IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 6650 OF 2021

Chetan Krishna Shetty .. Petitioner
Versus
Seema Chetan Shetty and ors .. Respondents

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Mr.Rajesh S. Patil with Ms.Sana Khan for the petitioner in WP 6650/2021.
Dr.Uday Warunjikar i/b Usha S. Tanua for respondent in WP No.6650/21.
Mr.Hemal V. Ganatra for respondent no.2 to 4.

CORAM: BHARATI DANGRE, J.
RESERVED : 15th DECEMBER, 2021
PRONOUNCED: 17th MARCH, 2022

JUDGMENT :-

1 By the present Writ Petition, the petitioner who is the original plaintiff to the Suit is aggrieved by the order passed by the City Civil Court at Mumbai on a Notice of Motion seeking rejection of the plaint under Order 7 Rule 11 of the CPC, pursuant to which a direction came to be issued to the plaintiff to pay deficit Court fee in relation to the claim for both the gift deeds under challenge, failing which it was directed that the plaint shall be rejected.

Being aggrieved by the said order, he filed a Review Petition which is also rejected on 30/8/2021.

2 Rule. Rule made returnable forthwith.

Heard learned counsel Shri Rajesh Patil for the petitioner and Advocate Dr.Uday Warunjikar for respondent no.1 and Advocate Hemal Ganatra for respondent nos.2 to 4.

In the longish facts involved, it would be sufficient to state that the plaintiff was married to defendant no.1. and defendant nos.2, 3 and 4 are the relatives of defendant no.1. The dispute resulting in institution of a Suit by the plaintiff revolve around the troubled relationship, when it is alleged by the plaintiff that he had purchased two flats in Mumbai Suburban, out of which the subject flat was gifted to him by his parents vide gift deed dated 9/4/2008. The plaintiff alleged that this flat came to be fraudulently transferred in favour of defendant no.1, with the active participation of defendant nos.2 to 4 and by hatching a conspiracy, the plaintiff was ousted from the suit flat. He, therefore, filed a Suit for declaration and injunction with a relief of being put back in possession and he sought a declaration that the action of defendant no.1 in connivance of defendant nos.2 to 4 of not allowing the plaintiff to enter and stay in the suit premises is bad-in-law. The suit premises covered two flats with the description set out in the plaint.

The plaint in the suit, sought several reliefs but the substantive relief prayed was to the following effect :-

> (a) This Hon'ble Court be pleased to declare that the documents executed are perpetrated by fraud, coercion

and the same is illegal and the same be declared as illegal and bad in law, null and void, namely:

(i) Gift Deed dated 16th March 2017 between the Plaintiffs and Defendant No.1 in respect of suit property being Flat No.502, 5th floor, Sai Suman CHS Ltd, "A" Wing, Vikhroli (East), Mumbai 400083, and

(ii) Gift Deed dated 5th December 2018 between the Plaintiffs and Defendant No.1 in respect of suit property being Shri Sai CHS Ltd, Bldg No.36, Room No.1162, Tagore Nagar, Vikholi (E), Mumbai-400083.

(b) This Hon'ble Court be pleased to declare that the Possession of Defendants of the suit property is bad in law, namely:

(i)Flat No.502, 5th floor, Sai Suman CHS Ltd 'A' Wing,Vikhroli (East), Mumbai- 400 083, and

(ii) Shri Sai CHS Ltd, Bldg No.36, Room No.1162, Tagore Nagar, Vikhroli (E), Mumbai 400083.

A permanent mandatory injunction/order of injunction restraining the defendants from dispossession the plaintiff from the suit property as well as the relief of temporary injunction was also sought.

In para-36 of the plaint, the plaintiff made the following declaration and paid the Court fee as per Section 6(iv)(j) of Maharashtra Stamp Act, 1958 and the said part read as under :-

> "The Plaintiff states that the Plaintiff is claiming seeking declaration and injunctions which are non-susceptible to monetary valuation and therefore, the Plaintiff values the suit for the purpose of court fees and jurisdiction under Section 6(iv)(j) of Maharashtra Stamp Act at Rs.1,000/- and pays the Court fees of Rs……../- accordingly".

