

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO.149 OF 2017

Mark J. Gomes	 Applicant
V/s.	
Eric D'Aguiar & Ors.	 Respondents

Mr. Jayesh Bhatt for the Applicant.

Mr. Clive D'Souza for the Respondents.

CORAM : DR. SHALINI PHANSALKAR-JOSHI, J.

DATE : 2ND APRIL 2018.

P.C. :

1. Heard Mr. Bhatt, learned counsel for the Applicant, and Mr. D'Souza, learned counsel for the Respondents.

2. By this Revision Application, filed under Section 115 of the Code of Civil Procedure, 1908, the Applicant is challenging the order dated 11th November 2016 passed by the learned Judge of the City Civil Court, Dindoshi, Mumbai, in Suit No.523 of 2014.

3. By the impugned order, the Trial Court has overruled the two objections raised to the maintainability of the Suit. The first objection was, '*whether the Suit is barred by limitation?*' and the second objection

was, *'whether the Trial Court has pecuniary jurisdiction to entertain the Suit?'*.

4. As regards the bar of limitation to the Suit, admittedly, the Suit is for partition and there is nothing on record to show that the request for partition was made and it was specifically refused, so as to start the period of limitation. In absence thereof, the Trial Court has rightly held that the Suit is filed within limitation.

5. As regards the pecuniary jurisdiction of the Trial Court, Respondent No.1 has valued the Suit on the basis of his 6.25% share in the joint family property. In paragraph No.34 of the plaint, Respondent No.1 has stated that, he has valued the claim, under Section 6(vii) of the Maharashtra Court Fees Act, in respect of his share in the suit property, which on a notional value, as per the 'Ready Reckoner', comes to Rs.83,67,565/-, and paid the Court Fees of Rs.1,12,830/-.

6. The submission of learned counsel for the Applicant is that, if 6.25% of the share of Respondent No.1 comes to Rs.83,67,565/-, then, it goes without saying that, the total valuation of the suit property being above Rs.1 Crore, the City Civil Court, Bombay, cannot have pecuniary jurisdiction to entertain the Suit.

7. However, the provisions of Section 6(vii) of the Maharashtra Court Fees Act clearly provide that, when it is a Suit for partition and separate possession of a share in the joint family property, then, the Plaintiff has to value the claim on the value of his share in the joint family property. Thus, the valuation has to be made on the share of Respondent No.1 in the suit property and accordingly he has valued the suit claim on the amount of Rs.83,67,565/-. It is not shown that the notional valuation of the share of Respondent No.1 in the suit property is beyond or more than that. In such situation, the Trial Court has rightly held that, as the Suit pertains to the partition and Respondent No.1 has valued the suit claim on the basis of his share, both the objections raised to the maintainability of the Suit are rightly rejected by the Trial Court. Hence, no interference is warranted in the impugned Judgment and Order of the Trial Court.

8. Revision Application, therefore, stands dismissed.

[DR. SHALINI PHANSALKAR-JOSHI, J.]