

**(1968) 10 BOM CK 0019**

**Bombay High Court**

**Case No:** Letters Patent Appeal No. 44 of 1968 (with A. O. 301 of 1968 and A. O. 237 of 1968)

Indumatiben Chimanlal Desai

APPELLANT

Vs

Union of India

RESPONDENT

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**Date of Decision:** Oct. 15, 1968

**Acts Referred:**

- Bombay City Civil Court Act, 1948 - Section 12, 3, 4, 5
- Bombay Court Fees Act, 1959 - Section 4, 5, 6(iv), 6(iv)(d), 6(ix)
- Civil Procedure Code, 1908 (CPC) - Section 15, 16, 17, 18, 19
- Court Fees Act, 1870 - Section 7, 7(iv), 7(iv)(c), 7(iv)(d), 7(viii)
- Hindu Marriage Act, 1955 - Section 24
- Specific Relief Act, 1963 - Section 34, 37, 38, 42
- Suits Valuation Act, 1887 - Section 3, 4, 8

**Citation:** (1970) MhLj 238

**Hon'ble Judges:** V. G. Wagle, J; D. V. Patel, J

**Bench:** Division Bench

**Advocate:** Hemendra Shah, instructed by Ratilal Desai and Co. in L. P. A. No.44/68, V. D. Govilkar in A. O. No. 301/68, D. R. Dhanuka for K. R Dhanuka in A. O. No. 237/68, for the Appellant; M. A. Rane, Asstt. Govt. Pleader in L. P. A. No.44/68, D. R. Dhanuka and H. K. Nagrani, instructed by P. R. Wadhwa, in A. O. No. 301/68, Girish Munshi and A. A. Patel in A. O. No. 237/68, for the Respondent

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**Judgement**

Nain, J.

Mr. Shah appearing for the plaintiff drew my attention to the provisions of Order VII, rule 1 (i) of the CPC which provides that the plaint shall contain a statement of the value of the subject-matter of the suit for the purposes of jurisdiction and court-fees, so far as the case admits. He contended that para 13 of the plaint did not set out the value of the subject-matter of the suit for the purpose of jurisdiction. He

therefore, asked me to remand the suit to the Bombay City Civil Court where he would amend para. 13 of the plaint so as to put the valuation below Us. 25,000. The result of this would be that the City Civil Court would have jurisdiction to entertain the suit. I, however, did not accede to this request of Mr. Shah, because it appears to me on the face of it that the subject-matter of this litigation was land admeasuring 950 sq. yds. on Bhulabhai Desai Road, Bombay, with a building thereon which property would be of a value not less than Rs. 5 lacs of which the land alone would exceed Rs. 3 lacs in value. I asked Mr. Shah to make a statement as to the market value of the property according to the plaintiff. Mr, Shah was unable to make a statement in absence of any valuation by a qualified valuer, but he stated that at the previous attempted sale by the income tax authorities the highest bid was Rs. 35,000. In my opinion, this would not be the market value of the property. But even if it were, it would be beyond the jurisdiction of the Bombay City Civil Court.

2. Coming to the form of the suit, the suit is so framed as to be a suit for an injunction. u/s 34 of the Specific Relief Act of 1963, a person may file a suit for a declaration as to any legal character, or as to any right to any property. This is a discretionary relief. Section 34 provides that no Court shall make any such declaration where the plaintiff, being able to see\* further relief than a mere declaration of title, omits to do so. Section 37 pertains to injunctions. Sub-section (2) provides that a perpetual injunction can only be granted by the decree made at the hearing and upon the merits of the suit; the defendant is thereby perpetually enjoined from the assertion of a right, or from the commission of an act, which would be contrary to the rights of the plaintiff. Section 38 prescribes when a perpetual injunction may be granted. The difference between section 34 on the one hand and sections 37 and 38 on the other hand is that the Court may not grant a declaration where the matter is capable of consequential relief. But there is no such restriction put on injunctions and the Court may grant an injunction as a substantive relief without any prayer for declaration, although in many cases a declaration may be implicit in the grant of a perpetual injunction.

3. In this appeal, I am concerned with the valuation of the suit for the purpose of jurisdiction under the provisions of the Suits Valuation Act. But for this purpose one would have to consider the relevant provisions of the Court-fees Act applicable to a suit of this nature. Prior to 1959 the court-fees in this State were governed by the Court-fees Act VII of 1870, which is a Central Act, as amended in its application to the State of Bombay. Section 7(iv)(c) provided for a declaration with consequential relief. Section 7 (iv) (d) provided for suits for injunctions only. In both these cases it was provided that the plaintiff may put any valuation on the suit. Under the Bombay amendment of section 8A of the Suits Valuation Act, the valuation put by the plaintiff if inadequate could be questioned. With this however, we are not concerned. Article 17 (iii) of Schedule II to that Act provided for a declaratory decree without consequential relief. Section 8 of the Suits Valuation Act applied to suits falling u/s 7 (iv) (c) and (d) with the result that the value of the suit for the purpose of jurisdiction

was the same as the value for the purpose of court-fees. The point to be borne in mind is that under the provisions of the Court-fees Act, 1870, in suits for declaration with consequential relief and in suits for injunction without declaration the plaintiff was allowed to put his own valuation on the suit, even though arbitrary, although in the State of Bombay arbitrary valuation could be questioned.

4. By virtue of the Bombay Court-fees Act XXXVI of 1959, the Court-fees Act, 1870 has been repealed in its application to this State. Mr. Shah appearing for the plaintiff contended before me that the present suit would fall either u/s 6 (iv) (d), first proviso or under Article 23 (f) of Schedule II to the Bombay Court-fees Act, 1959. Section 6 (iv) (d) provides for suits for declaration in respect of ownership, freedom or exemption from, or non-liability to, attachment with or without sale or other attributes, of immovable property. The first proviso to this clause states that if the question is of attachment with or without sale the amount of fee shall be the ad valorem fee according to the value of the property sought to be protected from attachment with or without sale or the fee of Rs. 15 whichever is less. If the suit had been for a declaration of freedom or exemption from or non-liability to attachment of the property which is the subject-matter of the suit, the suit would undoubtedly have fallen u/s 6 (iv) (d), first proviso. In that case, the court-fees payable would have been ad valorem fee according to the valuation of the property subject to a maximum of Rs. 15. Although the court-fees may not have exceeded Rs. 15, for the purpose of jurisdiction u/s 8 of the Suits Valuation Act, the valuation would have been the value of the property. But in my opinion, section 6 (iv) (d) has no application to the present suit, because this suit is not for a declaration. The plaintiff has chosen to bring the suit in the form of a suit for injunction only, and as I stated above, under the provisions of the Specific Relief Act she is not compelled to seek a declaration.

