

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**APPEAL FROM ORDER NO. 865 OF 2019
WITH
CIVIL APPLICATION NO. 1033 OF 2019
AND
APPEAL FROM ORDER NO. 866 OF 2019
WITH
CIVIL APPLICATION NO. 1034 OF 2019**

Smt. Prabhavati Prabhakar Shinde (decd)
through LRs & Ors.

..Appellants

Vs.

Prakash Ramchandra Jadhav (Decd.)
through Lrs & Ors.

..Respondents

Mr. Tejesh Dande with Mr. Bharat Gadhavi, Mr. Krupanshu Nandu and
Mr. Vishal Navale i/b. Tejesh Dande & Associates for Appellants.
Mr. P. G. Karande with Mr. Sudam Patil for Respondents.

**CORAM : G.S. KULKARNI, J.
DATE : FEBRUARY 08, 2023**

Oral Judgment

1. These appeals from order arise from the judgment(s) and order dated 22 August, 2017 passed by the learned District Judge-8, Nashik, allowing the regular civil appeals filed by the respondents which assailed judgment and order passed by the learned Civil Judge, Junior Division, in the regular civil suits filed by the appellants.

2. By the judgment(s) as impugned in both these appeals, the learned District Judge has set aside the judgment(s) and order passed by the

learned Trial Judge, whereby the suits in question stand remanded to the trial Court to be decided afresh, by framing an issue as to the “valuation of the suit”. Illustratively the operative part of the impugned order passed by the learned District Judge in the first proceeding needs to be noted which reads thus:-

“ **ORDER**

(i) The judgment and decree passed by the Ld. Trial Court in R.C.S. No.55/2012 dated 30-11-2015 is hereby quashed and set aside and the matter is remanded back to the Ld. Trial Court to decide it afresh by framing the issue as to the valuation of the suit.

(ii) The Ld. Trial Court to try and decide the matter as expeditiously as possible.

(iii) The parties are directed to appear before the Ld. Trial Court on 25-09-2017.”

3. The facts need not be adverted in detail, suffice it to observe that the appellants in both these appeals, filed suits before the Court of Civil Judge Junior Division, Nashik Road, Nashik, against the respondents/defendants praying for possession of the suit property, and for compensation and mesne profit, on the ground that the suit properties were ancestral properties of the appellants. The appellants contended that Shakuntala who was the sister of deceased husband of plaintiff No.1 Prabhavati Prabhakar Shinde was a gratuitous licensee who had permitted the respondents to use the suit property without consideration.

Respondents/defendants contested the suits inter alia on the ground that they had become owners of the suit property by adverse possession. The learned Trial Judge framed issues, including on the plea of the respondent as to whether they had become the owners of the suit property by adverse possession. It is pertinent that the defendants did not raise a specific plea that the trial Court did not have 'pecuniary jurisdiction' by objecting to the valuation of the suits in question. Eventually, the learned trial Judge had no occasion to frame an issue in regard to the suit not being sufficiently valued, so as to consider the maintainability of the suit on such count. Considering the rival pleas and the evidence on record, on merits the learned trial Judge did not accept contentions as urged by the respondent, resulting in the suits being decreed with a direction to the respondents to deliver the possession of the suit property to the appellants/plaintiffs, within a period of two months of the judgment and decree. The judgment(s) and decree passed by the learned trial Judge in both the suits and subject matter of the present appeals is quite similar.

4. The respondents being aggrieved by the judgment and order passed by the learned trial Judge approached the Court of learned District Judge in the regular civil appeals in question, which have been allowed in the

terms, as noted above. The respondents for the first time in the appeal before the learned District Judge raised an issue assailing the pecuniary jurisdiction of the trial Court to entertain the suits in question, i.e. whether the decree passed by the trial Court was required to be quashed and set aside due to non framing and not deciding the issue as to the valuation of the suits. Learned District Judge, accordingly, framed the following points for determination and recorded his findings which reads thus:-

