IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 1112 OF 2015
WITH
CIVIL APPLICATION NO. 3384 OF 2015
IN
FIRST APPEAL NO. 1112 OF 2015

Abdul Rahman s/o. Abdul Aziz Fitwalla & Ors. ...Appellants

Versus

Mohammed Islam Abdul Salam Qureshi & Ors. ...Respondents

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Mr.M.A.Adenwala for the Appellants.
Mr.Mohanish Chaudhari for Respondent No.1.

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CORAM: MRS.MRIDULA BHATKAR, J.
DATED: NOVEMBER 15, 2017

P.C. :

1. By consent of the parties, the First Appeal is heard finally and decided at the stage of admission.

2. This First Appeal is directed against the order dated 21.02.2015 passed by the learned Judge, City Civil Court, Gr. Bombay, in Short Cause Suit No. 1375 of 2013. The Suit was filed for declaration that the four registered sale deeds executed by original defendant nos. 2 to 4 and 6 in favour of defendant no.1 in respect of their undivided share in the suit property are null and void, illegal, invalid, bad in law and not

binding on the appellant/plaintiff and also consequential relief of permanent injunction restraining the defendants from acting upon the same or taking any benefits on the basis of the same.

3. It is the case of the appellant/plaintiff that he owns 2/9th undivided share in the common ancestor property of the plaintiff and defendant nos. 2 to 6. Defendant no.1 has raised preliminary objection on the ground of pecuniary jurisdiction of the City Civil Court, Gr. Bombay, as the Suit is valued beyond the pecuniary jurisdiction of the City Civil court. At present, the City Civil Court, Mumbai, is having a pecuniary jurisdiction upto Rs. 1 Crore. As per four agreements, the suit property is valued at Rs. 4,67,16,000/- and, therefore, the City Civil Court, Mumbai, cannot entertain and try the suit. The trial Court has accepted the objection raised by defendant no. 1 and rejected the plaint under Order 7 Rule 11 of the Code of Civil Procedure, 1908.

4. Learned counsel for the appellant/plaintiff has submitted that the suit cannot be valued for Rs. 4,67,16,000/-, but the amount of consideration mentioned in the agreements should have been taken into account to decide the valuation of the Suit and for which the plaintiff is liable to pay the Court Fees under under the Bombay Court Fees Act, 1959. In support of his submission, he relied on the **judgment and**

order dated 29.07.2010 passed by the learned Single Judge of Bombay High Court, Nagpur Bench in Writ Petition No. 4870 of 2009 (Sau.Asha Sopan Maithane Versus Ramkrushna Punjaji Wanare & Ors.). He has further submitted that in the said judgment, the learned Single Judge has held that the word “market value” is not used under Section 6 (iv)(ha) of the Bombay Court Fees Act, 1959 (hereinafter referred to as “the said Act”) under which the valuation of the suit for declaration is to be made, but it has only used the words “value of the property”. He has further submitted that in order to decide the value of the property, as per the said judgment, the value is to be decided on the basis of consideration mentioned in the agreements. He has further submitted that in the present case, the consideration of four agreements is mentioned as Rs.50,000 + 1 flat or two flats. Thus, the amount of consideration is the market price of the flat. However, those flats as on today do not exist, but defendant no.1 has agreed to construct those flats for the defendants/co-sharers and, therefore, the value of the suit property for which the respective agreements are executed is only Rs. 50,000/-. He has made an alternate statement that at the most, the value of the flat can be ascertained on the basis of the ready reckoner. If such yardstick is applied, then the value of one flat will be approximately Rs. 35 lakhs. The market rates which are mentioned in

Index- II and on which the stamp duty paid by a party is not a correct consideration mentioned in the agreements. He has further submitted that the market value shown in Index-II of four agreements is not a correct value of the flats, but this is the value for stamp duty. These are tenanted premises and, therefore, the value of the flats should be calculated 150 times of the rentable value. Assuming the valuation of the Suit goes beyond the pecuniary jurisdiction of the City Civil Court, then the plaintiff be allowed to file four separate suits either in the City Civil Court or in the High Court as per their independent valuation. He has further argued that the plaint should not have been rejected, but it should have been returned to the plaintiff for proper presentation before the appropriate Court.

