

Jafferali Allibhai and others Vs Messrs S.R. Dossa and Co.

Court: Bombay High Court

Date of Decision: Sept. 28, 1967

Acts Referred: Bombay Court Fees Act, 1959 " Section 5, 6(iv)(d), 6(iv)(j)

Court Fees Act, 1870 " Section 7, 7(iv)(c)

Transfer of Property Act, 1882 " Section 53, 63

Citation: (1968) MhLj 593

Hon'ble Judges: J.R. Vimadalal, J

Bench: Single Bench

Advocate: B.R. Zaiwalla, for the Appellant; M.S. Sanghavi for State of Maharashtra, for the Respondent

Judgement

J.R. Vimadalal, J.

This is a Chamber Summons taken out by the plaintiffs to review and set aside an order of the Taxing Master with regard to the valuation of the suit for the purpose of court-fees.

2. The suit, as framed, is a representative suit u/s 53 of the Transfer of Property Act by the creditors of defendant-firm No. 1 to avoid the deed of

assignment of movable and immovable properties by that firm in favour of defendant No. 2 which, was dated February 21, 1966. The properties,

which are the subject-matter of the said deed of assignment are of the value of Rs. 7 1/2 lacs. The plaintiffs have, in para. 17 of the plaint, valued

the suit for the purpose of court-fees u/s 6 (iv) (j) of the Bombay Court-fees Act, 1959, and they paid a fixed court-fee of Rs. 30 under the said

section. On a reference to the Taxing Master u/s 5 of the said Act to determine the correct amount of court-fees payable in respect of the suit as

framed, he came to the conclusion that court-fees would be payable by the plaintiffs on the aggregate sum of Rs. 2,26,998.14, being the total of

the claims of the creditors set out in annexure "G" to the plaint, including the claims of the two plaintiffs. In arriving at that conclusion, the Taxing

Master has proceeded on the footing that, since this is a representative suit, as required by section 63 of the Transfer of Property Act, all the

creditors mentioned in the list must be considered to be parties to this suit. It may be mentioned that the Taxing Master had, before proceeding

with the reference, directed a notice to be given to the State of Maharashtra, and the State was represented by attorneys in the course of the

hearing of the reference before the Taxing Master. Mr. Sanghavi, who appeared on behalf of the State before me, sought my permission to appear

at the hearing of this Chamber Summons, and I have permitted him to do so. It may further be mentioned that the State itself has taken out a

Chamber Summons dated August, 21, 1967, for a review of the valuation arrived at by the Taxing Master, contending that the same should be

enhanced to Rs. 7,50,000 which was the value of the property involved in the suit. I am, however, for the present, considering the plaintiff's

Chamber Summons, and will pass orders in regard to the Chamber Summons taken out by the State separately hereafter.

3. It would be convenient to refer at the very outset to the terms of section 6 (iv)(j) of the Bombay Court-fees Act, 1959. Clause (iv) of the said

section deals with various types of declaratory suits and in sub-clause (j) thereof, it is provided that, in suits where a declaration is sought and "the

subject-matter in dispute is not susceptible of monetary evaluation and which are not otherwise provided for" by the said Act, the court-fee

payable would be a fixed fee of Rs. 30. The questions that arise before me are, therefore, three, namely, (1) what is the subject-matter of the

present suit as framed, (2) is that subject-matter susceptible of monetary evaluation, and (3) whether it is a suit which is otherwise provided for by

the said Act.

4. Mr. Zaiwalla has, in the course of his argument, stated that four views are possible, namely, (1) that the subject-matter is the claim of the two

plaintiffs aggregating to about Rs. 18,000; (2) that the subject-matter is the aggregate claim of all the creditors on whose behalf the suit is filed as a

representative suit aggregating to Rs. 2,26,998.14, (3) that the subject-matter is the valid of the property comprised in the deed of assignment

which is sought to be avoided by the present suit u/s 53 of the Transfer of Property Act, and (4) that the subject-matter is merely the relief, namely

the declaration that the deed of assignment in question is void as against the creditors of defendant No. 1.

