

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL REVISION APPLICATION NO. 567/2015

Mohammedali Abbas Kazi & Ors.

... Applicants

V/s.

Mukesh Jagjivandas Upadhyaya (HUF) & Anr.

... Respondents

Mr. K. K. Malpathak for the Applicants

Mr. Sagar A. Rane for the Respondents

CORAM: K.K. TATED, J.

DATED : AUGUST 10, 2016

PC. :

1. Heard the learned counsel for the parties. By this Civil Revision Application defendant No.1 to 3 challenge the order dated 06.04.2015 passed by the learned 4th Jt. Civil Judge, Junior Division, Vashi, new Mumbai, below exhibit 1 in Regular Civil Suit No. 609/2012 holding that it has jurisdiction to entertain and try the suit filed by the respondent plaintiff.

2. In the present proceedings the respondent plaintiff filed Regular Civil Suit No. 609/2012 before the Civil Judge, Junior Division, Thane for declaration and injunction with following prayers:

“a. it be held and declared that agreement for sale dated 20.05.2006 and deed of conveyance dated 06.10.2006 duly registered in the office of Sub Registrar of Assurances, Thane at Sr.No.5207/2011 dated 21.06.2011 are subsisting, valid and binding on the defendants.

b. *it be held and declared that the defendants have no right, title and interest over the suit property and hence the defendants have no right to put their lock on the iron gate of the entrance of the suit property and to disturb the development activities of the plaintiff in the suit property.*

c. *it be held and declared that the act of the defendants of putting their lock on the iron gate of the entrance of the suit property and to disturb the development activities of the plaintiff in the suit property is illegal, invalid and highhanded.*

d. *The defendants be directed to remove their own lock put by them on the iron gate of the entrance of the suit property own by the plaintiff and not to disturb the development activities of the plaintiff to be carried out by the plaintiff on the suit property.*

e. *The defendants their agents, servants and any persons claiming through or under them be permanently restrained by an order of permanent and mandatory injunction from disturbing the development activities of the plaintiff in the suit property under the garb or colours whatsoever.*

f. *pending the hearing and final disposal of the suit the defendants, their agents, servants and any persons claiming through or under them be temporarily restrained by an order of temporary injunction from disturbing the development activities of the plaintiff in the suit property under the garb or colours whatsoever.*

g. *ad-interim reliefs in terms of prayer clause (e) and (f) above be granted.*

h. *such further and other reliefs as to the nature and circumstances of the case requires to the Hon'ble Court may deem fit to grant, be granted.*

AND

i. *cost of the suit be awarded to the plaintiff from the defendants.*

3. It is the case of the plaintiff that the plaintiff shown their readiness and willingness to purchase and the defendant Nos.1 to 4 along with Smt. Ayeshabibee Abbas Babasaheb Kazi agreed to transfer redevelopment rights to develop the suit property i.e. the plot of land bearing Plot No.416A, Hissa No.15 admeasuring 1300 sq.mtrs. situate, lying and being at Shahbaz, Belapur, Navi Mumbai, Taluka and Dist. Thane for the monetary consideration of Rs.22,00,000/- and 30% of the total constructed area of the suit property, free of cost in form of flats. Accordingly, the development agreement was executed between the parties on 26th July 1997 and duly registered.

4. As per the terms and conditions of the development agreement dated 26.07.1997, the owner handed over the possession of the suit premises. Clause 14 of the said development agreement reads thus:

“14. On the execution of this agreement i.e. today on 26th July 1997 the owners have handed over exclusive possession of the said property to the developers for enabling them to develop the said property subject to the conditions set out hereinabove.”

Thereafter, the plaintiff purchased the suit property by registered sale deed dated 20.05.2006 and conveyance dated 06.10.2006.

5. It is the case of the plaintiff that he started redevelopment of the suit property. He also pleaded in the plaint that the plaintiff constructed temporary shed for their staff and thereafter the applicant defendant started disturbing their possession. Hence, the plaintiff filed suit for declaration that the sale deed as well as the conveyance is binding on the defendants and for other relief.

6. The plaintiff valued the suit for declaration and injunction for Rs.2000/- and paid court fees of Rs.400/-. Clause 27 of the plaint reads thus;

“27. The suit for declaration and injunction is valued at Rs.2000/- and the requisite Court Fees Stamp of Rs.400/- is affixed to the plaint.”

