

(1963) 01 GUJ CK 0010

Gujarat High Court

Case No: Civil Revision Application No. 425 of 1961

Madhusudan
Dahyabhai

APPELLANT

Vs

Manilal Harilal and
Another

RESPONDENT

Date of Decision: Jan. 30, 1963

Acts Referred:

- Bombay Civil Courts Act, 1869 - Section 24, 26
- Constitution of India, 1950 - Article 219
- Court Fees Act, 1870 - Section 7, 7(iv)(c)
- Suits Valuation Act, 1887 - Section 8

Citation: AIR 1963 Guj 291 : (1963) GLR 1022

Hon'ble Judges: V.B. Raju, J

Bench: Single Bench

Advocate: A.D. Desai, for the Appellant; M.C. Shah, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

V.B. Raju, J.

What is challenged in this revision application is the view taken by the lower appellate Court that the appeal before it should be returned for presentation to the High Court and that the District Court is not competent to hear the appeal.

2. The suit was one for accounts, for the sum due after taking accounts and for an injunction to restrain the opponents from taking an objection to the petitioner taking part in a business, The suit was also for a declaration that a certain writing was illegal, void and not binding upon the petitioner. The suit was also for a declaration that whatever property was acquired from the income of business was a joint Hindu family property and for a

permanent injunction to restrain the opponents from obstructing the petitioner from doing vahivat. The suit was also for a partition of property acquired from the income of the, business. The suit was valued at Rs. 205/- for the purpose of court-fees. The suit was originally filed in the Court of Civil Judge (Junior Division), but as by joint purshis the parties agreed that the value of the suit exceeded Rs. 10,000/-, the suit was transferred to the Civil Judge, Senior Division, When the matter went up in appeal, the appellate Court was of the view that the District Court was not competent to hear the appeal, but only the High Court, and the memorandum of appeal was ordered to be returned for presentation to the proper Court. This order is now challenged in revision.

3. As the suit is one for a declaratory decree where consequential relief is claimed, Section 7(iv)(c) of the Court fees Act of 1870 is applicable, but so far as partition of the property acquired from the income of the business is concerned, it does not fall u/s 7 at all. It is, therefore, contended that Section 8 of the Suits Valuation Act applies, and the value for the purpose of jurisdiction should be the same as the value for the purpose of Court-fees. It is also contended therefore that the value for the purpose of Court-fees is that which is given by the plaintiff in his plaint, namely, Rs. 205/-. It is, therefore, contended that the value for the purpose of jurisdiction is also Rs. 205/- and that therefore the District Court is competent to hear the appeal.

4. Section 24 of the Bombay Civil Courts Act provides as under:"

"..... .The jurisdiction of a Civil Judge, Junior Division, extends to all original suits and proceedings of a civil nature wherein the subject-matter does not exceed in amount or value ten thousand rupees."

Section 26 of the same Act provides as follows :

"In all suits decided by a Civil Judge of which the amount or value of the subject-matter exceeds ten thousand rupees, the appeal from his decision shall be direct to the High Court."

5. The question, therefore, is what is the amount or value of the subject-matter. Section 8 of the Suits Valuation Act reads as follows;

"Where In suits other than those referred to in the Court-fees Act, 1870, Section 7, paragraphs v, vi and ix and paragraph x, Clause (d), Court-fees are payable ad valorem under the Court-fees Act, 1870, the value as determinate for the computation of Court-fees and the value for purposes of jurisdiction, shall be the same."

This section deals with suits other than those referred to in the Court-fees Act, 1870, Section 7, paragraphs v, vi and ix and paragraph x, Clause (d), where Court-fee is payable ad valorem. Section 8 is in Part II of the Suits Valuation Act, which is headed "other suits". Part I of the Suits Valuation Act, is headed "suits relating to land". Therefore, on a first impression Part II deals with suits other than those relating to land. Admittedly,

