

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.1371 of 2019
WITH
INTERIM APPLICATION NO.1202 OF 2021

Rashmi VasANJI Thakkar	...Applicant
<i>In the matter of</i>	
Nirmalaben VasANJI Thakkar (since deceased through LRs)	...Appellants
vs.	
Indian Oil Corporation Limited	...Respondent

Mr. Aakash Rebellow a/w. Mr. Vachan Bodke, Ms. Namita Shinde, Ms. Swati Kalatme and Ms. Pinki Sharma and Mr. Tushar Nagvekar i/b. V and M Legal, for the Appellants.

Mr. Sunil Gangan a/w. Mr. S.M. Seegarla i/b.RMG Law Associates, for Respondent No. 1.

CORAM : N. J. JAMADAR, J.

DATE : OCTOBER 05, 2021

P.C.:

. This appeal is directed against the common order in S.C.Suit No. 7842 of 2000 and Notice of Motion No. 2242 of 2019 taken out in the said suit, by the appellant/plaintiff whereby the learned Judge, City Civil and Sessions Court, Mumbai was persuaded to answer the issue of jurisdiction against the plaintiff and reject the plaint. Notice of Motion No. 2242 of 2019 taken out by the plaintiff seeking return of the plaint for presentation to the proper Court, was also dismissed.

2. This appeal arises in the backdrop of the following facts:

a] The predecessor in title of the plaintiff instituted a suit against the defedant/Corporation seeking a direction against the defendant and the persons claiming through the defendant to hand over the vacant, peaceful possession together with structure standing thereon i.e. non agricultural land, situated at Village Bhalgam, Tal. Wankaner, Dist.Rajkot bearing Survey No. 23 admeasuring 36 gunthas discribed in Exhibit B and Y annexed to the plaint. The compensation in the sum of Rs. 10,000/- or such other sum as deemed appropriate by the Court was also sought from the Corporation for withholding the plaintiff's suit premises.

b] It seems that on 18th January, 2000 the plaintiff sought leave under clause XII of the Letters Patent and the leave as prayed for came to be granted.

c] Eventually the suit came to be transferred to Civil Civil Court, Greater Bombay under provision of sections 4 and 6 of the Bombay City Civil Court (Amendment) Act, 2012 read with Government Notification No. CCS.2911/CR58/D.19 dated 28th August, 2012.

d] Before the City Civil Court, it seems, an issue of jurisdiction of the said Court to entertain, try and adjudicate the suit was raised. By an order dated 20th February, 2015 the City Civil Court framed the following issue of jurisdiction, which was directed to be tried as

a preliminary issue:

Suit property being situate at Thikriali, Taluka Wankaner, Dist. Rajkot, whether this Court has jurisdiction to try the suit ?

e] In the meanwhile, the plaintiff/applicant preferred Misc. Civil Application No. 193 of 2018 seeking transfer of the said suit from City Civil Court to High Court. This Court was of the view that since the preliminary issue has already been framed, the City Civil Court shall determine the said issue and thus the M.C.A. No. 193 of 2018 came to be disposed of by an order dated 8th April, 2019, keeping all contentions of the parties open for consideration. The observations in para Nos. 2 to 5 of the said order read as under:

2] The preliminary issue was framed on 20th February, 2015 whereas this application was filed on 21st August, 2015 and since pending before this Court.

3] Having regard to preliminary issue framed, the learned Judge, City Civil Court is requested to decide the preliminary issue in the subject suit No. 784 of 2000 in accordance with law, as expeditiously as possible, and preferably before 28th June, 2019.

4] This Misc. Civil Application is disposed of in the aforesaid terms.

5] All contentions of the parties are kept open.

f] The plaintiff, preferred a Notice of Motion No. 2242 of 2019 seeking return of the plant under Order 7 Rule 10 of the Code to be presented before the proper Court i.e. High Court of Bombay. By the impugned common order the learned Judge was persuaded to answer the issue of jurisdiction in the negative, reject the plaint and

dismiss the Notice of Motion.

g] Being aggrieved by and dissatisfied with the impugned order of rejection of plaint, the plaintiffs are in appeal.

3. I have heard Mr. Aakash Rebellow, learned counsel for the Appellants and Mr. Sunil Gangan, learned counsel, for Respondent No. 1/defendant.

4. Mr. Rebellow, would urge that the learned Judge, City Civil Court committed a manifest error in rejecting the plaint when the plaintiff had sought an order for return of the plaint for presentation to the proper Court. It was submitted that the learned Judge lost sight of the fact that the suit came to be transferred pursuant to the general order consequent to amendments in Bombay City Civil Court Act, whereby the pecuniary jurisdiction of the Bombay City Civil Court came to be enhanced. Since the plaintiff had obtained the leave under clause XII of the Letters Patent, the suit could not have been rejected on the count that the subject matter of the suit was situated beyond the local limits of the jurisdiction of the City Civil Court.

5. As against this, Mr. Gangan, the learned counsel for the

respondent would submit that in the case at hand, admittedly, the suit property is situated at Village Bhalgam, Tal. Wankaner, Dist.Rajkot. A suit in respect of the said property thus could not have been entertained by this Court. In the backdrop of the nature of the pleadings and relief claimed in the suit, according to Mr. Gangan, the leave under clause XII could not have been granted. Therefore, according to Mr. Gangan, there is no infirmity in the impugned order.