5. In the case of Ratilal Manilal Vs. Chandulal Chhotalal, , which was a suit for possession of a house in which the plaintiff claimed that the

defendant was in possession as his licensee, in holding that court-fee was payable according to the market value of the house, it was observed by

Macklin J. in the judgment of the Division Bench (at p. 554) that, in plain English, the subject-matter of a suit is what the suit is about and that it is

not the same thing as the object of the suit. The learned Judge then proceeded to state that the object of the suit before him was the claim, or, in

other words, possession of the house, but the subject of the suit was the house itself. On a consideration of the various clauses and sub-clauses of

section 7 of the Court-fees Act, 1870, the learned Judge came to conclusion that the said section contemplates the subject-matter of a suit for the

possession of land as being the land, the subject-matter of a suit for the possession of a garden as being the garden and the subject-matter of a suit

for the possession of a house as being the house, and there was no suggestion anywhere that the subject-matter ought to be taken to mean anything

else.

6. Turning to the present suit, as framed, in the light of the decision in Ratilal Manilal's case (1) just cited by me, in my opinion, as a matter of plain

language, the claim of the two plaintiffs aggregating to Rs. 18,000 cannot, therefore, be said to be the subject-matter of the suit. On parity of

reasoning, the claim of all the creditors, on whose behalf this representative suit is filed by the plaintiffs, cannot be said to be the subject matter of

the suit. Moreover, it would be impossible in any given case for the plaintiffs to be able to say what is the aggregate value of the claims of all the

creditors, some of whom may even be unknown to the plaintiffs. From the practical point of view also, therefore, it would be impossible to

compute court-fees on that footing. The first two of the four possible views in regard to this listed by Mr. Zaiwalla must, therefore, be rejected, and

the question resolves itself into this, namely, whether the subject-matter of the suit can be said to be the property comprised in the deed of

assignment which is sought to be declared void and not binding on the creditors by the present suit.

7. In order to decide the question, it is necessary for me to refer to the frame of the present suit. It is quite clear that prayer (a) of the suit does not

seek to set aside the deed of assignment, but merely seeks a declaration that the same is void as against the plaintiffs and the other creditors of

defendant No. 1 and that it is also the averment in the body of the plaint in para. 13. In the case of Abdallakhan Daryakhan v. Purshottam AIR

1948 Bom. 265 = (1946) 49 Bom. L R 876, which was a decision in appeal from the decision of Lokur J. reported in Keshavlal Hiralal Vs.

Girdharlal Uttamram Parekh, = (1943) 46 Bom. L R 613, one of the questions which arose was what was the article of the Limitation Act which

would govern a suit by a creditor u/s 53 of the Transfer of Property Act. In considering the applicability of Article 91 of the Limitation Act, 1908,

which applies to suits to cancel or get aside instruments, it was observed in the judgment of the Division Bench delivered by Gajendragadkar J. that

prima facie, suits to set aside instruments can be filed only by persons who are parties to the instrument in question, and the object of such, suits is,

as the Article itself expressly states, to cancel or set aside instruments. The learned Judge then went on to observe as follows (p. 877):

On the other hand, suits u/s 53 of the Transfer of Property Act are instituted by creditors who are not parties to the transactions impeached and

the claim made in such suite is not to cancel or set aside such transfers, but to obtain a declaration that such transfers do not bind the creditors on

whose behalf such suits are filed. Even if such suits are decreed, the instruments evidencing the transfers in question are act cancelled or set aside

but are only held to be not binding on the creditors of the transferors. The nature of such suits is, in our opinion, substantially different from that of

the suits referred to by Article 91. In that view we are not prepared to hold the suits brought by creditors u/s 53 of the Transfer of Property Act

are governed by Article 91. In our opinion, such suits would be governed by Article 120 of Indian Limitation Act.