the instant case relates to Immovable property and therefore relates to land. But Part I of the Suits Valuation Act has not been applied to Bombay and Gujarat. The heading "other suits" given in Part II would mean suits other than those referred to in Part I, and ordinarily the heading "other suits" of Part II would mean suits other than those relating to land. In such a case, Section 8 of the Suits Valuation Act would not be applicable to the instant suit, which is "one relating to land. But as already observed, Part I is not applied to Bombay and Gujarat and the heading of Part II, namely "other suits" would mean suits other than those to which Part I has been made amicable, and if Part I has not been made applicable, the heading "other suits" would mean all suits and not merely suits other than those relating to land. In this view, Section 8 of the Suits Valuation Act would be applicable to suits relating to land provided the other requirements of Section 8 of the Suits Valuation Act are satisfied. One of the other requirements is that the suit should be one other than those referred to in the Court-fees Act, 1870, Section 7, paragraphs v, vi and ix and paragraph x, Clause (d). That requirement is satisfied, because it is common ground that the instant suit is one which falls u/s 7(iv)(b) and (c). The second requirement is whether in the instant case court-fees are payable ad valorem under the Court-fees Act of 1870. In the case of Bombay, Section 14 of the Bombay Finance Act, 1932, provides that for Articles 1, 6, 7, 12, 14, 17, 18, 19, 20 and 21 of Schedule M of the Court-fees Act of 1870, certain other entries shall be substituted, in particular regarding item No. 17, the following shall be substituted:

"17. Plaint or memorandum of appeal in each of the following suits :-

(i) to alter or set aside a summary decision or order of any of the Civil Courts not established by Letters Patent or of any Revenue Court;	When the amount or value of the property involved does not exceed five hundred rupees.	Ten rupees.
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(ii) to alter or cancel any entry in a register of the names of proprietors of revenue paying estates ;	When the amount or value of the property involved exceeds five hundred rupees.	Fifteen rupees.
(iii) to obtain a declaratory decree or order, where no consequential relief is prayed ;	...	Fifteen rupees.
(iv) to set aside alienation;	...	Fifteen rupees.
(v) to set aside a decree or award;	When the amount or value of the property involved does not exceed five hundred rupees.	Ten rupees.

	When the amount or value of the property involved exceeds five hundred rupees.	Fifteen rupees.
(vi) to set aside an adoption; and	...	Fifteen rupees.
(vii) any other suit where it is not possible to estimate at a money value the subject matter in dispute, and which is not otherwise provided for by this Act.	...	Fifteen rupees.

This new entry 17 in Schedule II therefore provided that in any other suit where it is not possible to estimate at a money value the subject-matter in dispute and which is not otherwise provided for by the Act, the proper fee payable is Rs. 15/-. In the case of all suits falling u/s 7 of the Court-fees Act of 1870, the subject-matter or "the value is that stated in Section 7. In a suit like this it is the value as made in the plaint. It depends on the estimation of the plaintiff. In all such cases, it cannot be said that it is difficult to estimate the value, because Section 7 of the Court-fees Act, 1870, leaves the estimation to the plaintiff. It is only when the plaintiff himself says that it is difficult to estimate, that item No. 17(vii) of Seh. II of the Court-fees Act, 1870, would come into operation. When Section 7 gives right to the plaintiff to estimate the value, then Schedule I, which refers to

ad valorem fees, applies to the valuation as made by the plaintiff in his plaint.

6. In the instant case, in so far as the suit falls u/s 7(iv)(b) and Section 7(iv)(c) of the Court-fees Act, 1870, the plaintiff can put his own valuation, and having put such a valuation, he would have to pay ad valorem fees on such valuation. Section 8 of the Suits Valuation Act would, therefore, apply.

7. But the real question is whether the instant suit falls u/s 7(iv)(b) or Section 7(iv)(c) or Section 7(v) or item 17 (ii) of Schedule II of the Court-fees Act of 1870. Section 7(iv)(b) and Section 7(iv)(c) reads as follows:

"(b) Suits to enforce the right to share in any property on the ground that it is joint family property;

(c) Suits to obtain a declaratory decree or order, where consequential relief is prayed."

Section 7(v) of the Bombay Court-fees Act, 1870, reads as follows:

"In suits for the possession of land, houses and gardens--according to the value of the subject-matter; and such value shall be deemed to be where the subject-matter is land, and."