7. The applicant defendant filed the application dated 30.04.2012 under section 9A of the Code of Civil Procedure, 1908 for framing a preliminary issue about jurisdiction of the trial court to entertain the suit and for payment of court fees as per section 6(iv)(d) of the Maharashtra Court Fees Act, 1959 (said Act). On the basis of defendant's application, the trial court, by order dated 20.02.2013 framed preliminary issue about jurisdiction which reads *“Whether this court is having jurisdiction to try and entertain the present suit?”* The trial court answered the said issue in the affirmative in favour of the plaintiff by impugned order dated 06.04.2015. Hence, the Writ Petition.

8. The learned counsel for the applicant defendant submits that the trial court erred in coming to the conclusion that it has jurisdiction to entertain and try the suit filed by the plaintiff. He submits that admittedly, the sale deed and the conveyance in respect of the suit property was for Rs.72 lacs. He further submits that according to the plaintiff, the valuation of the suit property was Rs.2,15,80,000/-. He submits that the trial court ought to have directed the plaintiff to pay court fees on that amount. He further submits that if the valuation of the suit property is taken into consideration, then the court below has no jurisdiction to entertain the suit. He submits that in the present

proceedings the plaintiff claimed declaration that the sale deed as well as the conveyance deed is binding on the respondent plaintiff and therefore they ought to have paid the court fees as per section 6(iv)(d) of the said Act. He further submits that the plaintiff, by prayer clause (d) of the plaint is seeking possession of the suit property. Whenever the possession is claimed, the plaintiff has to pay court fees u/s.6(iv)(d) of the said Act. In support of this contention, he relies on the judgment of this court in **G. V. Iyengar and Anr. Vs. A. R. Sampathkumar and Ors. 2008(3) Mh.L.J. 621**, paragraph 10 reads thus:

“10. Admittedly, in the present case, the suit pertains to the right to possess a bungalow situated within Mumbai City. It is impossible to believe that the bungalow is not susceptible of monetary evaluation. If the contention of the plaintiff would be that the defendants, without any legal right or title, were interfering in his possession or that they wanted to dispossess him without following procedure of law, it could be said that the claim in the suit is not susceptible of monetary evaluation. However, in the present case, the plaintiff seeks declaration that he is entitled to possess suit house as a legal heir of the original owner Dr. Gopal Ayengar. With this declaration, he also seeks certain consequential reliefs in the nature perpetual injunction, etc. Section 6 (iv)(d) does not provide for suit for declaration in respect of ownership only. It deals with the declaration of different types of claims and rights in respect of immovable property and in the present case, the plaintiff claims the legal right to possess the immovable property as an heir of the original owner and therefore, the case must fall under Clause (d). Because he is seeking declaration with consequential reliefs, he will be required to pay half of the ad valorem fee. It is impossible to believe that such a claim is not susceptible of monetary evaluation. Clause (j) would be applicable only if the dispute is not susceptible to monetary evaluation and also if otherwise there is no provision for payment of Court fee in respect of such dispute. As the dispute in the present case is susceptible of monetary evaluation and it is also specifically provided for in Clause (d) of Section 6 (iv), it must be held that Section 6(iv)(j) has no application and the suit has to be

valued for the purpose of court fee under Section 6(iv)(d). Naturally the valuation for the Court fee and the valuation for pecuniary jurisdiction will be same. I refrain myself from entering into the question as to what is the value of the property because that question has not been addressed to by the trial Court. Naturally, the trial Court will have to enter into an enquiry as to the valuation of the suit as provided in Sections 8 to 14 of the Bombay Court-fees Act.”

9. On the basis of this submission and the law declared by this court in **G. V. Iyengar** (supra), the learned counsel for the applicant submits that the impugned order is liable to be set aside holding that the trial court has no jurisdiction to entertain the suit filed by the plaintiff

10. On the other hand, the learned counsel for the respondent plaintiff vehemently opposed the Civil Revision Application. He submits that the trial court has rightly held that it has jurisdiction to entertain the suit filed by the plaintiff. He submits that the plaintiff purchased the suit property by sale deed dated 20.05.2006 and deed of conveyance dated 06.10.2006. He further submits that both these documents were duly stamped and registered with the Authority. He further submits that in development agreement dated 26.07.1997 in clause 14, it was specifically stated that the owner handed over possession of the suit property to the plaintiff on the same day i.e. 26.07.1997. He submits that during the development activities, the applicant defendant put his lock on the main door of the compound and therefore, the plaintiff made prayer clause (d) in the plaint for directing him to remove his lock. He further submits that the plaintiff specifically made averments in the plaint that they are in possession of the suit property. They have started construction activities and also

constructing temporary shed for their staff. He further submits that even the electricity bills stand in the name of the plaintiff. He further submits that till today the plaintiff is paying property taxes of the suit property, though the same stands in the name of the defendant. Therefore, the plaintiff has not claimed possession in the suit. He claimed only injunction restraining the defendant from disturbing their possession and declaration that both the documents i.e. sale deed as well as conveyance deed are binding on the defendants. Therefore, there is no question of payment of court fees as per section 6(iv)(d) of the said Act. He further submits that the plaintiff rightly valued the suit as per section 6(iv)(j) of the said Act. In support of this contention, he relies on the judgment of this court in ***Madhukar Abaji Kalbande & Ors. Vs. Mangalchand Mannalal Agrawal and Ors. 1988 Mh.L.J. 558***, particularly following portion of paragraph 3 of the said judgment :