3 The defendants in the Suit took out a Notice of Motion No.1937 of 2020 for the following relief :

> "(a) That this Court with all powers under Order 7 Rule 11 be pleased to dismiss the Suit on the ground of maintainability, lack of cause of action and deliberate under valuation of the plaint"

The affidavit in support of the Notice of Motion pleaded that Suit was a counter blast to the divorce proceedings and therefore, in terms of Section 7 of the Family Court Act, only the Family Court will have jurisdiction and therefore, the plaint was sought to be returned.

Another objection raised was about undervaluation. The affidavit in support of the Notice of Motion pleaded as under :-

> "The Plaintiff with oblique motives and malafide intentions has deliberately undervalued the Plaint. On a bare perusal of the prayers, the Plaintiff is indirectly seeking to restore his 50% (fifty) share (title) in both the properties mentioned in the Gift Deeds and thus the Plaintiff has suppressed crucial material facts and is liable to pay the Court fees based to try the suit. The Plaintiff has grossly undervalued the Plaint.

5 On consideration of the Notice of Motion seeking dismissal of the Suit, the City Civil Court, by order dated 1/4/2021 rejected the motion, on the ground of the plaint lacking cause of action and its maintainability.

However, as far as the Court fees is concerned, the plaintiff was directed to pay deficit court fee in relation to the claim for both the gift deed under challenge in the Suit as per the value of the properties mentioned in those gift deeds within a period of eight weeks, failing which the plaint was liable to be rejected under Order 7 Rule 11b of the CPC.

In arriving at the said conclusion, the learned Judge relied upon the observations of the Delhi High Court and by applying the law emerging from the said decision, recorded that the plaintiff has simply claimed relief of declaration in respect of two gift deeds without seeking cancellation thereof, and in the matter before the Delhi HIgh Court, plaintiff wa sdirected to pay deficit Court fees by valuing the relief in relation to the registered gift deed, even though relief of cancellation of gift deed was not claimed by the plaintiff. Reasoning that the plaintiff is a party to the gift deeds, he was directed to pay deficit court fee on valuation of his shares in the concerned properties as per Section 6(iv)(ha) of the Maharashtra Court Fee Act.

By an analogous reasoning, the Review Petition was also dismissed.

6 The learned counsel Warunjikar, appearing for the respondent would submit that the scheme of Section 6 of the Maharashtra Court Fees Act contemplate various entries and the valuation of the Suits would be determined depending on the nature of relief sought i.e. upon the claim staked in the Suit. By inviting my attention to the specific entries as regards avoidance of sale, contract for sale being Section 6(iv)(ha), Mr.Warunjikar would submit that the said sub-section provide valuation for a suit which seek declaration that any sale or contract for sale, or termination of contract for sale of any movable or immovable property is void. This definitely would not cover the gift deed, is his submission. The learned counsel would thus submit that as far as clause (j) is concerned, where a declaration is sought with or without injunction or any consequential relief and the subject matter is not susceptible of monetary evaluation, only in this contingency, clause (j) would be attracted.

His submission in short is, that in case where the gift deed is a subject matter of challenge, the case is neither governed by 6(iv)(ha) or even 6(iv)(j). His submission is, clever drafting of a plaint by a counsel would not be a factor determining what Court fee should be payable since it would be an attempt to avoid payment of higher court fee, causing loss to the Revenue. The settled principle of law being what relief one claims in the Suit and what is entitled to, would determine the amount of Court fee payable.

7 Per contra, the counsel for the petitioner, Shri Patil would submit that the key words in Section 6(iv)(j) are; "the subject matter in the dispute" and "not susceptible of monetary evaluation". The learned counsel would submit that in the plaint, it is specifically pleaded by the plaintiff that the gift deeds under challenge are executed by fraud and coercion and therefore, the subject matter in the Suit are the gift deeds.

He would further submit that the word 'susceptible' means capable of submitting to an action, process or operation and since both the gift deeds are without any consideration, they are not be susceptible of monetary evaluation.