<u>POINTS</u>	<u>FINDINGS</u>
1. <u>Whether the judgment and decree passed by the Ld. Trial Court needs to be quashed and set aside due to not framing and deciding the issue as to valuation of the suit ?</u>	In the affirmative.
2. Whether the matter needs to be remanded back to the Ld. Trial Court for framing and deciding the same ?	In the affirmative.
3. What order ?	As per final order. (emphasis supplied)

5. Thus, in the adjudication of the regular civil appeals, the only point which came to be framed by the learned District Judge was to the effect ‘whether the judgment and decree passed by the learned trial Court deserved to be quashed and set aside due to non-framing and deciding by the trial Court, an issue as to the valuation of the suits and whether for

such reasons, the suits were required to be remanded to the trial Court for framing and deciding such issue. As noted above, the learned District Judge has answered both the points in the affirmative, thereby remanding the proceedings for a fresh decision on the suit.

6. Mr. Dande, learned counsel for the appellants at the outset submits that in law the approach of the learned District Judge in passing the impugned order was not correct. He submits that in the facts of the present case, on a technical issue of valuation of the suit, the judgment and decree passed by the learned trial Judge ought not to have been set aside and such issue could have been decided by the appellate Court itself. He has drawn the Court's attention to the written statement filed by the respondents to contend that the issue of valuation was in fact not an issue before the learned trial Judge as a specific objection in regard to any deficit court fees was not raised by the respondent. Mr. Dande submits that the learned District Judge has considered the said issue to be the primary issue in the adjudication of the suit which according to Mr. Dande, was not the appropriate course of action followed by the learned District Judge considering the settled position in law. Mr. Dande has however, submitted that according to the appellants the suit is appropriately valued and the valuation is not disputed by the respondents. Mr. Dande has placed

reliance on the decision of this Court in **Basant Kumar Jain vs Chief Executive Officer, Maharashtra Industrial Development Corporation and Ors.**¹ to contend that merely on the issue of a suit being not appropriately valued, the judgment and decree passed by the trial Court on merits cannot be set aside.

7. On the other hand, Mr. Karande, learned counsel for the respondents would not dispute the position in law. He would submit that although an objection was taken by the respondents in the written statement that the suit was not appropriately valued, such objection being not a specific objection would not matter. Mr. Karande would also not dispute that no attempt was made by the respondents, for a specific issue to be framed by the learned trial Judge in this regard. Mr. Karande is also not in a position to support any prejudice being caused to the respondents or a failure of justice having suffered by the respondents on such count. He would however submit that in the event this Court directs the learned District Judge to decide the appeal on its own merits, all contentions of the respondent/defendant on any deficit Court fees and the suit being not valued appropriately as per law be kept open.

8. I have heard learned counsel for the parties. With their assistance, I

¹ 2005(2) Mh.L.J. 950

have perused the impugned order and the record.

9. As an objection of the respondents in the appeal before the learned District Judge was in regard to the valuation of the suit(s) to contend that the trial Court did not have pecuniary jurisdiction to entertain the suit(s), the relevant provisions of law, which would stand attracted, are Section 21 of the Code of Civil Procedure and Section 11 of the Suit Valuation Act, 1887. The said provisions read thus:-

“Section 21 of the CPC :- Objections to jurisdiction.

[(1)] No objection as to the place of suing shall be allowed by any appellate or Revisional Court unless such objection was taken in the Court of first instance at the earliest possible opportunity and in all cases where issues or settled at or before such settlement, and unless there has been a consequent failure of justice.

[(2)] No objection as to the competence of a Court with reference to the pecuniary limits of its jurisdiction shall be allowed by any Appellate or Revisional Court unless such objection was taken in the Court of first instance at the earliest possible opportunity, and in all cases where issues are settled, at or before such settlement, and unless there has been a consequent failure of justice.

(3) No objection as to the competence of the executing Court with reference to the local limits of its jurisdiction shall be allowed by any Appellate or Revisional Court unless such objection was taken in the executing Court at the earliest possible opportunity, and unless there has been a consequent failure of justice.]

(emphasis supplied)

Section 11 of the Suit Valuation Act, 1887.