5. The next contention of the plaintiff is that the suit would fail under Article 23 (f) of Schedule II to the Bombay Court-fees Act, 1959, which provides a fixed fee of Rs. 30 in a plaint in a civil Court not otherwise provided for and the subject-matter of which is not capable of being estimated in money value. Actually in the plaint, this is the provision relied upon by the plaintiff. Before I deal with this provision, I propose to deal with the contention of the learned Government Pleader appearing for the defendants.

6. According to the learned Government Pleader, the suit would fall u/s 6 (iv) of the Bombay Court-fees Act, 1959. This provision pertains to suits to set aside an attachment of land or of an interest in land and states that the valuation shall be according to the amount for which the land or interest was attached. The proviso to this clause states that where such amount, meaning the amount for which the land is attached, exceeds the value of the land or interest, the amount of fee shall be computed as if the suit were for the possession of such land or interest. If we examine the prayer in the plaint carefully, we find that the plaintiff has asked for a

permanent injunction against the defendants restraining them from attaching or continuing to attach the property. This in effect would give to the plaintiff relief contemplated by the provisions of section 6 (ix) of the Bombay Court-fees Act without using the exact words of that provision. That provision talks of suits to set aside the attachment of land. What the plaintiff wants the Court to do is to grant the plaintiff an injunction against the defendants asking them to discontinue the attachment. This is no more nor less than asking the Court to set aside the attachment. In my opinion, the prayer in the plaint is equivalent to a prayer for setting aside the attachment. But even if it were not so, the prayer for setting aside the attachment would be implicit in the prayer in the plaint because without setting aside the attachment the Court cannot ask the defendants to discontinue the attachment. Before the Court asks the defendants to discontinue the attachment, the Court must come to the conclusion that the attachment is liable to be set aside. I, therefore, hold that the suit falls u/s 6 (ix) of the Court-fees Act. Mr. Shah for the plaintiff invited my attention to a Full Bench decision of this Court in the case of Dayachand Nemchand v. Hemchand Dharmachand (1880) I L R 4 Bom. 515 where it has been held that the term "land" in section 7 (viii) of the Court-fees Act, 1870, does not include a house. Whereas in this case what is attached is land with buildings thereon. Section 7 (viii) is in the same terms as section 6 (ix) of the Bombay Court-fees Act. Mr. Shah, therefore, contended that section 6 (ix) was not applicable. However, even if the building is not included, the value of land alone would far exceed Rs. 25,000 and would put the suit outside the jurisdiction of the Bombay City Civil Court.

7. Section 8 of the Suits Valuation Act in its application to the State of Maharashtra covers section 6 (ix) of the Bombay Court-fees Act Accordingly, the value of the suit for the purpose of jurisdiction shall be the same as the valuation of the suit for the purpose of court-fees. If we take the amount for which the property is attached, the said amount is Rs 8,82,427.65. But in case on a proper valuation being made of the attached property, it is found that the value of the suit property is less than the amount for which it is attached, by virtue of the proviso the Court will have to compute court-fees on the value of the land as if it was a suit for possession. Section 6 (v) provides for suits for possession of land, houses and gardens and states that they shall be valued according to the value of the subject-matter and that such valuation would be deemed to be, where the subject-matter is a house or garden, according to the market value of the house or garden. In case where the subject-matter is land the valuation would be as provided in the said clause.

8. Now I come to this contention of the plaintiff that the suit would fall under Article 23 (f) of Schedule II to the Bombay Court-fees Act of 1959, because the subject-matter of the suit, according to the plaintiff, is not capable of being estimated in money value. Assuming that the subject-matter is not capable of being estimated in money value for the purpose of the Court-fees Act it may still be capable of valuation for the purpose of Suits Valuation Act and jurisdiction. The suit

obviously relates to land or interest in land. The plaintiff seeks to avoid the attachment of the suit land for payment of income tax due by her husband. Section 4 of the Suits Valuation Act, 1887, provides that such interest in land is to be valued in accordance with the rules framed by the State Government u/s 3 of the Suits Valuation Act. It is conceded that no rules have been framed u/s 3 of the said Act. Under these circumstances, the judgment of the Bombay High Court in the case of [Dayaram Jagjivan Vs. Gordhandas Dayaram](#), provides that the valuation must be based on the market value of the land. The same question also came up for decision in the Patna High Court in the case of [Jadunandan Gope and Others Vs. Syed Najmuzzaman and Others](#), where it is observed that suits relating to lands coming under the scope of section 7 (iv) (c) of the Court-fees Act are governed by section 4 of the Suits Valuation Act, and, if no rules have been made under sections 3 and 4 of the Suits Valuation Act for the valuation of an interest in land which is the subject-matter of a suit u/s 7 (iv) (c) of the Court-fees Act, the market value of the subject-matter has always been taken as the value for the purposes of court-fees and jurisdiction. Bearing the judgments of the Bombay and Patna High Courts in mind I have no hesitation in coming to the conclusion that where the suit related to interest in land prior to the coming into force of the Bombay Court-fees Act, 1959, it would have fallen u/s 7 (iv) (c) of the Court-fees Act, and would have been valued in accordance with sections 3 and 4 of the Suits Valuation Act, and if no rules were prescribed by the State Government, the suit would have been valued in accordance with the value of the interest in land at the market rate prevailing at the date of the institution of the suit.

9. Section 4 of the Suits Valuation Act as applicable to the State of Maharashtra expressly makes the said section applicable to suits falling under Article 23 (f) of Schedule II of the Bombay Court-fees Act, 1959. Even if the contention of the plaintiff that her suit falls under that provision were correct, for the purpose of jurisdiction the suit would have to be valued at the market value of the property which would in any case exceed Rs. 25,000 and be beyond the jurisdiction of the Bombay City Civil Court.

10. If the suit fell under Article 23 (f) of Schedule II of the Court-fees Act and it was incapable of being estimated in money value both for the purposes of court-fees, as well as for the purpose of jurisdiction under the Suits Valuation Act, there would be another difficulty in the way of the plaintiff instituting this suit in the Bombay City Civil Court. In Bombay, by clause 12 of the Letters Patent the High Court in its original jurisdiction has been empowered to receive, try and determine suits of every description except those suits which fall within the jurisdiction of the Bombay Small Cause Court or the Bombay City Civil Court. The residuary jurisdiction vests in the High Court on its original side. It is not contended by the plaintiff that the suit falls within the jurisdiction of the Bombay Small Cause Court. In fact the suit has been instituted in the Bombay City Civil Court. We must see if the suit will fall within the jurisdiction of the Bombay City Civil Court. If it will not, it must fall within the

residuary jurisdiction of the Bombay High Court on its original side.

