

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
Civil Revision Application NO. 446 OF 2012

SHRI. SUDHIR N. KOTHARI
AND ANR.

...Applicants

Versus

SHRI. VAGHU TATYABA PADWAL
AND ORS.

...Respondents

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Mr. A.V. Anturkar, Senior Advocate a/w. Mr. Amol Ghatne i/b.
Sugandh B. Deshmukh, Advocate for the Applicants.

Mr. Rahul S. Kadam, Advocate for Respondent Nos.1 to 4.

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CORAM : R. G. KETKAR, J.

DATE : 17th MARCH, 2016

P.C.

1. Heard Mr. A.V. Anturkar, learned Senior Counsel for the applicants and Mr. Rahul Kadam, learned Counsel for respondents No.1 to 4, at length.

2. By this application under Section 115 of Code of Civil Procedure, 1908 (for short, 'CPC'), the applicants have challenged the judgment and order dated 27.3.2012 passed by the learned 36th Civil Judge, Junior Division, Pune below Exhibit-17 in Regular Civil Suit No.1658/2011. By that order, the learned trial Judge rejected the application made by original

defendant No.2 under Section 9-A of CPC.

3. Respondent Nos.1 to 9, hereinafter referred to as 'plaintiffs', have instituted Regular Civil Suit No.1658/2011 against the applicants, hereinafter referred to as 'defendant Nos.1 and 2' and respondent Nos.10 to 16, hereinafter referred to as 'defendant Nos.3 to 9', *inter alia* praying for declaration that the plaintiffs have become owners by adverse possession of Gat No.214 admeashring 5 Hectare 21 Ares situate at Mouje Nandivali, Taluka-Mulshi, District-Pune (for short, 'suit land'); for cancellation of the sale deed dated 11.10.1989 executed by defendant Nos.3 to 9 in favour of defendant Nos.1 and 2; for perpetual injunction restraining defendant Nos.1 and 2 from causing obstruction to the plaintiffs possession as also from creating third party interest.

4. During pendency of the Suit, defendant No.2 filed application dated 17.1.2012 at Exh.17 for framing preliminary issue on the ground that (1) the suit is beyond limitation, (2) the suit is beyond pecuniary jurisdiction of the Court of Civil Judge, Junior Division, Pune and (3) that the plaintiffs have not paid the required court fees on the current government

valuation of the suit land as required under the Maharashtra Court Fees Act (for short, 'Act') and thus the suit is liable to be dismissed on the ground of pecuniary jurisdiction, limitation and payment of insufficient court fees. The plaintiffs resisted the application by filing a reply dated 7.2.2012. By the impugned order, learned trial Judge rejected the application. It is against this decision, defendant Nos.1 and 2 have instituted the present Civil Revision Application.

5. Mr. Anturkar strenuously contended that Section 6(iv)(d) of the Act does not apply. In any case the Maharashtra Suits Valuation (Determination of Value of Land for Jurisdictional Purposes) Rules, 1983 (for short, 'Rules') do not apply. Even if the Rules apply, Rule 8 thereof does not apply to the suit instituted by the plaintiffs. He further submitted that Section 6(iv)(d) of the Act requires payment of the Court fees on the market value. He has taken me through

(1) section 6(iv)(d) and 6(v) of the Act;

(2) the Suits Valuation Act, 1887 and in particular Sections 2, 3, 4 and 8 thereof.

(3) Rule 2 of the Rules as also decision of this Court in the case of **Shantabai vs. Kamlakant, AIR 1937 Bom. 326**, and in particular para-5 thereof, to contend that the valuation for the purpose of jurisdiction should be on the basis of the market value.

6. Lastly, he submitted that before the trial Court the Advocate appearing on behalf of defendant Nos.1 and 2 gave concession that section 6(iv)(d) of the Act applies. As the said concession was on question of law, the same is not binding on defendant Nos.1 and 2. He relied upon paragraph-13 of decision in the case of **Central Council for Research in Ayurveda & Siddha and another vs. Dr. K.Santhakumari, (2001) 5 SCC 60**. For all these reasons, he submitted that the impugned order is required to be set aside.

7. On the other hand, Mr. Kadam supported the impugned order. He submitted that the suit is for declaration of acquisition of ownership by adverse possession and for cancellation of the sale deed. The property in dispute is Gat No.214. In view thereof, Section 6(iv)(d) of the Act is applicable. Section 6(iv)(d) of the Act lays down that in suits for declaration in respect of ownership

amongst others, 1/4th 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 is payable. Section 6(iv)(d) refers to the payment of court fee for a suit for possession. One has to refer to section 6(v) of the Act. As per section 6(v) of the Act, where the subject matter is land, the value of the subject matter would be as per Clauses (a) to (c) of that section. In other words, if the suit is for possession of land, the value of the subject matter would be either forty times of the survey assessment as per clause (a), eighty times as per clauses (b) and (c). Having regard to the assessment of the suit land, the Court of Civil Judge, Junior Division will have pecuniary jurisdiction to try and entertain the suit. He submitted that no case is made out for invoking powers under Section 115 of CPC.