The learned counsel Shri Patil place reliance on the decision of this Court in case of *Vasant Kisan Idhol* vs. *Manjurabai Kisanrao Idhol, 2017(3) Mh.L.J 520*, and also the decision in case of *Roopa Kailash Ganatra & Anr vs. Reena Sabherwal & Ors, 2013 (2) Mh.L.J, 663.* The learned counsel for the petitioner would submit that reliance placed by the respondent in the judgment of Surhid Singh is not of any assistance to the respondent.

8 In order to ascertain the relief claimed by the plaintiff in the Suit, it is necessary to read the plaint as a whole, and on it's perusal, it is apparent that the plaintiff allege that the defendant no.1, who is his wife, along with the other three defendants,

played a fraud upon him and transferred the amount in the name of defendant no.1 and this is alleged to have happened on account of the some medicine being administered to him. The pleading in the plaint is, that on consuming the medicine, the plaintiff used to feel in passive state of mind and he was not aware of the consequences of his action. It is further alleged by him that the defendants hatched a conspiracy to grab the flat which was gifted to the plaintiff by his parents and the one purchased by him and he was coerced to sell the flat and he was made to sign some documents, which he subsequently realized, was a sale deed of the flat, which was gifted to him by his parents. A fund of Rs.35 lakhs came to be transferred into his account, though he was unaware as to what was the total consideration received for the said flat. The deal was also struck in respect of the other flat situated at Vikhroli, Mumbai and he was made to sign few cheques in favour of the seller and he was told that the amount by way of consideration of the flat at Vikhroli and the documents of the new flat were prepared in the joint name of plaintiff and the defendant no.1.

In the backdrop of the aforesaid allegations, the plaintiff sought relief of declaration and injunction.

9 In passing the impugned order, the learned Judge has placed reliance upon a decision of the Delhi High Court in case of <u>Manjinder Singh Versus Krishna Bhat & ors [CS (OS) 1642/2007</u>

– judgment dated 11/11/2013, and in particular the following paragraph :-

> "13. Under the garb of an innocently worded prayer clause, the Plaintiff cannot avoid payment of the appropriate court fee on the relief in relation to the Gift Deed dated 1st June 2007. In the circumstances, while the value of the suit property for the purpose of specific performance is stated to be Rs.3,20,31,250/- (which is the sale consideration under the Agreement to Sell dated 16th October 2006), the valuation of the relief of declaration of the Gift Deed dated 1st June 12007 as null and void at Rs.200 cannot be said to be correct".
>
> 14. The Court is of the view that the Plaintiff has to value the relief of declaration and consequent cancellation of the gift deed at the value of the suit property as reflected in the registered gift deed i.e. Rs.1,37,37,500/-. The plaintiff has to pay court fee on that basis.

10 Reliance upon the judgment of the Delhi High Court in S. Majinder is totally unfounded as the facts involved were completely distinct and in my considered opinion, the learned Judge has completely erred in holding that the fee would have to be determined in terms of Section 6(iv)(ha), as apparently the plaintiff is not seeking any declaration that any sale or contract for sale or termination of contract for sale is void. He, is merely seeking a declaration which could be covered by the remainder clause i.e. clause (j) and since the property conveyed is by way of gift, which is not susceptible to monetary evaluation, the governing clause would be clause (j).

11 In somehow identical situation, as the one before me, a learned Single Judge of this Court (Justice A.S. Chandurkar, J), in case of Vasant K. Idhol, determined the issue, whether the plaint is liable to be rejected under the provisions of Order 7 Rule 11b. The question arose in the backdrop of the fact that the applicant - defendant, son of the non-applicant plaintiff prepared a gift deed without her consent and as per the gift deed, the suit property was shown to have been gifted by the non-applicant in favour of the applicant. The non-applicant, therefore, filed a suit for declaration that the gift deed was null and void and not liable to be acted upon. Cancellation of the gift deed was sought with a prayer that the applicant be injuncted permanently from disturbing her possession or creating third party rights.