11. Section 3 of the Bombay City Civil Court Act, 1948, provides that the City Civil Court shall have jurisdiction to receive, try and dispose of all suits and other proceedings of a civil nature not exceeding Rs. 10,000 in value and arising within Greater Bombay except suits or proceedings which are cognizable by the Small Cause Court. The State Government is empowered to increase the jurisdiction of the City Civil Court by a notification upto a sum of Rs. 25,000. The State Government has done so. The present jurisdiction of the Bombay City Civil Court, therefore, is to try and dispose of suits of a civil nature not exceeding Rs. 25,000 in value. If, according to the plaintiff, her suit is not capable of being estimated in money value, it cannot be predicted or stated that the suit will not exceed Rs. 25,000 in value. In order to be able to state that the suit does not exceed Rs. 25,000 in value, the plaintiff should be able to estimate the money value of the suit. If she has not been able to estimate the money value, the City Civil Court will have no jurisdiction and the suit must be filed in the Bombay High Court on its Original Side by virtue of the residuary jurisdiction under clause 12 of the Letters Patent.

12. A similar question arose before the Allahabad High Court in the case of *Paras Ram v. Shrimati Janki Bai alias Savitri* (1961)<sup>1</sup> All 932 (FB). In an appeal from an order u/s 24 of the Hindu Marriage Act, 1955, made by the Civil Judge, Kanpur, the question arose whether in view of the fact that the subject-matter was incapable of monetary valuation, the appeal would lie to the District Court which heard appeals in matters not exceeding Rs. 10,000 in value or to the High Court. It was held in that case by a Full Bench of the Allahabad High Court that when no value was fixed on the petition and when there was no law also under which a certain value or a value not below or not exceeding a certain sum ought to have been fixed, it cannot be said that the value of the petition did not exceed Rs. 10,000. The Full Bench further held that the appeal in that case would lie to the Court of the District Judge only if it could be predicted that the valuation of the petition did not exceed Rs. 10,000. In the case of a subject-matter not capable of pecuniary valuation it cannot be said that it does not exceed any particular sum of money. It further held that the residuary power to entertain an appeal vests in the High Court not only when the value of the suit exceeds Rs. 10,000 but also when the subject-matter of the suit is incapable of pecuniary valuation. As I have observed in this case, if the subject-matter of the plaintiff's suit is not capable of being estimated in money value, for the purpose of jurisdiction under the Suits Valuation Act, she cannot state that it does not exceed Rs. 25,000 in value, and unless she could state this the suit will not fall within the jurisdiction of the Bombay City Civil Court and must inevitably fall within the jurisdiction of the Bombay High Court on its Original Side.

13. Mr. Shah appearing for the plaintiff invited my attention to the judgments in [Mt. Deokali Kuari Vs. Mahadeo Prasad Bhagat](#), [The Straw Products Limited Vs. The Municipal Board](#), [Chhotalal Kalidas Vs. Laxmidas Mayaram and Others](#), and [Burjor](#)

[Pestonji Sethna Vs. Nariman Minoo Todiwalla and Others,](#) . In my opinion, none of these judgments has application to the facts of this case because these cases pertain to valuation u/s 7 (iv) (c) of the Court-fees Act, 1870, which permits the plaintiff to put arbitrary valuation on his plaint and they do not pertain neither to section 6 (iv) (d) or section 6 (ix) or Article 23 (f) of Schedule II of the Bombay Court-fees Act, 1959.

14. At the end of the arguments, Mr. Shah appearing for the plaintiff, handed me a draft of a proposed amendment and applied that I should permit the plaintiff to amend the plaint in terms of the said draft. This amendment introduces a fresh prayer (a) which in terms seeks a declaration that the attachment levied by the defendants on the suit property is null and void. The amendment retains the prayer for injunction. This amendment, if granted, may also take the suit to section 6 (ix) of the Bombay Court-fees Act, 1959, and would require the suit to be valued in the manner provided in the said provision. In this amendment, the plaintiff seeks to value the prayer at Rs. 300 for the purpose of court-fees and jurisdiction as if the suit fell u/s 6 (iv) (d), first proviso. However, in view of the fact that I have already held that the suit does not fall under that provision and would not fall under that provision even if the amendment were allowed, I reject the plaintiff's application for amendment. If the contention of the plaintiff is that such amendment would take the suit to section 6 (iv) (d), third proviso, viz. a suit for declaration that the property is not liable to attachment with consequential relief, the suit would still be beyond the jurisdiction of the City Civil Court because ad valorem fee leviable in a suit for possession would be charged. The plaintiff would be free to repeat the amendment application before the Court to which she Represents the plaint.

15. In the result, the appeal fails and is dismissed with costs.

16. The application for amendment to be treated as a civil application and the same is also dismissed with costs.

17. The plaintiff appealed under the Letters Patent.

Patel, J.

18. These three matters raise question under the Court-fees Act, the Suits Valuation Act and consequently the question of jurisdiction of the Bombay City Civil Court.

The facts of Letters Patent Appeal No. 44 of 1968.

19. The plaintiff in this case is the widow of one Chimanlal Chhotalal Desai. He died on or about January 22, 1965. It appears that at the time of his death a sum of about rupees eight lacs was due from the deceased towards income tax. For recovery of this tax the Additional Collector of Bombay, the authority for recovery of income tax, attached a property known as "American View"" as the property of deceased. The plaintiff filed the present suit contending that the property was purchased in the joint names of both the deceased and herself and that after the death of her

husband she became the owner as the survivor and the property is not liable to attachment. Secondly, she contended that in any event, under the will left by her husband, she had become the owner of the property and that it was not liable to be attached for recovery of the income tax. Thirdly, she contended that in any event she had a right to be maintained out of the property and, therefore, it could not be attached for recovery of the taxes. It was also alleged that She had applied to the authorities concerned that the question raised by her should be considered before levying of the attachment. As no heed was paid to her request, she had to file the present suit. In the prayer clause she prayed that a permanent injunction and order be issued prohibiting the respondents from attaching or continuing to attach or from selling or dealing with the property "American View", After filing the plaint, an application was made for an interim injunction. At that stage the trial Court returned the plaint for want of jurisdiction and for presentation to the proper Court. The appellant filed an appeal in the High Court, The appeal was heard by Mr. Justice Nam. The learned Judge held that the suit was governed by section 6, clause (ix) of the Bombay Court-fees Act and that the value of the subject matter being beyond the pecuniary jurisdiction of the City Civil Court, it had no jurisdiction and therefore, the plaint was rightly returned. He also held that if the subject-matter of the plaint was incapable of valuation as alleged, then the City Civil Court had no jurisdiction. By this appeal the appellant seeks to challenge the judgment of Mr. Justice Nain.

