015 (2) Bom. C.R. 614
4 1986 (88) BOMLR 308

3. Mr.Godbole, learned Counsel for the respondents, in reply, submitted that the objection on the Court fees cannot be raised at appellate stage. The enquiry as to the valuation of the suit under section 8 of the Bombay Court Fees Act can be made only before the trial Court. He submitted that in all the cases relied on by the appellants, the objections to the Court fees was taken before the trial Court and thereafter the order passed therein was a subject matter before the higher courts. In the present case, no such objection was raised in respect of Court fees either under section 11 of the Suits Valuation Act or under Order 7 Rule 11(b) of Civil Procedure Code. He further submitted that in a suit for partition and separate possession of a share of a joint property, the plaintiff has to pay Court fees according to the value of the share in respect of which the suit is instituted and it falls squarely under section 6(vii) of the Act. He further argued that the submission of the learned Counsel for the appellants that prayer clause (e) pertains to the cancellation of sale deeds or gift deeds is not correct because in prayer (e), the plaintiff does not seek any order of cancellation of those sale deeds but he claims only his share in the sale deeds. Therefore, section 6(iv)(ha) cannot be attracted. He further submitted that in schedules (i) to (iii) of the plaint, the description of the properties is given. In schedule (iv), the properties are in respect of a share claimed in the royalties. The 1/7th share claimed comes to Rs.47

lacs. He submitted that this Court should not go into the issue of proper valuation of the suit as it is not the correct forum to decide the same and hence, this appeal is to be transferred to the District Court. He submitted that in a substantive appeal also, the issue of valuation cannot be raised and this is an appeal against order. In support of his submissions, Mr.Godbole relied on the judgment in the case of **Suhrid Singh *alias* Sardool Singh vs. Randhir Singh & Ors**[5].

4. By way of rejoinder, Mr.Pai, the learned Counsel for the appellants, has submitted that section 11 is not applicable to this Appeal from Order but it is in respect of an appeal where a final decree is passed. He submitted that section 11 pertains to matters which are covered under section 99 of Civil Procedure Code which pertains to a final decree. He further submitted that the enquiry conducted at this stage is not for non-suiting the plaintiff under Order 7 Rule 11(b) of the CPC but it is only for the defendants' right to choose and fix appropriate appellate forum. Under section 28C of the Maharashtra Civil Courts Act, the word 'court' is not defined so it can also be considered as appellate Court.

5. Under section 28C, this Court has to consider whether the value of the subject matter of the suit or appeal is below Rs.1 crore or it exceeds the said amount. Section 28C reads as follows:

5 (2010) 12 SCC 112

> "28C. On the commencement of the Maharashtra Civil Courts (Amendment) Act, 2015, all appeals in which the amount or value of the subject matter does not exceed one crore rupees and pending before the High Court immediately before such commencement, shall stand transferred to the concerned District Court and such District Court may deal with such appeal from the stage which was reached before such transfer or from any earlier stage or *de-novo* as such court may deem fit:
>
> Provided that, this section shall not apply to any appeals which are pending before the High Court, which are statutorily provided under the relevant enactment before such Court."
>
> (emphasis added)

6. By section 28C of the Maharashtra Civil Courts Act, a suit not exceeding Rs.1 crore stands transferred as on 1.9.2015. This appeal is filed by the defendants and therefore, the say of the defendants in respect of the valuation of the suit is not be read as objection raised under Order 7 Rule 11(b) of the Civil Procedure Code. This appeal is filed challenging the ad-interim order passed by the learned trial Judge. Therefore, whether this appeal is to be entertained by the High Court or the District Court in view of the change and increase in the pecuniary jurisdiction, is a point to be determined by the High Court.

7. The subject matter depends on the reliefs claimed in the plaint. This is a suit claiming share in the joint property, which is covered under section 6(vii) of the Court Fees Act, which states that a co-owner has to pay the Court fees according to the value of the share in respect of which he instituted a suit. Prayer clause (a) pertains to declaration of will dated 22.9.2008 as false and fabricated. Prayer clause (b) seeks declaration

that the plaintiff and the other defendants are the only legal heirs and successors. Thus, prayers (a) and (b) are pure declaratory reliefs which are to be covered under section 6(iv)(j) of the Act as they are not monetarily susceptible. Valuation in prayer clause (c), (d) and (e) are disputed. Prayer clause (c) is made in respect of avoidance of the gift deed in which he prays his 1/4th share in the properties, which are mentioned in schedule (i). The value of the property is considered as Rs.1,68,43,680/-. In prayer clause (c) he prays for a declaration that gift deed dated 28.7.2006 is illegal, null and void and not binding on the plaintiff and defendant Nos.5 to 7 and he claims his 1/4th share in the said property. In prayer clause (d), he challenges another gift deed dated 24.1.2006 and claims ½ share in the said property. In prayer clause (e), the plaintiff seeks declaration that two deeds of apartments dated 3.5.2004, which were registered on 11.5.2004, by which the two apartments were purchased which is in schedule (iii), are bogus and not binding on the plaintiff and he demanded his right in the suit properties, which were purchased. All these prayers of the plaintiff in fact are two fold. Firstly, he requests for declaring deeds void and not binding on him and secondly, claims his share therein.

