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***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION***

WRIT PETITION NO. 3480 OF 2015

Mr. Vinoo Omprakash Kumar. ... Petitioner.

V/s.

Mr. Arun Omprakash Kumar and Ors. ... Respondents.

Mr. Vishal Kanade i/b. Mohit Gadkari & Co. for the Petitioner.

Mr. S.N. Nagpurkar a/w. R.C. Singh i/b. Legal Liaisons for
Respondent 1.

Mr. Ajay Omprakash Kumar for Respondent No.2 in-person.

Mrs. Prachi Mhatre i/b. M/s. Shiralkar & Co. for Respondent No.3.

CORAM : N.M. Jamdar, J.

25 August, 2016.

Oral Order :-

Rule. Rule made returnable forthwith. By consent, taken up for final disposal. The Petitioner challenges the order passed by the City Civil Court, Dindoshi, Boriwali dated 23 March 2013 rejecting the application filed by the Petitioner under Section 9-A of the Code of Civil Procedure on the ground for lack of pecuniary jurisdiction. The learned City Civil Court Judge has held

that the Plaintiff has correctly valued the suit as per Section 6 (iv)(j) of the Maharashtra Court Fees Act. The contention raised by the Petitioner that the suit needs to be valued under Section 6(iv)(d) of Maharashtra Court Fees Act, has been rejected.

2. Heard the learned Counsel for the parties.

3. Two basic propositions must be kept in mind. Firstly the court fee will have to be determined on the basis of the plaint. Secondly, generally the Court will accept the valuation made by the Plaintiff, unless it is shown to be palpably arbitrary and impossible. Proceedings on these two premises, the plaint filed by the Respondent will have to be examined. The Respondent – Plaintiff and the Petitioner – Defendant No.1 and Defendant No.2 are brothers. The dispute pertains to Flat No.14, 1st floor, Airlines Co-operative Housing Society Ltd., popularly known as “Mayur” situated at Plot No.139 & 153, T.P.S. V, 126 Prabhat Colony, Santacruz (East), Mumbai. In the plaint the Plaintiff has narrated that the suit property was purchased by the father of the Plaintiff out of family funds arising from family business. It is his case that the Plaintiff and Defendant No.2 also contributed towards purchased. Thereafter, it is averred that the Plaintiff and Defendant No.2 occupied the premises and resided together, however, subsequently disputes arose between the parties. The father expired on 27 September 2003 and the mother expired on 18 January 1992. It is

then averred that though the property was a joint family property, the Defendants started claiming that it was self-acquired property denying the share of the Plaintiff in the property. Subsequent events of redevelopments of the building, where the suit property is situated are narrated. Thereafter, relief has been claimed in the plaint as under :-

“(a) It may be declared that the suit premises situated at Flat No.14, First Floor, Airlines Co-operative Housing Society Ltd. Popularly known as “Mayur”, situated at Plot Nos.139 & 153, T.P.S. V. 126 Prabhat Colony, Santacruz (East), Mumbai – 400 055, is a Joint Family Property in respect of the suit premises.

(b) The Defendants, their servants, agents, family members and/or any person/s claiming through or under them be restrained by a Permanent order and injunction from this Hon'ble Court from dispossessing and/or interfering with peaceful possession of the Plaintiff from the suit premises situated at Flat No.14, first floor, Airlines Co-operative Housing Society Ltd., popularly known as “Mayur” situated at Plot No.139 & 153, T.P.S.V, 126 Prabhat Colony, Santacruz (East), Mumbai – 400 055, without following due process of law.

(c) By Mandatory order and injunction, the Defendant No.3 may be ordered and directed to execute agreement for Permanent alternate accommodation with the Plaintiff and/or may be directed to incorporate the name of the Plaintiff in

the Development Agreement or any Agreement pertaining to the suit premises, for permanent alternate accommodation, if any, already executed with Defendant No.1.”

4. For the purpose of valuation, the Petitioner has relied upon Section 6(iv)(j) of the Court Fees Act. In the impugned order the learned City Civil Court Judge has rejected the contentions of the Petitioner that the suit has to be valued as per Section 6(iv)(d), on the ground that the Plaintiff has not claimed any partition and has only simplicitor sought a declaration that the suit property is a joint family property. It was held that there is no declaration of ownership or title sought, and the relief of declaration is not susceptible to monetary evaluation and thereafter, the learned City Civil Court Judge has directly accepted the valuation made by the Plaintiff.

5. The relevant provisions will have to be noted. Section 6(iv)(j) reads as under :-

“(j) In suits where declaration is sought, with or without injunction or other consequential relief and the subject matter in dispute is not susceptible of monetary evaluation and which are not otherwise provided for by this Act ad valorem fee payable, as if the amount or value of the subject matter was one thousand rupees.”

Perusal of this provision shows that where the suit for declaration is sought with or without injunction or any consequential relief or any subject matter of dispute is not susceptible to monetary evaluation and which are not otherwise provided under the Act, this clause will apply. By bare perusal of this provision indicates that it is a residuary clause covering eventuality which are not otherwise covered under the other provisions. The Plaintiff has directly invoked the residuary clause and sought to pay a fixed amount. The Petitioner has sought to bring the Suit under a particular provision of the enactment. Therefore, merely because the interpretation placed by the Petitioner is not accepted that the suit falls within a particular category, does not mean that directly the residuary clause can be invoked. The learned Judge therefore ought to have considered whether the suit can fall under other categories before coming to the conclusion that Clause 6(iv)(j) is attracted. It is trite that if the valuation falls under a specific clause of the Act, then the residuary clause need not be resorted to.

6. In the present case, by way of an illustration, the Clause 6(vii) needs to be noticed. This clause reads as under :-

“(vii) For share in joint property – In suit for partition and separate possession of a share of joint family property or of joint property, or to enforce a right to a share in any property on the ground that

it is joint family property or joint property whether or not the plaintiff is in actual or constructive possession of the property of which he claims to be a co-parcener or co-owner-according to the value of the share in respect of which the suit is instituted.”

This clause states that the suit to enforce right to share in the property or that the property is joint whether or not the Plaintiff is in actual possession, then a particular valuation will be attracted. There is no application of mind as to whether the valuation falls under this category. The learned Judge has only gone by the version of both the parties without making an attempt to find out the valuation as per the provisions of the Act.

7. Since this exercise is not done, it is not necessary, under the power of superintendence to find out under which provision the valuation can be made. This exercise will have to be done with reference to the pleadings in the plaint. This is not a case where it can be said with certainty that the valuation of the suit does not fall under under any other clause at all to directly invoke Clause 6(iv)(j) of the Act. However, I do not wish to enter into that enquiry which I propose to leave it to the learned City Civil Court Judge.

8. In the circumstances, the impugned order based on 23 March 2015 will have to be quashed and set aside. Accordingly, it is set aside. The Notice of Motion filed by the Petitioner under

Section 9-A of the Code of Civil Procedure stands restored to file to be decided by the learned City Civil Court Judge on its own merits. It is clarified that what is stated above is by way of an illustration and only to draw the attention of the learned Judge that an enquiry is necessary to find out under which provision the valuation of the suit has to be made. All contentions of the parties in this regard are kept open. Rule is made absolute in the above terms. No order as to costs. Since the proceedings are in respect of the jurisdiction of the Court, the learned City Civil Court Judge will consider disposing of the Notice of Motion at an early stage.

(N.M. Jamdar, J.)