

Deepak Natwarlal Parekh Vs Tejas Natwarlal Parekh

Court: Bombay High Court

Date of Decision: Sept. 12, 2014

Acts Referred: Civil Procedure Code, 1908 (CPC) – Order 7 Rule 10, Order 7 Rule 11, 21(2)
Presidency Small Cause Courts Act, 1882 – Section 14(1)(i)
Suits Valuation Act, 1887 – Section 11

Citation: (2015) 1 ALLMR 790 : (2015) 1 BomCR 180

Hon'ble Judges: Mohit S. Shah, C.J.; M.S. Sonak, J

Bench: Division Bench

Advocate: Birendra Saraf and S.B. Pawar i/b. Little and Co, Advocate for the Appellant; J.F. Reis, Sr. Advocate, R.N. Kachare and Abhijeet Desai i/b. Ameet Palkar, Advocate for the Respondent

Final Decision: Dismissed

Judgement

M.S. Sonak, J.

This appeal is directed against the judgment and order dated 7 May 2014 made by the learned Single Judge of this Court

dismissing the appellant's (original defendant's) notice of motion no. 1532 of 2013 in Suit No. 5 of 2014 urging the dismissal of the suit for lack of

pecuniary jurisdiction or the return 1 of 12 of the plaint under Order 7 Rule 10 of the CPC for presentation to the appropriate court of competent

jurisdiction.

2. For sake of convenience, the parties shall be referred by their position in Suit No. 5 of 2014. This means, appellant shall be referred as the

defendant and the respondent as the plaintiff.

3. Dr. Birendra Saraf, learned counsel for the defendant made the following submissions: -

(A) The suit as filed, was basically for recovery of the suit premises from the defendant, who according to the plaintiff, was nothing but a gratuitous

licensee. In terms of the Presidency Small Causes Court Act, 1882 (PSCCA), exclusive jurisdiction in the matter of recovery of possession, even

from a gratuitous licensee, is vested in the Court of Small Causes. Consequently, this Court lacked jurisdiction to entertain the suit of the present

nature and the same ought to have been dismissed or in any case the plaint ought to be returned for presentation before the Court of Small Causes,

Mumbai. Reliance was placed upon the decision of the Supreme Court in the case of Prabhudas Damodar Kotecha and Others Vs. Manhabala

Jeram Damodar and Another, for the proposition that the expression "licensee" used in Section 14(1)(i) of the Presidency Small Causes Court

Act, 1882, (PSCCA) includes within its scope and ambit, a gratuitous licensee.

(B) The "suit premises" to which the suit pertains, comprises basically the first floor of unit no. 5 and is stated to admeasure hardly 650 sq. ft. In

terms of the Ready Reckoner issued by the Maharashtra State Government for the year 2013, the value of the suit premises would at the highest,

be in the range of Rs. 61,41,000/-. Instead, the Plaintiff has arbitrarily and unreasonably valued the suit for the purposes of jurisdiction of court fee

at Rs.5,00,00,000/-. By said over valuation, the plaintiff has misguided the court and sought to maintain the suit therein, when in fact in terms of the

true and correct valuation, the suit would lay before the City Civil Court.

4. In our judgment, the learned trial Judge of this Court, by the impugned judgment and order has rightly dismissed the defendant's notice of

motion, in which the aforesaid was urged.

5. The defendant, was by no means clear as to the legal provisions based upon which aforesaid pleas were raised in the notice of motion taken out

by him. Reference was however vaguely made to the provisions of Rules 10 and 11 of Order 7 of the CPC. Rule 10 merely provides that the

plaint shall, at any stage of the suit, be returned to be presented to the Court in which the suit should have been instituted. Rule 11 of Order 7,

CPC provides that the plaint shall be rejected, inter alia, where the relief claimed is "under valued", and the plaintiff on being required by the court,

to so correct the valuation, within the time to be fixed by the Court, fails to do so. In the present case, the defendant does not allege any under

valuation of the plaint. The defendant complains about over valuation.