Facts of A. O. 237 of 1968.

19. In this case it appears that a building situated at 467-A, Chira Bazar, Bombay was purchased by three persons Dwarkadas Gordhandas, Girdharilal Baijnath and Dungarmal Haribux. The plaintiff claims to be an occupier of the fourth floor premises through Dungarmal Haribux under an agreement styled as a leave and licence agreement. It appears that the son of Dwarkadas Gordhandas objected to the plaintiff's occupation of the premises on the ground that Dungarmal Haribux was not in possession of the said flat and that in this indirect manner an attempt was being made to take control of the flat by the present plaintiff. The plaintiff, therefore, instituted the present suit and prayed for a permanent injunction restraining the defendant from entering into the suit premises and /or from dispossessing the plaintiff from the same except by due process of law. In para. 10. of his plaint the plaintiff made a statement that the suit was incapable of monetary valuation and, therefore, a fixed court- fee of Rs. 30 was paid. This was apparently done under Article 23, clause (f) of Schedule II of the Bombay Court-fees Act, 1959. The plaintiff at the inter locutory stage applied for an interim injunction against the defendant which the trial Court granted. The defendant filed the appeal to this Court against the order granting temporary injunction and when the matter came before the learned single Judge for hearing, he urged that as the plaintiff had himself said that the suit was incapable of valuation, the City Civil Court had no jurisdiction to entertain and hear the suit, relying upon the judgment of Mr. Justice Nain. The learned single Judge, therefore, directed that the matter should be placed before a



Division Bench.

Facts of Appeal Mo. 301 of 1968.

20. In this case the plaintiff alleged that he was trading in the name of V. Arjan & Co. and that on January 8, 1964, he had executed a power-of-attorney in favour of defendant No. 1 as he was not keeping well. As the defendant was trying to assert his exclusive possession and was giving the premises to out Siders on licence and had introduced outsiders into the premises, he gave a notice terminating the power-of-attorney and called upon the defendant not to enter the premises. He prayed that the defendant had no right to enter in and upon the premises of the plaintiff and remain in the said premises and that he should return all the papers and keys pertaining to the business and also the key to the promises referred therein. In para. 15 of the plaint, He stated that the value of the subject-matter for the purpose of court-fees and jurisdiction as not ascertainable in terms of money and, therefore, the plaintiff was affixing fixed court-fee of Rs. 30 again under the provisions of Article 23, clause (f) of Schedule II of the Bombay Court-fees Act.

21. When the suit reached final hearing, the judgment of Mr. Justice Nain was brought to the notice of the learned trial Judge. He, therefore, held that the City Civil Court had no jurisdiction and directed the plaint to be returned for presentation to the proper Court.

22. The question regarding jurisdiction is connected with the question of court-fees and it is not, therefore, possible to decide merely the question of jurisdiction without reference to the court-fees.

23. The Court-fees Act 1870 (which we will call the Act of 1870) by the Central Legislature does not prevail in this State. Originally in 1956 by a provision of the Finance Act the provisions of the Court-fees Act as applicable to Bombay State were amended. Thereafter by Bombay Act No. XXXVI of 1959 (which we will call "the Bombay Act") the Act of 1870 was repealed and the present Court-fees Act became applicable in the Bombay State. The scheme under the Act of 1870 is different than the scheme of the Bombay Act. The latter is wider in scope by the making of detailed provisions.

24. We will refer to the relevant provisions. Section 5 of the Bombay Act provides that no document shall be filed before a Court or shall be received by any officer unless in respect of such document there has been paid a fee of an amount not less than indicated by either of the Schedules as the proper fee for such document. Section 6 is the computing section and the Schedules are the charging provisions. It is the plaintiff's case that Article 23 (f) of Schedule II applies to the present case and so far as is relevant it is as follows:

"Article 23. Plaint, petition or application (including memorandum of appeal) which is capable of being treated as a suit-

(f) in or to any civil Court not otherwise provided for and the subject-matter of which is not capable of being estimated in money value."

Before Mr. Justice Nain on the one hand it was argued that clause (ix) of section 6 would apply and this contention was accepted by the learned Judge. Clause (ix) of section 6 reads as follows:

""(ix) In suits to set aside an attachment of land or of an interest in land or revenue-according to the amount for which the land or interest was attached:

Provided that, where such amount exceeds the value of the land or interest, the amount of fee shall be computed as if the suit were for the possession of such land or interest;"

On behalf of the plaintiff an attempt was also made to bring the suit within section 6 (iv) (d) which is to the following effect:

"(d) In suits for declaration in respect of ownership, or nature of tenancy, title, tenure, right, lease, freedom or exemption from, or non-liability to, attachment with or without sale or other attributes, of immovable property, such as a declaration that certain land is personal property of the Ruler of any former Indian State or public trust property or property of any class or community--one-fourth of ad valorem fee leviable for a suit for possession on the basis of title of the subject-matter, subject to a minimum fee of eighteen rupees and seventy-five naye paise:

Provided that if the question is of attachment with or without sale the amount of fee shall be the ad valorem fee according to the value of the property sought to be protected from attachment with or without sale or the fee of fifteen rupees, whichever is less;

Provided further that, where the defendant is or claims under or through a limited owner, the amount of fee shall be one-sixth of such ad valorem fee, subject to the minimum fee specified above:

Provided also that, in any of the cases falling under this clause except its first proviso, when in addition any consequential relief other than possession is sought the amount of fee shall be one-half of ad valorem fee and when the consequential reliefs also sought include a relief for possession the amount of fee shall be the full ad valorem fee;"