Item No. 17(vii) of Schedule II of the Court-fees Act, 1870, reads as follows:

"Plaint or memorandum of appeal in each of the following suits:

(vii) any, other suit where it is not possible to estimate at a money value the rupees. subject matter in dispute, and which is not otherwise, provided for by this Act.

8. It is provided in Section 6 of the Court-fees Act of 1870 as follows-

"Except in the Courts hereinbefore mentioned no document of any of the kinds specified as chargeable in the first or second schedule to this Act annexed shall be filed, exhibited or recorded in any Court of Justice, or shall be received or furnished by any public officer, unless in respect of such document there be paid a fee of an amount not less than that indicated by either of the said schedules as the proper fee for such document."

In other words the Court-fee chargeable either under the first or second schedule, as the case may be, should be affixed. The Court-fee shown in the first schedule shall be charged at the ad valorem rate and that under the second schedule at the fixed rate. Section 7 of the Court-fees Act of 1870 provides for the computation of the amount of fees payable under the Act in certain suits. In certain suits Section 7 allows the plaintiff to state the amount at which he values the relief sought. In certain other suits, Section 7 provides as to how the amount of fees payable under the Act is to be computed, for instance in the case of suits falling u/s 7(ix) -- on the principal money expressed to be secured by the instrument of mortgage. In certain other cases, the amount is the amount

of rent of Immovable property. It is provided in Section 7(ix) as follows:

"In suits against a mortgagee for the recovery of the property mortgaged, and in suits by a mortgagee to foreclose the mortgage, or, where the mortgage is made by conditional sale, to have the sale declared absolute -- according to the principal money expressed to be secured by the instrument of mortgage."

In certain suits, Section 7 refers to the market value of the land, for instance, para v(d) of Section 7. Therefore, Section 7 of the Court-fees Act of 1870 refers to various modes of determining the amount at which the relief sought is valued. But in all cases to which Section 7 applies, there is no difficulty in estimating the subject-matter in dispute, although in some cases Section 7 gives the right to the plaintiff to put his own valuation. But apart from the suits mentioned in Section 7, there may be other suits, for instance, suits to set aside an award and to set aside an adoption, and for such suits, a provision is made in item. No. 17 of Schedule II of the Court-fees Act of 1870. If a suit is one of the classes mentioned in Section 7, then ad valorem Court-fee should be paid, because Section 7 is not dealing with suits where it is not possible to estimate at a money value the subject-matter in dispute. It specifically provides for the manner of estimating the money value of the subject-matter in dispute, although in some cases it leaves it to the plaintiff to put his own valuation. Once a specific value is arrived at, the ad valorem table must govern the Court-fee payable.

9. The next question is whether the suit in the instant case is one which falls u/s 7(iv) or Section 7(v) of the Court-fees Act of 1870 or is one where it is not possible to estimate at a money value the subject-matter of the dispute and which is not otherwise provided for by the Act.

10. If we look at the plaint, it contains alternative prayers. The plaint alleges that the plaintiff is the exclusive owner of certain property and in the alternative he claims to be a member of the joint family owning certain property. As regards the first, the case obviously comes under para (v) of Section 7, because he is claiming to be an exclusive owner and claims possession of certain property on the ground that he is an exclusive owner.

11. But it is contended that in the plaint, as originally filed, there is a contention that the plaintiff is an exclusive owner of the property and for possession as such exclusive owner. It is true that there is such a prayer in the plaint which would bring it within the application of Section 7(v) of the Court-fees Act of 1870. We have to consider the plaint as originally drafted and filed, if we are to decide the question of jurisdiction as to who is to hear the suit. But, we are not concerned with that question now. The question before me is whether the High Court is to hear the appeal or the District Court is to hear the appeal. For that purpose we have to look at the decree and for this purpose we have to consider the plaint as amended at the time of the decree. By reason of the pursuance of the plaintiff, the prayer relating to exclusive ownership was given up and that there is nothing