I am not concerned, on the present application, with the rest of the judgment in the said case. If the present suit, which is admittedly a suit u/s 53 of

the Transfer of Property Act, is construed in the manner stated by Gajendragadkar J. in Abdallakhan's case A I R 1948 Bom. 265 = (1946) 49

Bom. L R 875, as not being a suit to set aside the deed of assignment, I fail to see how it can be said that this suit is about the property comprised

in the deed of assignment. As Mr. Zaiwalla has rightly pointed out, even if the plaintiffs succeed in the present suit, they do not get that property, or

any part of it. It does not become available to the plaintiffs until they have proved their respective claims in independent litigations, and perhaps, not

even then. Reference may also be made in this connection to the decision of V. S. Desai J. in the case of Society Etc. of God v. Hanmantrao 1965

Mh. L J 473 = (1964) 67 Bom. L R 210, in which the question which arose was, what was the provision of the Court-fees Act which would be

applicable to a suit by a sub-tenant of the original tenant claiming that he was entitled to become the direct statutory tenant of the landlord on the

termination of the tenancy of the head tenant by reason of the provisions of section 14 of the Bombay Rent Act. In holding (at p. 213) that the suit

would be governed by section 6 (iv) (j) of the Bombay Court-fees Act, 1959, the learned Judge stated that, since what the plaintiffs sought was a

declaration relating to statutory tenancy, it could not be said to be a declaration in respect of the nature of their tenancy of any immovable property.

It is pertinent to note that it was not held that the suit was ""about"" the immovable property, and even the contention that it would be governed by

section 6 (iv) (d) was rejected by the learned Judge. This decision provides an answer to the argument of Mr. Sanghavi that, where it is possible to

relate the relief claimed to some property and to value that property, even approximately, the provisions of section 6 (iv) (j) cannot be invoked.

8. Reliance was placed by Mr. Zaiwalla on the decision of a Division Bench of this Court in the case of Chhotalal Kalidas Vs. Laxmidas Mayaram

and Others, . The relief"s claimed by the plaintiffs in that suit who were the mortgagors were a claim for a declaration that a certain sale effected by

defendant No. 1 who was the mortgagee, in favour of defendant No. 2 was illegal, void, invalid, ineffective and bad in law and the same be set

aside, and for an injunction against the two defendants restraining them from proceeding further with the completion of the sale. The plaintiffs had

valued the claim for court-fee and jurisdiction at Rs. 420, but the defendants contended that the value of the suit properties being above Rs.

25,000, the suit was beyond the jurisdiction of the City Civil Court in which it was instituted, and the said Court was, therefore, incompetent to

entertain the suit. That case fell to be decided under the provisions of the Court fees Act, 1870. The trial Judge upheld the contention of the

defendants and ordered that the plaint be returned for presentation to the proper Court. On appeal, Bavdekar J. held that the City Civil Court had

jurisdiction to entertain the suit and reversed the order passed by the trial Court, directing the trial Court to proceed with the suit according to law.

It may be mentioned that u/s 7 (iv) (c) of the Court-fees Act, 1870, in a suit to obtain a declaratory decree or order, where consequential relief

was prayed for, the plaintiff was entitled to pay court-fees according to the amount at which the relief was valued by him in the plaint, but section

8A of the same Act provided that if the Court was of opinion that the subject-matter of a suit had been wrongly valued, it could revise the valuation

and determine the correct valuation by holding the necessary inquiry for that purpose. The plaintiffs put their own valuation on the said suit under

the provisions of section 7 (iv) (c), and the Division Bench, in considering the question as to whether the valuation put by the plaintiffs should be

accepted, or an inquiry ordered under the provisions of section 8A, observed that though the right of the plaintiff u/s 7 (iv) (c) to put his own

valuation was indisputably subject to the provisions of section 8A, it was only if there was some standard by reference to which it would be

possible to value subject-matter of a suit and the Court could come to the conclusion that the valuation made by the plaintiff was wrong, that it was

open to the Court to revise the valuation u/s 8A. It was then observed in the judgment in the said case as follows: (p 593):

But in this case it cannot be said that there was a standard by reference to which the valuation made by the plaintiffs of the subject-matter of the

suit can be demonstrated to be wrong. The claim made by the plaintiffs is a claim for a declaration that a certain sale effected by defendant No. 1

in favour of defendant No. 2 was "illegal, void, invalid, ineffective and bad in law" and for an injunction against the two defendants; and we are

unable to appreciate by reference to what standard the valuation of the subject-matter by the plaintiff) of a suit for a declaration that a particular

sale is invalid, ineffective and bad in law can be rectified.