A reading of clause (iv) (d) and clause (ix) of section 6 may suggest that these two clauses provide among other things for almost similar kinds of suits, but when closely examined, there is a distinction between the suits provided for by clause (iv) (d) and clause (ix) of section 6, Clause (iv) (a) relates to a suit for declaration to obtain adjudication against recovery of money from the plaintiff, whether the recovery is as land revenue or arrears thereof or tax or duty or cess or fee or fine or penalty or

under any decree or order of a Court or any certificate or award other than under the Arbitration Act, 1940, or in any other manner and it provides the method of computation of court-fees in respect of the same. Sub-clause (b) of clause (iv) of section 6 relates to claim in respect of movable property and for a similar declaration in respect of movable property. Sub-clause (e) again relates to suits for declaration of the status of plaintiff, to which remuneration, honorarium, grant, salary, income, allowance or return is attached. Sub-clause (d) relates to suits for declarations of ownership or the nature of title as well as freedom or exemption from or non-liability to, attachment with or without sale. It would seem that clause (iv) (a) may relate to suits where the binding nature of the particular liability is being challenged, inasmuch as it also refers to anything "under any decree or order of a Court or any certificate or award other than under the Arbitration Act." Clause (iv) (d) is primarily concerned with the declaration of ownership to properties or to any right therein and even suits in which any freedom or exemption from, or non-liability to,, attachment or sale is claimed, would fall within sub-clause (d). On the other hand those suits which seek to set aside an attachment of land or of an interest in land or revenue would be covered by clause (ix) of section 6. When the liability is of "X" and property of " Y" is being attached, it is not necessary for him to set aside the attachment. He merely asks for a declaration that it is not liable to attachment and an injunction. In such case clause (d) must apply. If, however, the liability is of "X" and that property is also of "X" then if the attachment is illegal and improper or is in any way not warranted, he must sue to get it set aside and in such case clause (ix) would apply.

25. It was argued before Mr. Justice Nain and it is also argued here that in any event clause (ix) applies only to "land" which cannot mean any other kind of property, such as houses or gardens. For this contention reliance has been placed on the wordings in clauses (v) and (vi) of section 6 where the words land, houses and gardens" are used.

26. The word "land" has not been defined in the Court-fees Act nor has it been defined in the Suits Valuation Act, It is accepted that generally the word "land" means not only land as such but anything permanently fastened to land. Though it is possible to say that this is the general meaning of the word "land", in the context of a statute it may have a narrower meaning. While construing these provisions we must bear in mind the general rules of construction. The rule may be stated thus: That ordinarily a word has the same meaning in all the sections of a statute. [See; In re National Saving Bank Association (1866) 1 Ch. 547, 550]. It may, however, happen that the same word may be used in different senses in the same section or in different sections [see Doe dem. Angell v. Angell (1846) 9 Q B 328, 356, The Queen v, Allen (1872) LR1CCR 367, 373, 374, In re Smith. Green v. Smith (1883) 24 Ch. D 672 and Meux v Jacobs (1875) L R 7 H L 481, at p.493].

27. Merely because, therefore, the word "land" has been used in similar sense as distinguished from "houses" and "gardens" in clauses (v) and (vi) of section 6, it may not necessarily follow that when the Legislature used the word "land" alone in clause (ix), it must be confined only to land as such. One essential purpose for differentiation between "land" and "houses and gardens" in clauses (v) and (vi) of section 6 was to provide different method of valuation for the purpose of court-fees; assessment paying land which was used only as land is required to be valued on the basis of assessment, while in the case of houses and gardens it requires the court-fees to be paid on the basis of the market value of the same. Same distinction has been kept in clause (vi). The differentiation made particularly in these two clauses had a definite and a distinguishing purpose, and it is for this reason that the word "land" is used in its limited sense. Under clause (ix), in the first instance where the suit is to set aside an attachment, the court-fees have to be paid according to the amount for which the land or interest is attached. But if in any case the amount for which it is attached exceeds the value of the property then the court-fees are to be paid as if it were a suit for possession of land or interest. There could be no possible purpose in restricting clause (ix) only to the case of land. If in suits for possession the Legislature provided the less onerous method of valuation of land on the basis of assessment, it is difficult to see why it should have provided for more onerous method of valuation in the cases of land in this clause and leave the matter relating to houses and gardens unprovided for to attract the application of Article 23 (f) of Schedule XI. There is no principle discernible. We are of opinion, therefore, that the word "land" in clause (ix) means and includes houses and gardens as well.

28. Mr. Shah on behalf of the plaintiff relied upon a decision of the Full Bench in *Dayachand Nemchand v. Hemchand Dharamchand* (1880) 1 L R 4 Bom. 515. The plaintiff in that case a creditor had filed a suit under the provisions corresponding to Order XXI, rule 103 of the Civil Procedure Code, for a declaration that the property belonged to his judgment debtor and that it was liable to be attached and sold in execution of his decree, after the attachment was raised by the executing Court under provisions corresponding to those of Order XXI, rule 58. The court-fee was paid as on a declaratory suit only. The plaint was stamped with a court-fee stamp of Rs. 10 under Article 17, clause (iii), Schedule II of the Court-fees Act of 1870 as it then stood. The Court held that such a suit would be a suit to set aside a summary decision of a Court and was, therefore, governed by Article 17, clause (i) of Schedule II. While considering the question as to whether clause (viii) of section 7 of the Court-fees Act corresponding to clause (ix.) of the Bombay Act, could apply, the learned Chief Justice observed that the suit could not fall within that clause for the reason that it was a suit to restore and not to raise an attachment and, secondly, because attachment was on a house, and not upon land or an interest in land or revenue. This judgment would be binding on us if it appeared that the other two Judges concurred in it, but then the other two learned Judges merely concurred in the reply to the District Judge and at least on some part of the case did not express

any opinion particularly in reference to the decision in *Ravloji Tamaji v. Dholapa Raghu* (1879) I L R 4 Bom. 123. Whether or not the learned Judges delivered separate judgments is not clear. Unfortunately because of the reorganization of State, the record of this case is not available as the reference was from Surat District. In a subsequent judgment [*Purshotum Bacher v. Narayan Trimbak* (1879) I L R 4 Bom 528] which is also referred to at p. 528 in the authorized series, Mr. Justice Melvill stated (p. 529):

"This Court has already held that a suit brought by a party who has failed in a miscellaneous proceeding u/s 246 of Act VIII of 1859, or the corresponding section of the new Code, is a suit to set aside a summary decision of a civil Court."

The opinion of the learned Chief Justice was based on the fact that the word "land" has a limited meaning in clauses (v) and (vi) and, therefore it should also have a limited meaning in clause (via). For the reasons above indicated it is difficult to follow the principle. Apart from this, the scheme of the Bombay Act is to widen the net and make it more exhaustive, and if any other Article is applicable then certainly the residuary Article 23, clause (f) will not apply,

29. The question then is whether the plaintiff's suit does really fall within clause (ix) of section 6. Primarily the plaintiff does not seek to set aside attachment. What the plaintiff really wants is a decision that as the plaintiff is now the owner of the property, the property is not really liable to attachment and sale. But then the plaintiff's suit is not for a declaration contemplated by section 6 (iv) (d), none being asked. The plaintiff has only asked for a substantive relief of injunction only. If the plaintiff had asked for a declaration then in every probability the case would have fallen within clause (d) of section 6 (iv), and if she had asked for a consequential relief which she would, under the terms of section 42 of the Specific Relief Act, be probably bound to ask, then it might have fallen under the third proviso of that section. Be that as it may, as no relief of declaration is claimed in the prayer clause, it is not necessary for us to decide whether the suit would fall, in this clause.