in the decree giving relief to the plaintiff as an exclusive owner. The appeal is by the plaintiff, and there is nothing in the decree denying the right of the plaintiff as an exclusive owner. The appeal does not raise the question of exclusive ownership. In the appeal it is not contended by the plaintiff that the lower Court was wrong in refusing the relief based on exclusive ownership. Therefore, for the purpose of the appeal, we have to consider the decree appealed against and the matters which are appealed against. In other words, we have to look at the plaint as amended, and for this purpose we have to ignore the fact that the plaint as originally drafted contains a prayer regarding exclusive ownership and a prayer for possession as such exclusive owner. Therefore, the suit as it stood at the time of the decree, would clearly fall within the scope of Section 7(iv)(b) of the Court-fees Act of 1870, and the plaintiff would have a right to value the relief sought at his own valuation, namely, Rs. 205/-. The Court-fee payable would then depend upon ad valorem table in Schedule I. Section 8 of the Suits Valuation Act would also come into application.

12. It is in order to make Section 26 of the Bombay Civil Courts Act applicable that Section 8 of the Suits Valuation Act has been passed. The preamble of the Suits Valuation Act provides that

"Whereas it is expedient to prescribe the mode of valuing certain suits for the purpose of determining the jurisdiction of Courts with respect thereto."

It is, therefore, clear that for the purpose of determining the jurisdiction u/s 26 of the Civil Courts Act, we have to look at the Suits Valuation Act and wherever it applies to Section 8 of that Act. As already held, considering the plaint in the instant case as it stood amended at the time of the decree and considering also the terms of the decree, Section 7(iv)(b) of the Court-fees Act, 1870, applies, and for the purpose of jurisdiction, it would be the District Court that would have the right to hear the appeal and not the High Court.

13. In order, therefore, to decide whether the appeal lies to the High Court or not, we have to determine the valuation of the subject-matter in the suit decided by the Civil Judge, that is, we have to determine the value of the subject-matter in this suit at the time of the decree because after the plaint is filed and before the suit is decided, the plaint can be amended, if it is amended, the amendment would have retrospective effect, and, therefore, we have to look at all the amendments of the plaint after the plaint is filed and before the date of the decision passed by the Civil Judge.

14. The plaintiff also alternatively alleges that he is a member of the joint family and as such a member he has certain rights. The plaintiff prays that he be allowed to enforce those rights as a member of the joint family. This alternative prayer clearly comes within the scope of Section 7(iv)(b) of the Court-fees Act of 1870. Section 7(iv)(b) reads as follows:

"(7) The amount of fee payable under this Act in the suits next hereinafter mentioned shall be computed as follows :

(iv) In suits-

(b) to enforce the right to share in any property on the ground that it is joint family property, In all such suits the plaintiff shall state the amount at which he values the relief sought."

The alternative prayer clearly comes within these words. As regards this alternative prayer, the Court-fees Act allows the plaintiff to state the amount at which the value of the relief is sought. Once that is done, the Court-fee payable is determined by the ad valorem table of Schedule I of the Court-fees Act of 1870, and in such a case Section 8 of the Suits Valuation Act would apply. The plaintiff having put the value at Rs. 205/-, the appeal would lie "to the District Court and not to the High Court.

15. It is, however, contended by the learned counsel for the opponents that a suit for partition comes either u/s 7(v) of the Court-fees Act, 1870, or under item 17(vii) of Sch. II of the same Act, and he relies on [Shankar Maruti Girme Vs. Bhagwant Gunaji Girme](#), which is a Full Bench case. The view previously taken by the Bombay High Court that a suit for partition by a person in constructive possession with other coparceners of a joint family property and for separate possession would fall u/s 7(v) of the Court-fees Act (1870) was reversed by the Full Bench, which held that where a person in constructive possession asks for separate possession, that is not a suit for possession or a suit for ejectment. Therefore, it was held that the suit would not fall u/s 7(5) of the Court-fees Act, 1870. That was the main decision of the Full Bench. Incidentally, the question whether the suit fell u/s 7(iv)(b) of the Court-fees Act, 1870 was considered. A reference was made to the case of Motibhai v. Haridas ILR 22 Bom 315, where it was held that such a suit fell u/s 7(iv)(b) of the Court fees Act, 1870. A reference was also made to the judgment of Batchelor J., who tried to distinguish between the word "share" and the word "a share". Batchelor J. expressed the opinion that the suit falling u/s 7(iv)(b) is one for enforcement of what one might call an abstract claim or right. This was the main reason for coming to the conclusion expressed by Weston J., who was one of the Judges of the Full Bench. Weston J. observed that in these circumstances, in view of the weight of authority, it should now be declared that the Bombay decisions are not good laws and that the Bombay High Court should fall in line with other High Courts and should hold that in a suit for partition where the plaintiff is in constructive possession with other coparceners of a joint family property the suit falls under Article 17 Clause (7) of Schedule H of the Court-fees Act, 1870, and according to the Bombay amendment, the Court-fee payable in the present type of suit, is a fixed Court-fee of Rs. 15/-. If a Judge or Judges of a Bench comes to a certain conclusion because the weight of authority is in favour of that conclusion, that would be, with great and profound respect, to base the decision on the weight of authority and not on the individual judgment of the Judges constituting the Bench, and that would be contrary to the provisions of Section 165 of the Evidence Act and Article 219 of the Constitution, and to the oath taken by the Judges under the Government of India Act, the terms of which are substantially the same as those under the Constitution of India. But with great respect, I agree with the Full Bench decision in 49