The learned Judges, therefore, agreed with the decision of Bavdekar J. that the valuation made by the plaintiffs not being shown to be wrong, the

Court was incompetent to revise it. It was further observed that a suit for a declaration that a sale is "invalid and ineffective" was not a suit to set

aside an alienation. In the next paragraph of the judgment in the said case, dealing with the argument of Mr. Trivedi that the suit fell within the

provisions of Article 17 (iv) or (vii) of Schedule II to the Court-fees Act, 1870, it was observed that the said suit could not be said to be a suit

where it was not possible to estimate at a money value the subject-matter in dispute and which is not otherwise provided for by the Act. Mr.

Sanghavi contended that this decision is of no assistance to the plaintiffs, because, though the valuation of the plaintiffs to the said suit was

accepted, this was a case in which ad valorem court-fees were computed on that valuation. These matters, however, do not, in my opinion, affect

the points on which Mr. Zaiwalla has relied as far as this decision is concerned, and they are that, in a case in which a declaration was sought that a

sale was ineffective and invalid, the view taken was that there was no standard by reference to which the valuation which the plaintiffs had

themselves put on the subject-matter of the suit could be said to be wrong. That could only be on the footing that the subject-matter in a suit

framed as a suit for a declaration that a sale of certain property is ineffective, is not the property itself. It also supports Mr. Zaiwalla's second

contention that such a suit is not susceptible of monetary evaluation. In my opinion, there is no difference between saying, as was said in the

judgment in Chhotalal Kalidas Vs. Laxmidas Mayaram and Others, , that there was no standard by which the suit could be valued otherwise than

by the plaintiffs' own valuation, and saying that the suit was not susceptible of monetary valuation within the terms of section 6 (iv) (j) of the

Bombay Court-fees Act, 1959, and the two expressions mean much the same thing. In the result, I hold that the subject-matter of the present suit,

as framed, is not the property comprised in the deed of assignment which was sought to be set aside, but is the relief by way of declaration itself,

namely, the declaration that the deed of assignment was void as against the plaintiffs, as Mr. Zaiwalla has rightly contended, and that the same is

not susceptible of monetary evaluation and is governed by section 6 (iv) (j) of the Bombay Court-fees Act, 1959. Some other decisions were also

referred to in the course of the arguments before me in this case, but it is unnecessary for me to deal with any of them, except the decision of the

Supreme Court in the case of State of Maharashtra v. Mishrilal 1964 Mh. L J 120 = A 1 It 1964 S C 457 = 1064 Bom. L R 254 in which it has

been laid down (para. 9) that the Court-fees Act is a taxing statute and its provisions, therefore, have to be construed strictly in favour of the

subject-litigant.

9. That leaves for my consideration only the question as to whether this is a suit which is otherwise provided for by the Bombay Court-fees Act,

1959. It was sought to be argued by Mr. Sanghavi for the State that this suit is expressly provided for by Article 1 or 7 of Schedule I to the said

Act, but, I am afraid, there is no substance in that contention of Mr. Sanghavi, for the simple reason that both those Articles are themselves Articles

of a residuary nature, it being stated in Article 1 of Schedule I that it applies to cases of plaint or memorandum of appeal ""not otherwise provided

for in this Act"", and in Article 7 that it applies to any ""other"" plaint etc. Moreover, as Mr. Zaiwalla has contended, the present suit, as framed, falls

specifically within the terms of section 6 (iv) (j) of the said Act, and, under the circumstances, there is no question of its being governed by any

other provision of that Act.

10. In the result, I make this Chamber Summons absolute in terms of prayers (a) and (b). The State must pay the plaintiffs" costs of this Chamber

Summons. Counsel certified.