Procedure where objection is taken on appeal or revision that a suit or appeal was not properly valued for jurisdictional purposes.-

(1) Notwithstanding anything in Section 578 of the Code of Civil Procedure, an objection that by reason of the over-valuation or under-valuation of a suit or appeal a Court of first instance or lower appellate Court which had no jurisdiction with respect to the suit or appeal exercised

jurisdiction with respect thereto shall not be entertained by an appellate Court unless —

(a) the objection was taken in the Court of first instance at or before the hearing at which issues were first framed and recorded, or in the lower appellate Court in the memorandum of appeal to that Court, or

(b) the appellate Court is satisfied, for reasons to be recorded by it in writing, that the suit or appeal was over-valued or under-valued, and that the over-valuation or under-valuation thereof has prejudicially affected the disposal of the suit or appeal on its merits.

(2) If the objection was taken in the manner mentioned in clause (a) of sub-section (1), but the appellate Court is not satisfied as to both the matters mentioned in clause (b) of that sub-section and has before it the materials necessary for the determination of the other grounds of appeal to itself, it shall dispose of the appeal as if there had been no defect of jurisdiction in the Court of first instance or lower appellate Court.

(3) If the objection was taken in that manner and the appellate Court is satisfied as to both those matters and has not those materials before it, it shall proceed to deal with the appeal under the rules applicable to the Court with respect to the hearing of appeals; but if it remands the suit or appeal, or frames and refers issues for trial, or requires additional evidence to be taken, it shall direct its order to a Court competent to entertain the suit or appeal.

4. The provisions of this section with respect to an appellate Court shall, so far as they can be made applicable, apply to a Court exercising revisional jurisdiction under section 622 of the Code of Civil Procedure or other enactment for the time being in force.

5. This section shall come into force on the first day of July, 1887.”

10. The question is whether the learned District Judge was correct in setting aside the decree passed by the learned trial Judge, merely on the ground that an issue as to the pecuniary jurisdiction was required to be decided and/or not decided by the learned trial Judge.

11. Considering the clear provision of Section 21 of the CPC read with Section 11 of the Suits Valuation Act, in my opinion, the approach of the learned District Judge was not correct in setting aside the decree merely on

the ground of the learned trial Judge had not decided the issue of jurisdiction. In the facts of the case such issue was required to be considered by the learned District Judge in the appeals in question, by applying the following principles of law which are well settled. The principles being:-

- (1) That an objection to the competence of a Court with reference to the pecuniary limits of its jurisdiction needs to be taken in the Court of first instance at the earliest possible opportunity, and in all cases where issues are settled, at or before such settlement, unless there has been a consequent failure of justice. [Section 21 (2) of C.P.C.];
- (2) The objection, in regard to pecuniary jurisdiction, is the most technical of technicalities;
- (3) The objection is required to be taken bonafide and not to prolong the litigation as any issue on Court Fees would not arm a litigant with a weapon of technicality against his opponent, but to secure revenue for the benefit of the State.
- (4) The party raising an objection needs to set out the prejudice being caused on merits;
- (5) In the absence of failure of justice, a plea of lack of pecuniary jurisdiction is a plea of mere irregularity which does not make a decree a nullity;
- (6) An objection on the ground of lack of pecuniary jurisdiction cannot be entertained by appellate or revisional court even if it was taken at the earliest opportunity before the trial court when there was no failure of justice. In the absence of failure of justice, lack of territorial or pecuniary jurisdiction is a mere irregularity which does not make a decree or nullity and that pecuniary jurisdiction of the Court may be waived by the defendant.