Bom L R 72 : (AIR 3947 Bom 259), that such a suit would not fall u/s 7(v) of the Court-fees Act, 1870. With great respect, I agree with the conclusion of the Full Bench that the previous view of the Bombay High Court on that point was not quite sound.

16. The learned Judge of the Bombay High Court, Weston J. has not given his own reasons for holding that such a suit would not fall u/s 7(iv)(b) of the Court-fees Act, 1870. In fact, the view has been taken in the earlier case of ILR 22 Bom 315, that such a suit would fall u/s 7(iv)(b) of the Court-fees Act, 1870.

17. In the instant case, it cannot be held that such a suit would fail under item 17 of Sch. II of the Court fees Act, 1870, as the plaintiff himself has put a clear valuation of the subject-matter. When the plaintiff is able to put the valuation of the subject-matter, how can it be said that it is not possible to put a valuation.

18. The learned counsel for the opponents also relied on [Ramaswamy Gurukkal Vs. Sivasubramania Gurukkal and Others](#), decided by a Single Judge of the Madras High Court. The real question involved before him was entirely different. The question before him was whether in a suit for partition of the plaintiff's share in the family estate the entire property or the plaintiff's share in the property should be valued. The learned Judge held that it was not necessary to value the entire estate, but it was sufficient to value the share of the plaintiff in the joint family estate. The learned Judge did not discuss the question whether Section 7(iv)(b) of the Court-fees Act, 1870, would be applicable to such a suit. It is, therefore, not necessary to consider this decision, as there is no discussion on the question whether Section 7(iv)(b) of the Court-fees Act, 1870, would be applicable to such a suit.

19. Another contention urged by the learned counsel for the opponents is that there was a joint purshis of the parties stating that for the purpose of jurisdiction the subject-matter did not exceed Rs. 10,000/- and that therefore this purshis is binding on both the parties. That purshis is only for the purpose of jurisdiction. There was no joint purshis stating that the value of the subject-matter for the purpose of Court-fees did not exceed Rs. 10,000/-. u/s 8 of the Suits Valuation Act it is the valuation for the purposes of Court-fees that governs the subject-matter for the purpose of jurisdiction in certain matters and not vice versa. Even in those matters it is not the value of the subject-matter for the purpose of jurisdiction" that governs the subject-matter for the purpose of Court-fees.

20. As already observed, item No. 17 of Schedule II of the Court-fees Act, 1870, cannot apply to this case, because this is not a case in which it is not possible for the plaintiff to put the valuation of the subject-matter, because the plaintiff himself has put a valuation. It is, therefore, not possible to hold that item No. 17 of Schedule II of the Court-fees Act, 1870, applies to the instant suit. In the plaint, there is no prayer for possession. The prayer is only for partition and for an injunction.

"Therefore, clearly the suit does not fall u/s 7(v) of the Court-fees Act, 1870.

21. The contentions of the learned counsel for the opponents" are therefore rejected the revision application is allowed. The order of the Assistant Judge returning the memo of appeal to the appellant is set aside, and the lower appellate Court is directed to dispose of the appeal. There will be no order as to costs.