30. Article 7 in Schedule I is in the following terms;

"7. Any other plaint, application or petition (including memorandum of appeal), to obtain substantive relief capable of being valued in terms of monetary gain or prevention of monetary loss, including cases wherein application or is either treated as a plaint or is described as the mode of obtaining the relief as aforesaid."

Proper fee: A fee on the amount of the monetary gain, or loss to be petition prevented, according to the scale prescribed under Article I."

The present suit obviously does not fall within Articles 1 to 6, If the relief is capable of being valued in terms of monetary gain or prevention of monetary loss, then the suit must be held to fall within this Article. In the present case what the plaintiff wants to do by the substantive relief of injunction is to prevent the property from

being sold. If the property were sold having regard to the large claim of the tax, the whole house would be a loss to her. What the plaintiff, therefore, wants to prevent is the loss of the house, and the loss of the house could be only the value of the house. Accordingly there can be no doubt that on the relief asked for by the plaintiff, the plaintiff ought to value the house and pay court-fees accordingly. It may be possible that in a given case the amount sought to be recovered is comparatively of a smaller value than the value of the property from which it is sought to be recovered; in such a case it would be only the amount which is sought to be recovered that would be the monetary loss. In such a case the court-fee has to be paid on the amount sought to be recovered by attachment and sale of the property. In either case it comes under clause (ix) of the Bombay Act.

31. The wording of Article 23, clause (f) of Schedule IE clearly shows that it is a residuary Article. If any other Article in the Schedule is applicable, then evidently this Article cannot apply, since the words are "not otherwise provided for". The plaintiff's contention, therefore, that Article 23 (f) must apply cannot be accepted.

32. This brings us to the provisions of the Suits Valuation Act. This Act was also amended in 1960 by making somewhat corresponding changes and some more in certain of its provisions. Section 3 (1) after the amendment reads:

"The State Government may make rules for determining the value of land for purposes of jurisdiction in the suits mentioned in paragraphs 5v) and (vi) and clause (d) of paragraph (xi) in section 6 of the Bombay Court-fees Act, 1959."

Section 4 reads:

"Where a suit mentioned in clause (c), (d) (e), (g), (i) or (j) of paragraph (iv) or paragraph (vii) in section 6 or Article 3, 4, 5 or 7 in Schedule I or clause (f) of Article 23 in Schedule II to the Bombay Court-fees Act, 1959, relates to land or an interest in land of which the value has been determined by rules under the last foregoing section, the amount at which for purposes of jurisdiction the relief sought in the suit is valued shall not exceed the value of the land or interest as determined by those rules ""

Section 8 reads:

"Where in suits other than those referred to in paragraphs (v), (vi) and (x) and clause (d) of paragraph (xi) in section 6 of the Bombay Court-fees Act, 1959, court-fees are payable ad valorem under the Bombay Court-fees Act, 1959, the value as determinable for the computation of court-fees and the value for purposes of jurisdiction shall be the same."

Evidently sections 3 and 4 are not applicable because no rules are framed by the State Government under sections 3 and 4. The only section, therefore, which can apply is section 8 and value for jurisdiction is the value determinable for the computation of court-fees. The words are not "the amount on which the court-fees

are payable" or "the value on which the court-fees are payable". It is the real value determined for the computation of the Court-fees and the value for purpose of jurisdiction that is required to be the same. Evidently, therefore, where a suit falls within Article 7 of Schedule I, or sub clause (d) of section 6 (iv), the value for computing the court-fees is the market value and a proportion of the court-fee on that value is only required to be paid. Under whichever provision the suit falls, therefore, the value of the property is the value for jurisdiction and admittedly that being more than the pecuniary jurisdiction of the City Civil Court, that Court would have no jurisdiction to entertain and hear the suit. We say so because admittedly in 1950 this property was purchased for over a sum of two lakhs of rupees. It is not possible to contend-and Mr. Shah has not contended-that the value of property has since fallen and, therefore, it is necessary to determine the actual value of the property.

32. It was argued that liability and non-liability to attachment cannot be valued relying upon, some of the observations of the learned Chief Justice in *Dayachand Nemchand v. Hemchand Dkaramchand*. That may, however, be under the scheme of the old Act. The scheme of the new Act is different and the test is either the monetary gain or the monetary loss which is sought to be prevented by the substantive relief so far as Article 7 is concerned. In clause (iv) (d) also clear method for valuing the relief is provided. Even if the case falls within clause (iv) (d) of section 6, as we have said, because of the wording in section 8 of the Suits Valuation Act, in the context of the language of the clause, the question of valuing assessment also would not arise. It is necessary to point out that under the Act of 1870, in suits falling under certain clauses, the plaintiff had a choice of valuing his relief and by reason of section 8 of the Suits Valuation Act, the same became the value for the purposes of jurisdiction. The principles obtaining under the Act of 1870, cannot now apply. Accordingly, though we do not hold that the plaintiff's suit falls within section 6, clause (is), we hold that the plaintiff's suit falls within Article 7 of Schedule I of the Bombay Court-fees Act, which is almost the same thing if one has regard to the proviso of clause (ix) of section 6 so far as this case is concerned. The judgment is, therefore, right and the appeal must fail and is dismissed. Having regard to the circumstances of the case, we direct that the parties will bear their own costs of this appeal.

A. O. No. 237 of 1968:

33. We have observed earlier, the plaintiff alleged that he was in possession of the premises in this case and Prayed for the substantive relief of an injunction seeking to protect his possession, may he according to him as a licensee. Evidently, therefore, he was trying to protect his possession or right to possess the premises. He made a statement in the plaint that the subject-matter of the suit was not capable of valuation. Whether that allegation is right or wrong, it is not necessary for the present for us to express any opinion upon it. After making this statement he

paid a fixed court-fee of a sum of Rs. 30. The question is whether under these circumstances the suit would be within the competence of the City Civil Court. This necessitates the construction of clause 12 of the letters Patent applicable to this Court and the relevant provisions of the Bombay City Civil Court Act, 1948.