12. The above principles are derived from the decisions, which are being discussed hereafter: In *Rachappa Subrao Jadhav Desai v. Shidappa*

*Venkatrao Jadhav Desai*², the Judicial Committee of the Privy Council has

² The Calcutta Weekly Notes Vol. XXIV 23

held that an objection as to pecuniary jurisdiction which was not taken at the trial should not have been allowed to be taken at the hearing of the appeal. It was held that the Court Fees Act was passed not to arm a litigant with a weapon of technicality against his opponent, but to secure revenue for the benefit of the State, and under Section 12 of the Court Fees Act, the detriment shown only to the revenue is to be corrected by the Appellate Court, and a judgment not shown to have wrongly decided to the detriment of revenue cannot be set aside at the instance of a party on the ground of jurisdiction. The relevant observations in this regard are required to be noted which read thus:-

“ Had the objection been taken, as it should, if at all, in the First Court, it would have been by no means insuperable. It might have resulted in the rejection of the plaint; but even this extreme measure would not have precluded the plaintiff from presenting in the same Court a fresh plaint, properly framed and valued, in respect of the same cause of action. Probably, however, the objection would have led to the more practical solution of an amendment of the prayer to the plaint by excluding from it the futile and demurrable claim for an injunction. Then the suit would have been in order, and it is because the defendant did not take the objection at the proper stage that he has been able to prolong this litigation, commenced so far back as the 3rd February, 1909, by an appeal to this Board, which, when analysed, rests on no sort of merit, but on the most technical of technicalities.

.....

The Court Fees Act was passed not to arm a litigant with a weapon of technicality against his opponent, but to secure revenue for the benefit of the State. This is evident from the character of the Act, and is brought out by Section 12, which makes the decision of the First Court as to value final as between the parties, and enables a Court of appeal to correct any error as to this, only where the First Court decided to the detriment of the revenue.”

13. A learned Single Judge of the Gauhati High Court in *Mazid Ali (deced) through his legal heirs Mustt. Maimuna Begum & Ors. v. Sri Lakshman Rabidas & Ors.*³ reiterated the principles, that an objection, that by reason of over-valuation or under-valuation of a suit would not be entertained by an appellate court, unless the objection was taken before the Court of first instance at or before the hearing, at which issues were first framed and recorded, or in the lower appellate Court in the memorandum of appeal, and that the overvaluation or under-valuation thereof has prejudicially affected the disposal of the suit or appeal on its merits. It was observed that the policy of the legislature was to treat the objection as technical – not open to consideration by an appellate court, unless there has been a prejudice on merits. It was observed that jurisdiction conferred on the appellate Court is an equitable one, which should be exercised only when there has been erroneous assumption of jurisdiction by a subordinate court as a result of over-valuation or under-valuation and consequential failure of justice. The Court observed that Section 21 of the Code of Civil Procedure clearly provided that lack of pecuniary jurisdiction is quite different and distinct from inherent lack of jurisdiction which goes to the root of jurisdiction or competence of a court

³ AIR 1992 Gauhati 91

to try a case. It was observed that an objection on the ground of lack of pecuniary jurisdiction cannot be entertained by appellate or revisional Court even if it was taken at the earliest opportunity before the trial court when there was no failure of justice. The Court also observed that in the absence of failure of justice, lack of territorial or pecuniary jurisdiction is a mere irregularity which does not make a decree a nullity. The Court observed that Section 21(2) is a statutory recognition of the principle that defect as to pecuniary jurisdiction of the Court may be waived by the defendant. The relevant observations of the Court are required to be noted which read thus:-

“6. It provides that an objection that by reason of the over-valuation or under-valuation of a suit or appeal a court of first instance or lower appellate court which had no jurisdiction with respect to the suit or appeal, exercised jurisdiction with respect thereto, should not be entertained by an appellate court unless the objection was taken in the court of first instance at or before the hearing at which issues were first framed and recorded, or in the lower appellate court in the memorandum of appeal and that the over-valuation or under-valuation thereof has prejudicially affected the disposal of the suit or appeal on its merits. The policy of the legislature appears to be to treat the objection as technical – not open to consideration by an appellate court, unless there has been a prejudice on merits. This jurisdiction conferred on the appellate court is an equitable one which should be exercised only when there has been erroneous assumption of jurisdiction by a subordinate court as a result of over-valuation or under-valuation and consequential failure of justice. Section 11, in fact is an exception to the general principle that want of jurisdiction will render the proceeding in a court and void.