An objection was raised that the suit was undervalued and the proper court fee ought to have been paid. The trial court rejected the application by holding that the plaint was properly valued as per Section 6(iv)(j) and being aggrieved, the Revision Application was filed.

In the backdrop of the facts, the following observations were made :

> *09. Under provisions of Section 6(iv)(d) of the said Act, if a declaration in respect of ownership or nature of tenancy, title etc. of immovable property is sought, then 1/4th of the ad valorem fee leviable for a suit for possession on the basis of title has to be paid. As per the third proviso, when any consequential relief other than possession is sought, then the amount of fee would be half of the ad valorem fee. Under provisions of Section 6 (iv) (j) of the said Act, where*

declaration is sought with or without injunction or other consequential relief and the subject matter in dispute is not susceptible to monetary evaluation and which is not otherwise provided for under the said Act, the court fee payable is Rs.1,000/-.

"10. As noted above, the averments in the plaint indicate that the non-applicant is not seeking possession of suit property. The relief sought by her is for declaration that the Gift-Deed dated 29th June, 2012 was null and void. What has to be seen while considering the question of appropriate valuation is the "subject matter in dispute". In the present case, the subject matter in dispute is the alleged fraudulent execution of the Gift-Deed dated 29th June, 2012. There is no consideration passed for execution of said Gift-Deed. The expression "subject matter" would mean the bundle of facts that have to be proved in order to entitle the plaintiff to the relief claimed as observed in Vallabh Das Vs. Madanlal & others [AIR 1970 SC 987].

In the judgment of the Gujrat High Court in Sanatkumar Bhikhabai Patel [supra], the suit therein was filed to avoid a Gift-Deed. The submission that the subject matter of the suit was not immovable property but the transaction of the Gift-Deed itself was accepted. It was held that the valuation of the suit would be under provisions of Section 6 (iv) (j) of the Act.

The above observations squarely apply to the facts of the present case.

Section 6(iv)(j) of the Maharashtra Court Fees Act govern a Suit where a declaration is sought with or without injunction or other consequential relief and the subject matter in dispute is not susceptible of monetary evaluation and which is not otherwise provided under the said Act.

In the present case, the plaintiff is not seeking possession of the suit property but seek a declaration that the gift deed is null and void and the subject matter of the dispute is fraudulent execution of a gift deed. Since there is no consideration passed while executing the gift deed, it is not susceptible of monetary consideration. The ratio of the decision in Vasant Idhol (supra) clearly cover the present case as the valuation would be required to be done as per Section 6(iv)(j) and not 6(iv)(ha), which section is limited in it's scope and reads as under :-

> *6(iv)(ha) In suits for declaration that any sale, or contract for sale or termination of contract for sale, of any moveable or immoveable property is void of advalorem fee leviable on the value of the property.*

12 Another decision in case of Roopa Kailash Ganatra & Anr, Vs. Reena Sabherwal & Ors, 2013(2) Mh.L.J, again delivered by another Single Judge (Justice R.M. Savant, J) would lead to a similar conclusion, in determining what Court fee is payable in a Suit for declaration calling in question the will and alleging that it is vitiated by fraud. The observations in para-9 is relevant for my purpose and it require a reproduction :-

> "9. The Trial Court it seems was carried away by the fact that decreeing of the suit in favour of the Plaintiffs would result in accrual of a right in the Plaintiffs to the property. In my view, the said approach of the Trial Court was erroneous. The Trial Court ought to have seen that the suit in question was for declaration in respect of the Will in question. The Trial Court has misdirected itself by considering the likely consequences of the Plaintiffs