8. I have considered the rival submissions advanced by learned Counsel appearing for the parties. I have also perused the material on record.

9. It is not in dispute that the subject matter of the suit is an agricultural land bearing Gat No.214. The suit is for declaration of ownership. If that be so necessarily the payment of

court fee would be governed by section 6(iv)(d) of the Act. Section 6(iv)(d) lays down that in the suit for declaration of ownership, 1/4th of *ad valorem* fee leviable for a suit for possession on the basis of title of the subject matter, subject to payment of minimum fee of one hundred rupees is payable. Having regard to the fact that section 6(iv)(d) of the Act refers to a suit for possession, one has to necessarily refer to section 6(v) of the Act. Section 6(v) of the Act reads thus :

“6. Computation of fees payable in certain suits

The amount of fee payable under this Act in the suits next hereinafter mentioned shall be computed as follows :

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(v) for possession of lands, houses and gardens

In suits for the possession of land, houses and gardens according to the value of the subject-matter; and such value shall be deemed to be, where the subject-matter is a house or garden according to the market value of the house or garden and where the subject-matter is land, and--

(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;

10. In view thereof, I am of the opinion that the plaintiffs are liable to pay court fee on the basis of either forty times or eighty times of the survey assessment. Even if we consider that the plaintiffs are liable to pay eighty times the survey assessment, it will not exceed the pecuniary jurisdiction of the Court of Civil Judge, Junior Division.

11. Mr. Anturkar submitted that the plaintiffs will have to value the suit as per the market value of the land and not on the basis of the assessment. It is not possible to accept this submission. Section 3 of the Suits Valuation Act, 1887 lays down that the State Government may make rules for determining value of the land for purposes of jurisdiction in the suits mentioned in paragraphs (v) and (vi) and clause (d) of paragraph (xi) in Section 6 of the Act. Section 4 thereof lays that where a suit mentioned in the clause (c), (d), (e), (g), (i), or (j) of paragraph (iv) or paragraph (vii) in section 6 or Articles 3, 4, 5 or 7 in Schedule I or clause (f) of Article 23 in Schedule II to the Bombay Court-fees Act, 1959 relates to land or an interest in land of which the value has been determined by rules under the last foregoing section,

namely section 3, the amount at which for purposes of jurisdiction the relief sought in the suit is value shall not exceed the value of the land or interest as determined by those rules.

Rule 2 of the Rules reads thus :

“2. In suits for the possession of land, houses and gardens mentioned in paragraph (v) in section 6 of the Bombay Court-Fees Act, 1959 (Bom. XXXVI of 1959), (hereinafter referred to as “the Court-Fees Act”), for the purposes of jurisdiction, the value of the property shall be determined as follows, namely :--

(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.

Explanation. – Where any land is partially or wholly exempt from the payment of land revenue, the full assessment leviable in respect of such land shall be deemed to be the assessment payable in respect of such land for the purposes of this rule, as if the land was not exempt from the payment of land revenue either partially or wholly.”

12. Perusal of Rule 2, extracted hereinabove, shows that the value of the property is to be determined depending on the subject matter of the suit whether is a house or garden or is land. If the subject matter of the suit is land, the Court fee in

the sum equal to two hundred times of the assessment payable in respect of the land, which will determine the jurisdiction. Thus, having regard to Rule 2(b) of the Rules and as also having regard to the assessment of the suit land, still it will not exceed the pecuniary jurisdiction of Civil Judge, Junior Division.

13. Mr. Anturkar relied upon the decision of **Shantabai's** case (supra) and in particular paragraphs-5 and 6 thereof. In that case the plaintiff had instituted the suit for possession of the agricultural land. He had paid the court fee stamp of a value equal to twenty times the land revenue. He had valued for the purpose of jurisdiction Rs.9000/- which, according to him, was the market value of the land. The defendant therein raised an objection on the ground that the valuation so far as jurisdiction was concerned, was not proper. According to the defendants the valuation for the purpose of jurisdiction should be similar to that of the valuation for the purposes of the court fee stamp. In para-4 of the report, the Court specifically recorded that the State Government did not make Rules for the purpose of determining the value of land for the purpose of jurisdiction. The decision relied upon by Mr. Anturkar was rendered on

16.1.1970 and the Rules came into effect w.e.f. 1.1.1984. In view thereof, reliance placed by Mr. Anturkar on **Shantabai's** case does not advance the case of defendant Nos.1 and 2.

14. In the light of aforesaid discussion, I do not find that the learned trial Judge has committed any error in passing the impugned order. Hence, the Petition fails and the same is dismissed.

(R. G. KETKAR, J.)

Deshmane (PS)