7. To the same effect is the provision of S. 21 of the C.P.C. Sub-Sec. (2) of S. 21 deals with objection in regard to pecuniary jurisdiction of the court. It reads:

“(2) No objection as to the competence of a Court with reference to the pecuniary limits of its jurisdiction shall be allowed by any Appellate or Revisional Court unless such objection was taken in the Court of first instance at the earliest possible opportunity, and, in all cases where issues are settled at or before such settlement, and unless there has been a consequent failure of justice.”

From a reading of the aforesaid provision it is clear that lack of pecuniary jurisdiction is quite different and distinct from inherent lack of jurisdiction which goes to the root of jurisdiction or competence of a court to try a case. An objection on the ground of lack of pecuniary jurisdiction cannot be entertained by appellate or revisional court even if it was taken at the earliest opportunity before the trial court when there was no failure of justice. In the absence of failure of justice, lack of territorial or pecuniary jurisdiction is a mere irregularity which does not make a decree or nullity. Section 21(2) is a statutory recognition of the principle that defect as to pecuniary jurisdiction of the Court may be waived by the defendant.

8. As to what amounts to failure of justice or as to when it can be said that the over-valuation or under valuation of a suit has prejudicially affected the disposal of the suit or appeal on its merits, we may refer to the decision of the Supreme Court in *Kiran Singh v. Chaman Paswan*, *supra*, where dealing with the expression “prejudicially affected the disposal of the suit or appeal on its merits”, it was held (at page 342):

“These words clearly show that the decrees passed in such cases are liable to be interfered with in an appellate Court, not in all cases and as a matter of course, but only if prejudice such as is mentioned in the Section results. And the prejudice envisaged by that Section therefore must be something other than the appeal being heard in a different forum.”

It was further held:

“We are therefore clearly of opinion that the prejudice contemplated by the Section is something different from the fact of the appeal having been heard in a forum which would not have been competent to hear it on a correct valuation of the suit as ultimately determined.”

Dealing with the meaning of the word “prejudice” used in S. 11 of the Suits Valuation Act, the court observed:

“The prejudice on the merits must be directly attributable to over-valuation or under-valuation and an error in a finding of fact reached on a consideration of the evidence cannot possibly be said to have been caused by over-valuation or

under-valuation. Mere errors in the conclusion on the points for determination would therefore be clearly precluded by the language of the Section.”

Similar is the interpretation of the expression “results in failure of justice” used in S. 21(2) of the C.P.C.”

14. In *Deepak Natwarlal Parekh versus Tejas Natwarlal Parekh*⁴ a Division Bench of this Court, considering the provisions of Section 11 of the Suits Valuation Act and Section 21(2) of the C.P.C., observed that “an objection, in regard to pecuniary jurisdiction is the most technical of technicalities, as observed by the Supreme Court in *Kiran Singh vs. Chaman Paswan*.” The Division Bench observed that mere change of forum and that such issue in regard to the jurisdiction are required to be raised at the first instance, at the earliest possible opportunity in the suit, and, in all cases where issues are settled, at or before such settlement, and unless there has been consequent failure of justice. The relevant observations of the Division Bench are required to be noted which read thus:-

“11. The objection, in regard to pecuniary jurisdiction is the most technical of technicalities. The court fee Act was passed, not to arm a litigant with the weapon of technicality against his Rachappa Subrao Jadhav vs. Shidappa Venatrao Jadhav (4) LR 461A 24 opponent but to secure for the benefit of the State. Although not directly relevant at this stage, even Section 11 of the Suits Valuation Act, 1887 and Section 21(2) of the CPC provided that no objection as to the competence of a court with reference to pecuniary limits of its jurisdiction shall be allowed by any appellate or revisional courts, unless the said objection was taken in the court of first instance at the

4 2014 SCC OnLine Bom 1031

earliest possible opportunity, and, in all cases where issues are settled, at or before such settlement, and unless there has been consequent failure of justice. There are several decisions, including of this Court, which take the view that mere change of forum neither occasions prejudice nor constitutes failure of justice. In the present case, true, that the defendant has raised objection as to over valuation in the court of first instance and at an early stage. However, there is neither any material placed nor any plea raised as to consequent failure of justice. The three conditions set out under Section 21(2) of the CPC are required to coexist, before any objection based upon pecuniary jurisdiction can sustain (*R.S.D.V. Finance Co. Pvt. Ltd. vs. Shri Vallabh Glass Works Ltd.* (1993) 2 SCC 130).