6. I have given my anxious consideration to the submissions advanced across the bar. Indisputably, the suit was initially instituted in this Court on 18th January, 2000 seeking direction to the defendant/Corporation to handover the vacant and peaceful possession of the suit premises situated at Village Bhalgam, Tal. Wankaner, Dist.Rajkot. It is incontrovertible that this Court had granted leave under clause XII of the Letters Patent. It is incontestible that the suit subsequently came to be transferred to Bombay City Civil Court.

7. It is trite that once the suit came to be transferred to City Civil Court, the jurisdiction of the said Court would be regulated by the provisions contained in Code of Civil Procedure, 1973 especially

section 17. The grant of leave under clause XII of the Letters Patent would not have thus inured to the benefit of the plaintiff before the City Civil Court.

8. Faced with the aforesaid difficulty, it seems, the plaintiff made effort to get the said suit transferred, firstly, by filing M.A.No. 193 of 2018 which came to be disposed of by an order dated 8th April, 2019, extracted above, and, secondly, by filing Notice of Motion No. 2242 of 2019 for the return of the plaint. These developments are thus required to be kept in view, in appreciating the submissions advanced on behalf of the parties.

9. The learned Judge, City Civil Court, while considering the aspect of jurisdiction proceeded on a plain premise that since the property is situated at Dist.Rajkot, Bombay City Civil Court had no jurisdiction to entertain, try and adjudicate the suit and, accordingly, answered the preliminary issue in the negative. The learned Judge, was also of the view that since the relief of transfer of the suit from the file of Bombay City Civil Court to the High Court was not granted by this Court in MCA No. 193 of 2018, the prayer of the plaintiff to return the plaint in Notice of Motion No. 2242 of 2019, cannot be countenanced.

10. I am of the considered view that the predicament in which the plaintiffs/appellants find themselves is not the result of the acts of the plaintiffs. In fact, the predecessor in title of the plaintiffs had obtained the leave of the Court to institute the suit before this Court under clause XII of the Letters Patent. Thereafter, the suit came to be transferred to the City Civil Court as a consequence of the legislative change. In this backdrop, the plaintiffs were involuntary made to submit to the jurisdiction of the Bombay City Civil Court. The fact that subsequently an issue of jurisdiction was raised before Bombay City Civil Court, on account of the fact that the suit property is situated beyond the local limits of the territorial jurisdiction of the Bombay City Civil Court is not of determinative significance. Once, the leave under clause XII of the Letters Patent was granted by this Court, the issue of jurisdiction ought to have been decided with reference to the jurisdiction conferred by the Letters Patent.

11. The submission on behalf of the respondent/defendant that the leave under clause XII of the Letters Patent could not have been granted does not carry the matter any further. The defendant may be justified in agitating the said issue. However, the prayer for revocation of the leave is required to be made before this Court.

12. The matter can be looked at from a slightly different perspective. The plaintiffs are non-suited by the Bombay City Civil Court for want of territorial jurisdiction. At the same time, despite obtaining the leave under clause XII of the Letters Patent, the plaintiff cannot pursue the remedy before this Court as the very same plaint came to be rejected by the City Civil Court.

13. In the aforesaid circumstances, in my considered view, the learned Judge, Bombay City Civil Court was not justified in rejecting the Notice of Motion whereby the plaintiff had sought the return of the plaint for presentation to this Court. Had the plaint been returned and presented before this Court, the plaintiff could have availed the benefit of the leave granted under clause XII of the Letters Patent. It would be difficult to agree with the view of the learned Judge, City Civil Court that since the City Civil Court had no jurisdiction to entertain and try the suit, the said Court could not have returned the plaint.

14. In the light of the aforesaid situation, which appears to be quite anomalous, it would be necessary to set aside the impugned order rejecting the plaint for want of territorial jurisdiction and direct that the suit No. 7842 of 2000 be transferred to this Court. It

would, however, be open for the defendant to raise the issue of grant of leave under clause XII of the Letters Patent and seek revocation of the said leave. Hence, I am persuaded to allow the appeal to this extent. Thus, the following order:

ORDER

- 1] The appeal stands partly allowed.
- 2] The impugned order dated 24th June, 2019 in Suit No. 7842 of 2000 and Notice of Motion No. 2242 of 2019 stands set aside.
- 3] The suit No. 7842 of 2000 stands restored to the file of Judge, Bombay City Civil Court.
- 4] Upon restoration, Suit No. 7842 of 2000 (Original Suit No. 665 of 2000) stands transferred to this Court for disposal in accordance with law.
- 5] Record and proceeding of Suit No. 7842 of 2000 (665 of 2000) be transmitted to this Court within a period of four weeks from the communication of this order.
- 6] The defendant shall be at liberty to raise the issue of grant of leave under clause XII of the Letters Patent and seek revocation thereof, if so advised.
- 7] All contentions of all the parties are kept open for consideration.
- 8] In view of the disposal of the appeal, the interim application No. 1202 of 2021 does not survive and, accordingly, stands disposed of.

(N. J. JAMADAR, J.)