

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.13804 OF 2016

Deepika Digambar Bhasme ... Petitioner
Vs.
Usha Bhauso Chavan and others ... Respondents

Mr. Rushikesh C. Barge for Petitioner.

CORAM : R. G. KETKAR, J.
DATE : DECEMBER 20, 2016

P.C. :

Heard Mr. Barge, learned Counsel for petitioner at length.

2. By this Petition under Article 227 of the Constitution of India, petitioner has challenged the judgment and order dated 17.12.2014 passed by the learned Joint Civil Judge, Junior Division, Patan below exhibit-23 in Final Decree No.2 of 2009. By that order, the learned trial Judge overruled the objection raised by the petitioner on the ground that executing Court has no pecuniary jurisdiction to entertain and try the final decree proceedings and held that it has jurisdiction to entertain and try the proceedings. Petitioner has also challenged the order dated 10.12.2014 below exhibit-22 passed by the learned trial Judge. By that order, the learned trial Judge rejected the application filed by the petitioner for rejecting the proceedings on the ground that proper Court fee is not paid on the final decree proceedings involving claim of Rs.13,85,300/-.

3. In support of this Petition, Mr. Barge submitted that respondents have filed Final Decree Application No.2 of 2009 claiming mesne profits of Rs.13,85,300/-. As the Court of Civil Judge Junior Division has pecuniary jurisdiction upto Rs.10,00,000/-, the said Court has no pecuniary jurisdiction to entertain and try the application. Petitioner,

therefore, filed application at exhibit-23 for determining this issue. Petitioner also filed application at exhibit-22 on the ground that respondents have not paid Court fees on the claim of Rs.13,85,300/-. He submitted that the Courts below committed error in dismissing both the applications.

4. As far as application exhibit-22 is concerned, that was rejected on the ground that respondents have claimed recovery of mesne profits and at this stage, they are not liable to pay Court fee on the amount mentioned in their application. Having regard to the fact that under Order 20, Rule 12 of C.P.C., the Court has to hold enquiry into the mesne profits, I do not find that the learned trial Judge has committed any error in rejecting the application exhibit-22, more so when respondents have expressed their willingness to pay the Court fee on the amount determined by the Court.

5. As far as the order below exhibit-23 is concerned, the learned trial Judge has referred to the decision of the Calcutta High Court in **Jogneswar Chatterjee vs. Surendranath Chatterjee**, AIR 1924 Calcutta 167 as also Full Bench decision in the case of **Bidyadhar Bachar Vs. Manindra Nath Das**, AIR 1925 Calcutta 1076. The decision of the Full Bench of Calcutta High Court is followed by the learned Single Judge of this Court in the case of **Dr. Vishwanath Raghuvir Sinai Edo Vs. Ashok Dattatray Dande**, 2000 (4) Bom.C.R. 734. The learned Single Judge, in paragraph 9, has observed thus,

“9. ... The Full Bench of Calcutta High Court has clearly laid down in the case of (Bidyadhar Bachar and others v. Mahindra Nath Das and others) AIR 1925 Calcutta 1076 that where a Judge has in the proper exercise of his jurisdiction passed a decree for possession and also a preliminary decree for mesne profits, he must be held to have jurisdiction to make a final decree in accordance with his decision. This jurisdiction is not limited. It, as a result of the inquiry directed by him, the mesne profits are

found to exceed the amount of value of the suit, the suit is rightly entertained as within the jurisdiction of the Judge and a decree is passed, his power to grant the proper and adequate relief is not affected by any event which increases the value of the relief during the pendency of the suit. ...”

6. In view thereof, I do not find that the learned trial Judge has committed any error in rejecting application exhibit-23. Hence, Petition fails and the same is dismissed.

(R. G. KETKAR, J.)

Minal Parab