15. The Supreme Court in *R.S.D.V. Finance Co. Pvt. Ltd. vs. Shree Vallabh Glass Works Ltd.*⁵ in the context of Section 21(1) of the C.P.C.

observed thus:-

“7. Sub-section (1) of Section 21 of the Code of Civil Procedure provides that no objection as to the place of suing shall be allowed by any appellate or revisional court unless such objection was taken in the Court of first instance at the earliest possible opportunity and in all cases where issues are settled at or before such settlement and unless there has been consequent failure of justice. The above provision clearly lays down that such objection as to the place of suing shall be allowed by the appellate or revisional court subject to the following conditions:

- (i) That such objection was taken in the court of first instance at the earliest possible opportunity;
- (ii) in all cases where issues are settled then at or before such settlement of issues;
- (iii) there has been a consequent failure of justice.”

16. In *Basant Kumar Jain vs. Chief Executive Officer, Maharashtra Industrial Development Corporation and others*⁶, a learned Single Judge of this Court, referring to the decisions some of which are noted hereinabove, held as under:-

⁵ (1993) 2 Supreme Court Cases 130

⁶ 2005(2) Mh.L.J. 950

“23. On the above canvas of law, the Addl. District Judge has committed an error by setting aside the judgment and decree passed by the trial Court, purely on the technical ground that the trial Court lacked pecuniary jurisdiction to try the suit. As per settled law, the learned Judge ought to have pronounced his judgment on all issues on merits rather than setting aside the decree on one technical ground. In *M/s. Fomento Resorts And Hotels Ltd. v. Gustavo Ranato Da Cruz Pinto*, 1985 Mh.L.J. (SC) 606 = (1985) 2 SCC 152, a three-Judge Division Bench of the Supreme Court, disapproving such disposal of the suit on a single ground, without pronouncing on all points, observed thus:

“29. In a matter of this nature where several contentions factual and legal are urged and when there is scope of an appeal from the decision of the Court, it is desirable as was observed by the Privy Council long time ago to avoid delay and protection of litigation that the Court should, when dealing with any matter, dispose of all the points and not merely rest its decision on one single point.”

17. In the aforesaid circumstances and considering the well settled principles of law, this is a clear case where no material was placed on record by the respondents of any failure of justice. The respondents also failed to move an application before the learned trial Judge praying for framing of an issue in regard to the pecuniary jurisdiction so that the same could be adjudicated. The respondents could not show any prejudice which was caused to the respondents on the issue of pecuniary jurisdiction of the trial Court. In the absence of these basic requirements being fulfilled by the respondents, it was certainly not a correct approach for the learned District Judge, to set aside the judgment and decree passed by the trial Court, merely on the ground of a purported lack of pecuniary jurisdiction of the trial Court.

18. For the above reasons, the appeals need to succeed. Hence, the following order:-

ORDER

- i. The impugned judgment and order dated 22 August, 2017 passed by the learned District Judge-8, Nashik in Regular Civil Appeal No. 29 of 2016 and Regular Civil Appeal No. 30 of 2016 is quashed and set aside with a direction to the learned District Judge to hear the appeals afresh on merits on all the issues including in regard to the valuation of suit and/or deficit court fees and adjudicate the same in accordance with law.
- ii. All contentions of the parties are expressly kept open.
- iii. The learned District Judge is directed to decide the appeal as expeditiously as possible and within a period of 8 months from today.
- iv. The parties are directed to appear before the learned District Judge on 27 April, 2023.
- v. The appeals stand allowed in the above terms. No costs.
- vi. The civil applications would not survive. The same stand disposed of.

[G.S. KULKARNI, J.]

Corrected as per the order of speaking to minutes dated 4 May, 2023