34. So far as is relevant for the present purpose clause 12 of the Letters Patent reads thus:

"And we do further ordain that the said High Court of Judicature at Bombay, in the exercise of its ordinary original civil jurisdiction, shall be empowered to receive, try, and determine suits of every description,... within the local limits of the ordinary original jurisdiction of the said High Court, except that the said High Court shall not have such original jurisdiction in cases falling within the jurisdiction of the Small Cause Court at Bombay, or the Bombay City Civil Court."

In terms of this clause of the Letters Patent, in the first place, the High Court has got jurisdiction to hear every kind of suit in its original jurisdiction subject to the qualification that the suit is not one which is cognizable by the other two Courts. The first enquiry, therefore, which would be relevant and pertinent in a case like this would be to ask the question, whether the present suit is one which falls within the competence of the Bombay City Civil Court. If we find on the construction of the relevant statutory provisions applying to that Court, that, the present suit falls within the jurisdiction of the City Civil Court, then the High Court's jurisdiction is ousted. If for some reason or the other the City Civil Court has no jurisdiction to entertain this suit, then evidently the High Court would be the only Court on its original side to entertain and decide this suit.

35. The relevant provisions of the Bombay City Civil Court Act are sections 3, 6 and 12. Section 3, so far as is relevant, reads;

"...Notwithstanding anything contained in any law, such Court shall have jurisdiction to receive, try, and dispose of all suits and other proceedings of a civil nature not exceeding ten thousand rupees in value, and arising within the Greater Bombay, except suits or proceedings which are cognizable-

(a) by the High Court as a Court of Admiralty or Vice-Admiralty or as a Colonial Court of Admiralty, or as a Court having testamentary, intestate or matrimonial jurisdiction, or

(b) by the High Court for the relief of insolvent debtors, or

(c) by the High Court under any special law other than the Letters Patent, or

(d) by the Small Cause Court."

The proviso to this section is not relevant for the time being. u/s 4 of the said Act the State Government has now increased the jurisdiction of the City Civil Court to suits and other proceedings within Greater Bombay of the value not exceeding twenty



five thousand rupees. Section 5 reads:

"The City Court shall be deemed to be a Court subordinate to and subject to the superintendence of the High Court within the meaning of the Letters Patent of the High Court and of the Code of Civil Procedure, 1908."

Section 12 reads:

"Notwithstanding anything contained in any law, the High Court shall not have jurisdiction to try suits and proceedings cognizable by the City Court:

Provided that the High Court may, for any special reason, and at any stage remove for trial by itself any suit or proceeding from the City Court."

In some measure section 12 overlaps the exception created by clause 12 of the Letters Patent, so far as it relates to the Bombay City Civil Court, the purport being the same i. e. that if a matter falls within the competence of the Bombay City Civil Court, the High Court would ease to have jurisdiction except by transfer for any particular reason of the said suit or proceeding to itself.

36. Mr. Dhanuka has argued that as the City Civil Court has got jurisdiction to entertain suits not exceeding in value Rs. 25,000 and inasmuch as the plaintiff has admitted in his own plaint that the subject-matter of the suit is not capable of valuation, it is impossible to say that the value of the suit is less than Rs. 25,000 and therefore must be one outside the jurisdiction of the City Civil Court. In this contention he is supported by some authorities, the principle underlying the decisions being that if the subject-matter of the suit is incapable of valuation, it cannot be said that the value of the suit is less than Rs. 25,000. He has invited our attention first to the decision in *Aklemannessa Bibi v. Mahomed Hatem* ILR (1904) 31 Cal 849 a litigation under Mahomedan law. The husband had instituted a suit against his wife for restitution of conjugal rights in the Munsif's Court. Under sections 18, 19 and 21 of the Bengal, N. W. P., and Assam Civil Courts Act (Act XII of 1887) the District Court and the Subordinate Court had got the jurisdiction with regard to all original suits cognizable by civil Courts and the Munsif's jurisdiction extended to all like suits of which the value did not exceed Rs. 1,000. The contention raised before the Court was that as the subject-matter was incapable of valuation, it could not be said that the value of the suit did not exceed Rs. 1,000 and, therefore, the Munsif had no jurisdiction and only the Court of the District Judge and the Subordinate Judge who had original jurisdiction with respect of every kind of suit had jurisdiction to entertain and deal with the suit. This contention was accepted. There was previous authority of the same High Court in *Gulam Rahman v. Fatima Bibi* (1886) I LR 13 Cal 232 and *Mowla Newaz v. Sajidunnissa Bibi* (1891) I L R 18 Cal 378 and the view taken is supported by a Privy Council judgment in *Shire v. Shire* (1845) 5 Moo. P C 81.

37. He has also relied upon the decision in [Paras Ram Vs. Janki Bai](#), only for the limited purpose of this argument where a similar view was taken. The litigation was under the Hindu Marriage Act, 1955. We are not concerned with the question as to whether an appeal will lie to the High Court in cases where a similar suit is decided by a Civil Judge in the District and we are not deciding that question. Mr. Dhanuka is supported by the authority to the extent of his contention that in such cases the Court would have no jurisdiction to deal with the matter.

38. A similar question arose regarding the right of appeal in *Barry v. Menem Et Al.* (1847) 12 Law Edn., 70, 46 U S 102 before the Supreme Court of the United States. The Court was considering an Act which provided that final judgments and decrees in civil actions and suits in equity in a circuit Court, when the matter in dispute exceeded the sum or value of two thousand dollars, exclusive of costs, might be re-examined and reversed or affirmed in the Supreme Court. The question before the learned Judges was whether a final judgment made in a habeas corpus petition could be examined by the Court and the Court held that as the subject-matter of such a petition is incapable of valuation in terms of money and as the jurisdiction of the Court is limited to cases where the value is more than two thousand dollars, the Court would have no jurisdiction because it cannot be said that in a case of that nature the value of the suit is less than two thousand dollars or more than two thousand dollars.

39. Mr. Munshi and Mr. Govilkar both tried to distinguish these cases by saying that they related to the power of the appellate Court and not to that of the trial Court who had initially to entertain the suit. In our view, the principle of these cases is the same, whether it relates to the powers of the appellate Court to entertain an appeal or the power of a trial Court to entertain a suit and decide it. This distinction, therefore, is not of substance,

40. Mr. Govilkar relies upon the decision in *Jan Mahomed Mandal v, Mashar Bibi* (1907) I. L. R. 34 Cal 352 which again was a case of restitution of conjugal rights. The plaintiff in that suit had valued the relief at less than Rs. 1,000 and instituted the suit in the Court of the Subordinate Judge. No objection was taken on behalf of the defendant to the valuation and the Court held that the appeal would lie to the District Court and not to the High Court. Reliance has been placed particularly on the observation that "the plaintiff in a suit for restitution of conjugal rights is the proper person to value the suit; but if from improper motives he undervalues or overvalues it, the Court must decide what should be the proper value". The decision in *Aklemannessa Bibi v. Mahomed Hatem* was distinguished on the ground that the precise question was not answered or dealt with by the Full Court.

