

Vidya Amin

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO. 412 OF 2014

Minimax Horticultural Pvt.Ltd. ... Applicant
Vs.
Devidas Jaisingh Jadhav & Ors. ... Respondents

Mr. Pradeep J. Thorat, Advocate for the applicant.
Mr. Sandip D. Shinde, Advocate for respondent nos. 1 to 5, 9 to 11.
Mr. Rahul D. Motkari, Advocate for respondent nos. 6 and 7.

CORAM : **MRS.MRIDULA BHATKAR, J.**
RESERVED ON : **30th July, 2018.**
PRONOUNCED ON : **31st August, 2018**

ORDER:

By consent, the Civil Revision Application is heard and decided finally at the stage of admission. Necessary record is provided by the parties to decide this Civil Revision Application.

2. In this Civil Revision Application, the order dated 3rd March, 2014 passed by the 9th Civil Judge Junior Division, Nashik below Exhibit 23 in Regular Civil Suit No. 715 of 2012 is challenged. The applicant-company/defendant no. 3 has filed an Application under Order 7 Rule 11 of the Code of Civil Procedure for rejection of the plaint on the ground that the suit is under valued and deficit Court fee is paid. Respondent nos. 1 to 5/original plaintiffs are the land owners

of the land, who filed a suit for partition and cancellation of sale deed dated 6th January, 1998 between original defendant nos. 3 & 4 and defendant nos. 5, 6 and 7, so also sale deed dated 14th October, 1998 between defendant nos. 3 & 4 and defendant nos. 1 and 2 and also sought declaration. Respondent nos. 1 to 5 claim their right in the ancestral property which is suit property. Defendant nos. 5 and 7 are the plaintiff's father and uncle and defendant no. 6 is plaintiff's grandmother. These defendants have entered into the sale deeds with defendant nos. 3 and 4 initially and then defendant nos. 3 and 4 have entered into sale deed with defendant nos. 1 and 2. The suit was valued as per the consideration amount mentioned in the first sale deed dated 6th January, 1998.

3. The learned counsel for the applicant has submitted that the valuation of the suit as per Section 6(iv)(ha) is not correct but it should have been valued as per Article 7 of Schedule I. In support of his submissions, the learned counsel relied on the following judgments:

- (i) Judgment of Division Bench of this Court in *Gulam Mohamed Mohamed Yunus vs. Lalchand Chelaran*, reported in 1976 0 AIR (Bom) 389.

- (ii) Judgment of Hon'ble Supreme Court in *Shamsher Singh vs. Rajinder Prashad*, reported in (1973) 2 SCC 524.
- (iii) Judgment of Single Judge of this Court in *Mohan Meakin Breweries Ltd. vs. Oceanic Imports and Exports Corporation and Anr.*, reported in 1980 BCI 97.
- (iv) Judgment of Single Judge of this Court in *M/s. Gilda Finance & Investment Ltd. vs. M/s. Natenco Wind Power Pvt. Ltd. & Ors.*, in Writ Petition No. 7461 of 2008 decided on 14th November, 2008.

4. The learned counsel for the respondents submitted that the view taken by the learned trial Court is correct. In support of his submission, the learned counsel relied on the following judgments:

- (i) Judgment of Single Judge of this Court in *Ravindra Narayan Rajarshi & Ors. vs. Rohini Ganpatrao Heblkar*, reported in (2017) 0 Supreme (Mah) 1055.
- (ii) Judgment of Single Judge of this Court in *Bhagwan Gundu Mohite vs. Janabai Bhagwan Mohite & Anr.*, in Writ Petition No. 6705 of 2013 decided on 15th April, 2016

5. In order to ascertain the proper value and payment of sufficient stamp, the Court has to look into the nature and the subject matter of the suit, so also the relief claimed. The suit is for partition and cancellation of sale deed. There is no question of preventing any monetary loss or gain. Under section 6 of the Court Fees Act, certain suits are mentioned and the computation of the fees payable in those suits is especially stated. Schedule I is regarding *ad-valorem* Court fees, how it is counted in which Article 7 is mentioned which cannot be attracted to the present suit. In the present suit, the respondent nos. 1 to 5/plaintiffs claim their share in joint family property and also sought declaration of the cancellation of sale deed and thus they have rightly valued the suit under section 6(iv)(ha). Similarly, the fee for injunction and declaration is also paid and thus, total fees of Rs. 7,415/- is paid.

6. In the case of ***Gulam Mohamed Mohamed Yunus*** (*supra*), the suit was not only regarding the mortgage deed but the transaction was also based on Will and some of the interest could be transferred to the first defendant and which he could validly put up the suit property for auction and so Article 7 of the First Schedule of Court Fees Act, 1959 was attracted.

Section 6(iv)(j) is applicable when the subject matter in dispute is not susceptible of monetary evaluation. Article 7 refers to obtaining of substantive relief capable of being valued in terms of monetary gain or prevention of monetary loss. Thus, under Section 6(iv)(j) the Court needs to verify the subject matter of the suit, however, under Article 7 the Court needs to look into the nature of the substantive relief if claimed by the plaintiff after going through the recitals of the plaint.

7. In the case of ***Mohan Meakin Breweries Ltd.*** (*supra*), it was in respect of the amounts which were due under two bank guarantees. This Court held that it is not falling under section 6(iv)(j) as it cannot be considered as not susceptible to monetary evaluation. It was held that the suit was to be valued under Item 7 of Schedule I of the Act.

8. In the case of ***M/s. Gilda Finance & Investment Ltd.*** (*supra*), injunction was sought restraining the defendants from enforcing the bank guarantee till the plaintiffs rights are settled in respect of Memorandum of Understanding. Thus, it was held that dispute was relating to prevention of monetary loss and so it was covered under Article 7.

9. The ratio laid down in the cases relied by the learned counsel for the applicant are not useful to the applicant in view of the nature of suit and the relief claimed by the present applicant. On the contrary, subject matter of the present suit is covered under the ratio laid down in the cases of ***Ravindra Narayan Rajarshi & Ors. vs. Rohini Ganpatrao Heblikar (supra)*** and ***Bhagwan Gundu Mohite vs. Janabai Bhagwan Mohite & Anr. (supra)***. In view of this, the order passed by the learned trial Judge cannot be faulted with, as it is correct and legal. No interference is required in the order of the learned trial Judge. Hence, Civil Revision Application is dismissed.

(MRIDULA BHATKAR, J.)

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