> succeeding in the suit for the purposes of valuation. In so far as declaratory suits are concerned, the same are covered by Section 6(iv)(j). In so far as Section 6(iv)(d) is concerned, the said provision concerns the suits which have been filed for declaration of ownership etc., and in so far as Section 6(iv)(h-a) is concerned, the said provision applies to a suit which has been filed for avoidance of sale, contract of sale etc. The said provisions would have no application in the teeth of the fact that in the present suit the relief sought is a declaration in respect of the Will Deed. There is no declaration of ownership sought or there is any relief claimed which would result in avoidance of sale or contract of sale. The Trial Court has misdirected itself by coming to a conclusion that decreeing of the suit in question would result in accrual of a right in the Plaintiffs to the property. The Trial Court has by a long drawn process sought to apply the provisions of Section 6(iv)(d) and 6(iv)(h-a) of the Bombay Court Fees Act. The Trial Court has failed to take into consideration the fact that even if the declaration in respect of the Will Deed is ultimately issued the Plaintiffs would have to file an independent proceeding for claiming their right in the property or share in the property. It is in such a suit that the provisions of Section 6(iv)(d) of the Bombay Court Fees Act may probably become applicable.

13 As against the two judgments, the decision on which the learned Judge has relied upon to arrive at a conclusion that the Court fee is liable to be paid as per Section 6(iv)(ha) i.e. in case of Manjinder Singh Vs. Krishna Bhatt (supra), is based on distinct facts and it is trite position of law that an authority is binding only qua the facts involved and will have to be read in reference to the facts.

The Delhi High Court was confronted with a suit for specific performance of an agreement in relation to an agricultural plot and for permanent injunction and the Suit was valued at Rs.200/- on which the requisite Court fee was paid. In written statement, it was disclosed that the property in question was transferred to defendants by registered gift deeds and therefore, the leave was sought to amend the plaint and declaration was sought that the gift deed was legal and void. The plaintiff argued that since the gift deed was a sham document, there was no need to seek it's cancellation, and therefore, there was no need to pay ad valorem court fee on the same. Relying upon the provisions in Court Fees Act, 1870 i.e. Section 7(iv)(c), the Delhi High Court held that the plaintiff has to value the relief on declaration and consequent cancellation of gift deed at value of the suit property as reflected in the registered gift deed and has to pay court fee accordingly. Section 7(iv)(c) of the Court Fees Act read as under:-

> "7. Computation of fees payable in certain suits : The amount of fee payable under this Act in the suits next hereinafter mentioned shall be computed as follows:
> (iv) in suits x x x x x x (c) for a declaratory decree and consequential relief – to obtain a declaratory decree or order, where consequential relief is prayed, x x x x x according to the amount at which the relief sought is valued in the plaint or memorandum of appeal"
> In all such suits the plaintiff shall state the amount at which he values the relief sought:
> Provided that minimum court fee in each shall be thirteen rupees"

As far as the provision contained in Maharashtra Court Fee Act is concerned, there is no provision similar to 7(iv)(c), but the only provision that exist is in form of 6(iv)(ha) and 6(iv)(j), is a clause pertaining to other declarations with or without injunctions or consequential relief and where the subject matter is not susceptible of monetary evaluation. The words 'not susceptible of monetary evaluation' is not to be found in Section 7(iv)c) of the Court Fees Act and the only provision which is similarly situated to 7(iv)(c) is Section 6(iv)(j).

In any situation, the case of the plaintiff do not fall within 6(iv)(ha) and this fact is conceded to by Mr.Warunjikar who admit that the case will not surely fall within the scope of 6(iv)(ha). Since Section 6(iv)(j) is the residuary entry/provision, which pertain to a declaration with or without injunction or any ancillary relief, this is the only provision which can be invoked in light of the relief sought by the plaintiff in the Suit, where he seek a declaration that the gift deed be declared as illegal and bad in law, and also a declaration that the possession of the defendants of the Suit property is bad in law.

14 The impugned order, however, has failed to consider the said aspect of the matter and the City Civil Court has allowed the Notice of Motion and directed payment of Court fee as per clause (6)(iv)(ha), which is a patent illegality and cannot be sustained in the wake of the provision as well as the relief sought

in the plaint. The impugned orders i.e. the order in original and in review passed by the City Civil Court, is therefore, quashed and set aside.

It is declared that the plaintiff has rightly valued the Suit for the purposes of Court fee and jurisdiction under Section 6(iv)(j) of the Maharashtra Court Fees Act at Rs.1,000/-. Resultantly, the Writ Petition is allowed.

Rule is made absolute.

(SMT.BHARTI DANGRE,J)

Tilak