41. It must be remembered that the Court-fees Act, 1870, as originally applicable to all suits, gave an option to a plaintiff to value his suit in some types of cases and by section 8 of the Suits Valuation Act it was provided that the valuation for purposes of court-fees and that for jurisdiction would be the same. This judgment, therefore, can

be justified on the ground that once the plaintiff had valued the suit for the purpose of court-fees, the same value would govern the question of jurisdiction subject of course to the right of the Court to review the valuation if a contention was raised by the defendant that the suit was improperly valued.

42. The provisions under the Suits Valuation Act, however, cannot in the present case help the plaintiff. Section 8 of the Suits Valuation Act limits its application to such cases where ad valorem court-fees are paid. It does not state what should be the valuation for jurisdiction in respect of suit which are incapable of valuation. Section 4 no doubt states that the valuation of a suit for the purpose of jurisdiction should not exceed the value of the land or interest as determined by rules u/s 3. No rules have been framed by the State Government u/s 3. No question, therefore, can possibly arise of the application of sections 3 and 4. It must, therefore, be held that inasmuch as the subject-matter according to the plaint itself is incapable of valuation, unless there is anything else it cannot be entertained by the City Civil Court.

43. Mr. Govilkar, however, argued that the City Civil Court would have jurisdiction to deal with the matter under the CPC and for this purpose he relies upon the opening words "Notwithstanding anything contained in any law" in section 3 of the City Civil Court Act. Those words were evidently required for the reason that under clause 12 of the Letters Patent the High Court had original jurisdiction in respect of all suits and as the City Civil Court was being created, exception had to be made to clause 12 of the Letters Patent. Those words, therefore, have no connection with any power with which the City Civil Court may be invested by any other legislation in connection with any other matter or matters given in its cognizance. So far as section 9 of the CPC is concerned, it is merely a declaratory section which gives a right of suit in all civil cases to a citizen and has no concoction either with the constitution of the City Civil Court or of the other Courts. Section 9 and sections 15 to 20 have to be read in conjunction with the statutes which constitute different Courts such as, Bombay City Civil Court Act Bombay Civil Courts Act and any other Act such as the Rent Restriction Act or the Matrimonial Act which specify the jurisdiction of a particular Court to hear a particular matter. This contention has no substance.

44. It is argued that even though the plaintiff had stated that the suit was incapable of valuation, the Court ought to have framed an issue and determined the question in terms of section 8 of the Bombay Court-fees Act and also the Suits Valuation Act. Reliance has been placed on the decision in [Aqa Abbas Haji Amin Anwari Vs. Haji Mohomed Haji Ali Jeerahiyan](#), which was a suit for dissolution of partnership and accounts. The plaintiff had valued the suit at Rs. 7,001 both for the purposes of jurisdiction and for court-fees. An objection was taken by the defendant that the valuation was deliberately improperly made at a low figure in order to bring the suit within the jurisdiction of the City Civil Court. The learned Judge without any enquiry returned the plaint for presentation to the proper Court. Under those circumstances

the learned Judge said that since there was a valuation made by the plaintiff and the defendant challenged the correctness of the valuation, it was the duty of the Court u/s 8 of the Court-fees Act to decide the question. If he came to the conclusion that the value fixed was too low and that the real value was higher and beyond the jurisdiction of the Court, then only he could return the plaint. On the facts, there can be no doubt about the applicability of the law stated by the learned Judge. This, however, is not the position in the present case where the plaintiff himself comes to Court with a statement that the subject-matter is incapable of valuation.

45. It is well settled that at the initial stages the question of jurisdiction depends upon the allegations contained in the plaint, unless there are any controversial facts involved. If the plaintiffs themselves come to the Court with a statement that the subject-matter is incapable of valuation and the defendant does not challenge the statement, then evidently the Court is bound to decide the question of jurisdiction only on the allegations in the plaint, and if it comes to the conclusion that either for the reason that the subject-matter of the suit does not fall within its jurisdiction or that the suit is of such a nature that it is excluded from its jurisdiction, it must act on it and return the plaint for presentation to the proper Court. Even though the plaintiff in order to avoid payment of proper court-fee does not state the real value of the subject-matter and comes out with a case that the subject-matter of the suit is incapable of valuation, he must take the consequences and cannot blame the Court and say that the Court is bound to hold an inquiry even when there is nothing to enquire.

46. Mr. Govilkar said that he had made an oral application to the learned Judge to permit him to make an amendment in the plaint and state what according to him is the valuation of the suit. So far as we are able to read the plaint, *prima facie* it is really in substance and effect a suit for recovery of possession. The plaintiff wants an injunction that the defendant should not continue in the property, should hand over the keys of the cupboard and also the keys of the premises which would clearly show that the defendant is in exclusive possession of the property. The fact that apparently the defendant is in possession of the property under a power of attorney cannot make any difference to the substance of the matter. It is the duty of a Court in all such cases to apply its mind and find in substance what really the plaintiff wants and ingenious ways to evade statutory provisions regarding court-fees and Jurisdiction ought not to be permitted unless the Court is helpless. *Prima facie* statements in the plaint, therefore, do not appear to us to be *bona fide* and the Court was, therefore, not bound to grant the application for amendment. It must also be noticed that it was merely an oral application and no more. We do not see why the Court should be bound in such cases, when the omission in the plaint or a positive statement in it is not honest, to grant the application.

Even here at this stage when we asked Mr. Govilkar whether he was prepared to pay court-fee stamp on the basis that the suit was one for possession we did not get any

effective answer from him.

47. We, therefore, hold that in none of these cases the City Civil Court had jurisdiction and the complaints in all these cases must, therefore, be returned for presentation to the proper Court.

48. Appeal No. 237 of 1968 succeeds only on this ground. We have not heard any arguments on facts and in fact they were not necessary to be heard. There will be no order as to costs. The Civil Application will no longer survive. No order as to costs. The trial Court will act on this judgment.

49. In Appeal No. 301 of 1968, the order of the learned trial Judge returning the complaint for presentation to the proper Court is confirmed. No order as to costs. The Civil Application does not survive.