

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

CIVIL REVISION APPLICATION NO. 464 OF 2015

Shri Kumar Ratanchand Makhija ..Applicant

Vs

Shri Girish Kumar Makhija .. Respondent

Mr. Anand D. Bhatia, Advocate for Applicant.

**CORAM : R.G.KETKAR,J.
DATE : 27/04/2016**

PC:

1. Heard Mr.Anand D.Bhatia, learned counsel for the applicant at length.
2. By this Petition under Section 115 of C.P.C, the applicant, hereinafter referred to as 'defendant', has challenged the Judgment and order dated 7.4.2015 passed by learned 4th Jt. Civil Judge, Jr. Dn., Ulhasnagar below Exhibit 1 in Regular Civil Suit No.276 of 2014. By that order the learned trial Judge held that it has pecuniary jurisdiction to entertain and try the suit and parties are directed to proceed with the suit in accordance with law.
3. Respondent, hereinafter referred to as 'plaintiff', has instituted suit, inter alia, praying for partition and separate possession of half share in flat admeasuring 542 sq.ft (Built Up Area) situate on 4th floor of Sai Atamaram Apartment, situate in Camp No. 5, Ward No.56, Ulhasnagar, (for short, 'suit premises'),

among other prayers. In the plaint, the plaintiff asserted that the plaintiff and defendant have purchased the suit premises from income of the joint family on 11.7.1991 from M/s Deepa Construction for Rs. 1,42,500/-. In paragraph 14 of the plaint, the plaintiff has valued the suit under section 6(vii) of the Maharashtra Court Fees Act (for short, 'Act') and accordingly paid court fees.

4. Defendant filed application under section 9-A of C.P.C., inter alia, contending that the market value of the suit premises is about 14 lacs. The plaintiff has not properly valued the suit for the jurisdiction purpose as per the market value. The plaintiff has valued the suit as per the value of the suit premises as of 1991. If the present market value of the suit premises is taken into consideration, the Court of Civil Judge, Jr. Dn., will have no pecuniary jurisdiction to entertain and try the suit. By order dated 2.12.2014, the learned trial Judge framed preliminary issues as to whether the suit is properly valued for the jurisdiction purpose and whether the Court of Civil Judge, Jr. Dn., has pecuniary jurisdiction to entertain and try the suit. The parties led evidence on these preliminary issues. After considering the evidence on record, the learned trial Judge overruled the objection raised by the defendant and held that the Court of Civil Judge, Jr. Dn., has pecuniary jurisdiction to entertain

and try the suit. It is against this order, the defendant has instituted the present Application under section 115 of C.P.C.

5. In support of this Application, Mr. Bhatia submitted that the plaintiff was cross examined on 17.3.2015. During the course of cross examination, the plaintiff gave categorical admissions to the following effect. :

“(a) It is true to say that I have not valued the suit property as per current market value;

(b) I am unable to say about the current market value of the suit property; and

(c) It is true to say that being unaware of the current market value of the suit property, I have not valued the suit property in consonance with the authority (meaning jurisdiction) of the Court.”

6. Relying upon these admissions, Mr. Bhatia submitted that the plaintiff admitted that he has not valued the suit premises as per the current market value. He further admitted that as he is not aware of the current market value of the suit premises, he has not valued the suit premises in consonance with the authority (meaning jurisdiction) of the Court. He submitted that the plaintiff clearly admitted that he did not value the suit premises as per pecuniary jurisdiction of the trial Court. He also relied upon Rule 2 of the Maharashtra Suits Valuation (Determination of Value of Land For Jurisdictional Purposes) Rules, 1983 (for short, 'Rules') to contend that as the plaintiff has

instituted suit for possession of the suit premises, for the purposes of jurisdiction, the value of the property, namely, house property is according to market value of the house. As the present market value of the suit premises is more than 14 lacs, the Court of Civil Judge, Jr. Dn., has no pecuniary jurisdiction.

7. I have considered the submissions advanced by Mr. Bhatia. I have also perused the material on record. As noted earlier, the plaintiff has instituted suit for partition and separate possession of his half share. He has valued the suit under section 6(vii) of the Act.

Section 6(vii) reads thus:

“(vii) In suits 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 ;

Explanation.— For the purposes of this paragraph, if the property in which a share is claimed consists of or includes any land assessed to land revenue for the purpose of agriculture, the value of such land shall be deemed to be the value as determined under paragraph (v) of this section;”

8. Perusal of Section 6(vii) shows that in a 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, suit has to value according to the **value of the share** in respect

of which suit is instituted. In other words, this Section does not require valuation to be made according to the market value of the share in respect of which the suit is instituted.

9. Mr. Bhatia relied upon Rule 2 of the Rules. Rule 2 which to the extent is relevant to the present controversy, 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, for the purpose 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.”

Perusal of Rule 2, extracted herein above, shows that in suits for the possession of land, houses and gardens mentioned in paragraph (v) in Section 6 of the Act, for the purposes of jurisdiction, the value of the house property shall be according to the market value. In the present case, the plaintiff has rightly valued the suit under section 6(vii) of the Act. In my opinion, Rule 2 of the Rules is not applicable to the facts of the present

case. Hence, no case is made out for invocation of powers under section 115 of C.P.C. Application fails and the same is dismissed.

10. Mr. Bhatia submits that the learned trial Judge may be directed to dispose of suit in a time bound manner on the ground that the defendant is a senior citizen. In view thereof, liberty is reserved to the defendant to make application before the trial Court for expeditious disposal of the suit. While deciding such application, the learned trial Judge will keep in mind the fact that the suit is between father and son and the defendant is a senior citizen and pass appropriate order. Order accordingly.

(R.G.KETKAR, J.)