5. Per contra, learned counsel for respondent no.1/defendant no.1, who is original contesting party, supported the order passed by the trial Court and has argued that the ratio laid down in the **judgment dated 19.12.2011 passed by the learned Single Judge of Bombay High Court in Appeal from Order No. 978 of 2011** (M/s. Nandanvan Co-operative Housing Society Ltd V/s. Nandanvan Co-operative Housing Society Ltd) is squarely applicable to the present case. He has submitted that in four agreements, the value of the property is Rs. 85,00,000/-,

Rs. 77,86,000/- Rs. 1,45,60,500 and Rs. 73,48,000/- respectively. He relied on the agreements and Index No.II and pointed out that the stamp duty was paid accordingly by the purchaser and this is to be taken as a correct value of the property in each agreement. He has further submitted that the Suit is filed for declaration of four agreements and, therefore, the Suit is to be properly valued under Section 6 (iv) (ha) and not under Section 6 (iv) (j) of the Bombay Court Fees Act.

6. This is not a suit for specific performance, but it is a suit for injunction and declaration that four registered sale deeds are to be declared bad in law, illegal and not binding on the plaintiff. Though, the plaintiff is not a party to the suit, however, he can ask such declaration being co-sharer in undivided property. The transactions between defendant no.1 and other defendants are illegal and, therefore, the registered sale deeds are to be treated bad in law and not binding on him and, therefore, the suit is not to be valued under Section 6 (iv) (j), but it is to be valued under Section 6 (iv) (ha) of the Bombay Court Fees Act.

7. In the case of ***Sau.Asha Sopan Maithane*** *(supra),* the learned Single Judge of this Court has distinguished the term 'value' and 'market

value' and further interpreted the word 'value' contemplated under Section 6 of the Bombay Court Fees Act.

8. If the consideration amount is specifically mentioned in the agreement that is to be treated as value and accordingly, the suit is to be valued. However, if amount of consideration is not mentioned in the agreement, then the ratio laid down in ***M/s. Nandanvan Co-operative Housing Society Ltd***. *(supra)* is helpful. In the said case, the value of the suit property in the said documents was not mentioned thus the transaction was without monetary consideration. Section 6 (iv) (ha) of the Bombay Court Fees Act refers to the value of the property. It was held that if the Court finds consideration or valuation of the property as unreasonable and the plaint has been demonstratively undervalued, the Court can examine the valuation and revise the same. In the present case, the consideration of four agreements is mentioned as Rs.50,000 + 1 flat or two flats. The amount of one or two flats is not specifically mentioned in the agreements. However, at the time of execution of agreements of sale, defendant no.1 has paid the stamp duty on the basis of the market value of the suit flat. In all cases, the 'market value' is not synonym for 'value' under the Court Fees Act. Thus, the value in terms of either the market value or the stamp duty is to be paid thereon.

9. In the present case, four different amounts are mentioned in the agreements as the market value of the suit property i.e. Rs. 85,00,000/-, Rs. 77,86,000/- Rs. 1,45,60,500/- and Rs. 73,48,000/- respectively. The stamp duty was paid by defendant no.1. The plaintiff filed one composite suit for declaration of all the agreements as null and void and not binding on him. These agreements are of different valuation. Out of these four agreements, three agreements can be entertained by the City Civil Court, Mumbai, as they can be valued within pecuniary jurisdiction of the City Civil Court. However, the value of one property is Rs. 1,45,60,500/-, which is beyond the pecuniary jurisdiction of the City Civil Court. Therefore, the view taken by the trial Court that the suit is undervalued and the plaintiff is required to pay the court fees under section 6 (iv) (ha) and not under section 6 (iv) (j) of the Bombay Court Fees Act is correct. I maintain the order dated 21.02.2015 passed by the learned Judge, City Civil Court, Mumbai with following directions:

(i) The present composite suit of four agreements is under valued and can not be triable by the City Civil Court for want of pecuniary jurisdiction.

(ii) If the plaintiff decides to file four separate suits, then as per pecuniary jurisdiction of the City Civil Court, the Suits can be entertained.

(iii) The plaintiff has not corrected the valuation when it was objected and therefore, the order of rejection of the plaint under Order 7 Rule 11 of C.P.C. is correct.

10. With this, First Appeal is disposed of accordingly.

11. In view of disposal of the First Appeal, nothing survives in the Civil Application and the same also stands disposed of.

(MRIDULA BHATKAR, J.)