6. In this regard, the legal position is that the plaintiff has the right to value the relief claimed according to his own estimation and such valuation has

to be ordinarily accepted. The plaintiff however, has not been given the absolute right or option to place any valuation whatsoever of such relief

and where the plaintiff manifestly and deliberately underestimates the relief, the Court is entitled to examine the correctness of the valuation given by

the plaintiff and to revise the same if it is patently arbitrary or unreasonable. Tara Devi Vs. Sri Thakur Radha Krishna Maharaj, through Sebaitis

Chandeshwar Prasad and Meshwar Prasad and Another,

7. The question of court fees and valuation must be considered in the light of allegations made in the plaint and decision in this regard cannot be

influenced either by the pleas in the written statement or by the final decision of the suit on merits. The valuation of the suit for purposes of court

fees has to be left to the discretion of the plaintiff. It is only in cases where the suit has been grossly undervalued that the court can examine the

valuation and revise the same. Parekh Market Permisses Co-op. Society Ltd. Vs. Padmanabh Builders and Others,

8. If therefore, the averments made in the plaint are taken into consideration, then the expression "suit premises" is described to mean the living

room situate on the first floor admeasuring approximately 300 sq. ft., the common garden, unauthorised construction above the parking lobby and

servants quarter admeasuring 10x x 35" (350 sq. ft.). Prayer clause (a) of the plaint seeks a restraint upon the defendant by a mandatory order and

injunction from using the suit premises and to remove their belongings, material, articles lying in the suit premises and further to permanently shift on

the ground floor. This relief in terms of prayer clause (a) has been valued at Rs.5,00,00,000/- and court fees of Rs.3,00,000/- have been paid

accordingly.

9. The Defendant, in support of his contention of "over valuation" has relied upon the Ready Reckoner issued by the Maharashtra State

Government for the year 2013, according to which the rate per sq. meter would be in the range of Rs.1,45,200/-. As per this rate, according to

the defendant valuation of the suit premises, which totally admeasure 650 sq. ft. would be Rs.97,77,000/-. However out of this, an amount of

Rs.33,06,000/- has to be deducted towards depreciation. Therefore, the suit premises, according to the defendant could not have been valued in

an amount in excess of Rs.61,41,000/-.

10. In our judgment, the defendant's aforesaid contention is clearly misconceived. In the first place, the purpose of providing a Ready Reckoner is

entirely different and by reference to the same, possibly some minimum price may be determined for fiscal purposes. However, there can be no bar

to parties either selling or valuing their property at rates higher than those set out in the Ready Reckoner. Secondly, the suit premises include not

merely the built up area of 650 sq. ft. but also the common garden. The calculations suggested by the defendant, completely overlook this aspect.

Thirdly, even if we are to proceed on the basis of the rates suggested in the Ready Reckoner, the valuation, upon inclusion of the common garden,

would certainly exceed the pecuniary limits of jurisdiction of this Court which is above Rs.1,00,00,000/-. This is certainly not a case where the

valuation is arbitrary or unreasonable. In such circumstances, there is no reason to deviate from the normal rule that the plaintiff is free to make his

own estimation of the relief sought in the plaint and such valuation, both for purposes of court fee and jurisdiction, which has to be ordinarily

accepted.

11. The objection, in regard to pecuniary jurisdiction is the most technical of technicalities. Kiran Singh and Others Vs. Chaman Paswan and

Others, Rachappa Subrao Jadhav vs. Shidappa Venatrao Jadhav (4) LR 461A 24 The court fee Act was passed, not to arm a litigant with the

weapon of technicality against his 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 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. Shri Basant Kumar Jain Vs. Chief Executive Officer, Maharashtra Industrial Development Corporation,

Regional Officer, Maharashtra Industrial Development Corporation and Maharashtra Industrial Development Corporation, 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 u/s 21(2) of the CPC are required to coexist,

before any objection based upon pecuniary jurisdiction can sustain. Pathumma and Others Vs. Kuntalan Kutty Dead by Lrs. and Others,

R.S.D.V. Finance Co. Pvt. Ltd. Vs. Shree Vallabh Glass Works Ltd.,

12. In view of the aforesaid legal position as also the facts and circumstances which obtain in the present case, we are satisfied that there is no

merit in the first contention of Dr. Saraf on the aspect of over valuation and lack of pecuniary jurisdiction.