8. In the case of **Shamsher Singh (supra),** the Supreme Court held that 'a mere astuteness in drafting the plaint will not be allowed to stand in

the way of Court looking at the substance of the relief asked for'. In the said matter, the Court was dealing with section 7 of the Court Fees Act and under Order 7 Rule 11 of the CPC. It was also pointed out that 'in deciding whether a suit is purely declaratory, the substance and not merely the language or the form of the relief claimed is to be considered'.

In the case of **Cotseeds Corporation (supra),** a learned Single Judge of the Gujarat High Court took the same view in respect of clever drafting and held that the Court should be careful before accepting the statement that the subject matter of the suit is not susceptible to monetary evaluation. The phrase 'susceptible of monetary evaluation' means capable of or admitting of monetary evaluation.

In the case of **Pushpaben Vishwambarlal Khetan & Ors. (supra),** a learned Single Judge of this Court had an opportunity to deal with the issue of correct evaluation of the Court fees. In the suit, 8 plaintiffs claimed that the defendants be ordered to pay jointly and severally a sum of Rs.8 crore i.e., Rs.1 crore each. In the said suit relying on section 18 of the Bombay Court Fees Act, which states about multifarious suits wherein ad-valorem fees is to be charged separately on each of such subjects, the Court directed the plaintiffs to pay separate court fees of Rs.1 crore each.

In the case of **Laxmidas N. Madhvani (supra),** before a learned Single Judge of this Court, a declaration regarding the allotment of shares in favour of certain shareholders was prayed as void and also there was a consequential relief prayed for allotment of shares to the plaintiff. It was held that if a suit is filed for declaration or avoidance of any sale, the said suit necessarily is covered by clause (ha) of section 6(iv) of the Bombay Court Fees Act and clause (j) of section 6(iv) will not apply to any such suit.

9. The ratio laid down in all the judgments cited by Mr.Pai appearing for the appellants, is binding in view of the facts and the nature of the plaint in those respective suits. The applicability of the ratio of these cases is to be considered only after going through the averments made in the present plaint and the reliefs claimed in the present plaint. It is to be noted that in all these cases, objection to the valuation of the subject matter was raised before the court of first instance and nt before the appellate Court.

10. I place reliance on the case of **Suhrid Singh *alias* Sardool Singh (supra),** the Supreme Court dealt with section 7(iv)(c) and (v) of the Court Fees Act, 1870 in the State of Punjab which are equivalent to section 6(iv) of the Maharashtra Court Fees Act. It was held that where the suit is for declaration and consequential relief of possession and injunction, then the

Court fees is governed by section 7(iv)(c) of the said Act. It was held if there is no prayer for cancellation of sale deeds and there is a prayer for declaration of deed as void and not binding on the plaintiff, the said suit was not by executant of the sale deeds then, the Court fee was computable under section 7(iv)(c) of the Act which states court fee shall be computed according to the amount at which the relief sought is valued on the plaint. The order passed by the High Court and the trial Court taking view that the Court fees is required to be paid ad-valorem, was set aside.

11. On this background, actual and real valuation is to be examined. Plaintiff is not an executant of the sale deed and the gift deeds. He basically wants his share in the property which is gifted and the property which is sold. He limits his claim to 1/7th share in the whole property which is quantified by him to Rs.47 lacs. Thus, he in fact, is not praying for a cancellation of the sale deed and the gift deeds but he prays for a declaration that these deeds are void as he claims his 1/7th share in those properties. It can be put in other words that if anyhow the respondent is given his share by paying the amount of Rs.47 lacs without cancelling the said gift deed or sale deed, the plaintiff's claim can be satisfied. Thus, in order to establish his claim it is necessary for him to make an initial prayer of declaration which is a source of his prayer of 1/7th share in the said property. Thus, the demand of 1/7th share is not a consequential relief. It

is a main relief. He has valued the entire property as per the market value to the tune of Rs.3,40,00,000/- and therefore, he could carve out his 1/7th share as Rs.47 lacs and it is susceptible to the monetary valuation. Therefore, for the purpose of subject matter in section 28C of the Act, his claim of 1/7th share in the property as pleaded in the plaint is a subject matter. Thus, the Appeal does not exceed Rs.1 crore and hence, stands transferred.

12. Appeal is disposed of accordingly.

13. The learned Counsel for the appellant submits that this order be stayed for four weeks as he wants to challenge the order before the hon'ble Supreme Court. Hence, the order is stayed for four weeks.

(MRIDULA BHATKAR, J.)