“.....It will be seen that section 6(iv)(j) is a residuary provision and applies only when the suit does not fall under any other specific provision. Thus, three aspects fall for consideration (i) what is the subject-matter of the suit ? (ii) Is it susceptible of monetary evaluation ? and (iii) is it otherwise provided for in the Act ? The trial Court has held that (i) the suit is about the nature of tenancy in respect of a house, (ii) the said house is susceptible to monetary evaluation ; and hence provisions of section 6(iv)(d) are attracted. In my judgment, there has been an error on the part of the trial Court in not appreciating the real nature of the suit. The suit is not at all about nature of tenancy in respect of a house. The plaintiff had proceeded upon the assumption that he is the tenant qua the said house. He is interested only in clearing a cloud about his right in the property vis-a-vis the defendants inter se. He is neither a party to the sale deed dated 28-12-1981 nor is he interested in setting aside the said transaction. The very limited relief he is interested in is to avoid the affect of that transaction on him. Thus subject matter of the suit is

not the house and the suit is not about the property as such. Declaration sought is neither about ownership in the property nor about nature of tenancy. There is no standard by which the present suit can be valued otherwise than on plaintiffs own valuation. In other words the subject matter is incapable of being valued in terms of money. All that remains to be considered is whether such a suit is otherwise provided for in that Act. Neither section 6(iv)(d) nor any other section is attracted. Thus resort to residuary provision section 6(iv)(j) was rightly taken by the plaintiff and there was no justification whatsoever for the trial Court to direct payment of additional Court-fees.”

11. The learned counsel for the respondent submits that even in the judgment cited by the learned counsel for the petitioner in **G. V. Iyengar** (supra), this court categorically held that if the defendant, without any legal right or title tried to interfere with possession of the plaintiff, in that case, it is not necessary to pay the court fees as per the provisions of section 6(iv)(d) of the said Act. In support of this contention, he relies on the same paragraph No.10 of the judgment in **G. V. Iyengar** (supra), which is relied upon by the learned counsel for the petitioner.

12. On the basis of these submissions and the law declared by this court, the learned counsel for the plaintiff submits that there is no substance in the Civil Revision Application and same be dismissed with costs.

13. Heard both sides at length. In the present proceedings, the plaintiff claimed ownership on the basis of sale deed as well as conveyance. He also claimed protection of his possession on the basis of development agreement dated 26/07/1997. Clause 14 of the development agreement specifically states that the owner handed over

possession of the suit property to the plaintiff on 26.07.1997. The plaintiff in the plaint made averments that he started development activities. He also constructed temporary shed for his staff. The electricity meters stand in the name of the plaintiff. On the basis of these facts, the plaintiff has filed the suit only for declaration that the sale deed as well as the conveyance is valid and binding on the defendant. The plain reading of the plaint shows that the plaintiff is in possession of the suit premises who started development activities. In the plaint, nowhere the plaintiff has claimed possession of the suit premises. Hence, considering the provisions of section 6(iv)(j) of the said Act and the law declared by this court in **G. V. Iyengar** (supra) and **Madhukar Abaji Kalbande** (supra), it is not necessary for the plaintiff in the facts and circumstances of the present case to pay the court fees on the market value of the suit property. These facts were considered by the trial court in the impugned order dated 06.04.2015. The trial court has also considered the fact that in view of provisions of section 6(iv)(j) of the said Act, the plaintiff has rightly valued the plaint and hence it has jurisdiction to entertain the same.

14. Considering these facts and the law declared by this court, I do not find any reason to interfere with the well reasoned order dated 06.04.2015 passed by the learned 4th Jt. Civil Judge, Junior Division, below exhibit 1 in Regular Civil Suit No. 609/2012.

15. Hence, the Civil Revision Application stands dismissed.

16. No order as to costs.

17. Considering the facts and circumstances of the present case, hearing of Regular Civil Suit No. 609/2012 is expedited.

(K.K. TATED, J.)