13. The second contention, based upon the provisions of PSSCA, had not been raised in the affidavit in support of the notice of motion.

Nevertheless, being a question of law, the learned trial Judge of this Court, permitted the defendant to urge the same.

14. Strictly speaking, the contention as raised is by no means a pure question of law. The contention proceeds on the premise that according to the

plaintiff, the defendant is a gratuitous licensee in respect of the suit premises, of which the plaintiff has sought recovery of possession. The

meaningful reading of the plaint, in its entirety, does not support such a premise. At this stage, there is no question of advertent to the defence of the

defendant. In such circumstances, the defendant ought not to have been permitted to raise such contention, without having taken up the same in the

affidavit supporting the notice of motion. Be that as it may, since the learned trial judge has permitted the defendant to raise the same, we proceed

to examine the same.

15. In our judgment, the suit as filed, is certainly not a suit for seeking recovery of possession from a gratuitous licensee. The plaintiff owns flat no.

2 on the first floor and the defendant who is his real brother owns flat no. 1 on the ground floor. Both parties have been jointly using the two flats

which together, comprised unit no. 5. However, on account of disputes, the defendant barred the plaintiff to use common kitchen on ground floor.

Consequently, the plaintiff called upon the defendant to refrain from using any portion of the first floor premises. Through mediation of a common

relative, even an arrangement was reached for the user of two premises. However, situation developed, whereby the defendant, in breach of such

arrangement prevented the plaintiff and his family members from user of the common kitchen on the ground floor but at the same time insisted upon

user of the premises on the first floor. The averments in the plaint clearly stated that both the parties were in joint use of the entire unit no. 5 which

comprises ground and first floor. Upon meaningful reading of the plaint, along with the reliefs sought for therein, it is clear that this is not a case

where the plaintiff seeks to recover possession from a gratuitous licensee, so as to attract the provisions of PSSCA.

16. As between family members, who have been jointly using the entire unit, there arises no question of some of the family members being

gratuitous licensees Conrad Dias of Bombay Vs. Joseph Dias of Bombay, This is a suit between family members, primarily to enforce reciprocal

obligations. Again, although the defendant's defence is irrelevant at this stage, it needs to be noted that the defendant in the present case claims

ownership of the entire unit no. 5 including the first floor premises. Obviously to suits which involve the issue of title, the provisions of PSSCA are

not at all attracted. As such there is no merit in the second contention raised by Dr. Saraf.

17. Before we part, we may mention that the present appeal was filed along with appeal (L) No. 363 of 2014, questioning the interim order made

by the learned trial Judge on 7 May 2014 itself, injuncting the defendant from using the entire first floor premises. That appeal was disposed of on

1 September 2014, with a direction that the injunction would be restricted to the entire first floor premises, save and except the premises

admeasuring 35" x 10" (350 sq. ft.) as indicated in the order. At that stage, the defendant, despite having lodged the present appeal, chose not to

move the same for hearing. Having secured some reliefs in the said appeal, the defendant has now chosen to move the present appeal for hearing.

18. In the facts of this case, we are satisfied that the defendant is bent upon harassing the plaintiff by raising frivolous pleas, with a view to deprive

the plaintiff of the benefit of the interim orders made in his favour. We, therefore, deem it appropriate to impose costs upon the defendant.

19. Appeal, is accordingly dismissed with costs quantified at Rs.25,000/- which shall be paid to the respondent within four weeks.