
(1970) 01 BOM CK 0033

Bombay High Court

Case No: Appeal No. 9 of 1967

Smt. Shantabai Mishra

APPELLANT

Vs

Kamlakant Laxmtkant

RESPONDENT

Date of Decision: Jan. 16, 1970

Acts Referred:

- Bombay Court Fees Act, 1959 - Section 6, 6(v)(b)
- Suits Valuation Act, 1887 - Section 8

Citation: (1970) MhLj 679

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

Bench: Single Bench

Advocate: P. T. Trivedi, for the Appellant; K.A. Ghatpande, for the Respondent

Final Decision: Allowed

Judgement

R. R. Bhole, J.

This is an appeal by the plaintiff from an order passed by the Civil Judge, Senior Division, Nagpur, in regard to the valuation of the court-fee and for jurisdiction purpose. The plaintiff has filed a suit for possession of agricultural land. He has paid the court-fee stamp of a value equal to twenty times the land revenue. He has valued for the purpose of jurisdiction Rs. 9,000 which, according to him, was the market value of the land. An objection was raised by the defendant stating that the valuation so far as jurisdiction was concerned was not proper. According to the defendant, the valuation for the purpose of jurisdiction should be similar to that of the valuation for the purposes of the court-fee stamp. The learned Civil Judge, who has entertained this objection, came to be of the view that the proper valuation would be similar to the valuation the plaintiff made for the purposes of the court-fee stamp. This order of the trial Court, therefore, is now challenged here.

2. The point, therefore, that arises here for determination is to see whether the valuation for the purposes of jurisdiction is twenty times the land revenue as was

paid for the court-fee stamp or is the market value.

3. Admittedly, the land which is the subject-matter of the suit is held on a permanent settlement exceeding thirty years. Therefore, this suit for possession of such land would fall within the purview of section 6 (v) (b) of the Bombay Court-fees Act, 1959. For the purposes of court-fee, therefore, in suits for possession of such lands, a sum equal to twenty times the survey assessment should be the valuation. The plaintiff has done the valuation according to this provision and paid the necessary court-fees. Now, the objection of the defendant is that the plaintiff ought to value the jurisdiction equal to the sum which he valued for the purposes of the court-fee stamp. The plaintiff has valued it according to the market value of the land. It is, therefore, the contention of the learned advocate for the applicant that the objection was improperly upheld. We will have to look at section 8 of the Suits Valuation Act applicable to our State of Maharashtra. Section 8 is as follows:

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

It is, therefore, clear from this provision that it divides the suits into two classes. One class of suits are those suits which are referred to in paragraphs (v), (vi), (x) and clause (d) of paragraph (xi) in section 6 of the Bombay Court-fees Act, 1959. These are the suits for possession of land, houses and gardens, suits to enforce a right of pre-emption, suits against mortgages for recovery of the mortgaged properties and suits for specific performance of awards. The other class of suits is that of suits other than mentioned above. u/s 8 of the (Maharashtra) Suits Valuation Act, one class of suits have to be paid court-fees according to what is mentioned there. The suits mentioned in the paragraphs have to be computed in a different way. For the suits which are not included in the above paragraphs and the court-fees are payable ad valorem under the Bombay Court-fees Act of 1959, the value as determinable for the computation of the court-fees and the value for purposes of jurisdiction shall be the same. Evidently, therefore, the Legislature has intended that when suits other than those referred to in the abovesaid paragraphs are instituted, then the court-fees when payable ad valorem, the value as determinable for the computation of the court-fees should be similar to the value for purposes of jurisdiction. In so far as the instant suit with which we are concerned, it is a suit which falls within the category of section 6 (v) (b). Section 8 of the Suits Valuation Act, therefore, does not contemplate that the value for the purposes of court-fee in this suit and the value for the purposes of jurisdiction shall be the same. What then shall be the value for the purposes of jurisdiction.

4. u/s 3 of the Suits Valuation Act, the Government may make rules for determining the value of land for purposes of jurisdiction in the suits mentioned in paragraphs

(v) and (vi), and clause (d) of paragraph (xi) in section 6 of the Bombay Court-fees Act. These are the paragraphs referred to in section 8 of the Suits Valuation Act. Under sub-section (2) of section 3, the rules may determine the value of any class of land, or of any interest in land in the whole or any part of a local area, and may prescribe different rules for different places within the same local area. Therefore, the State Government has to make rules for the purpose of determining the value of land for the purposes of jurisdiction. Admittedly, the State Government has not made rules. If, therefore, rules are not there, then what should be value for purposes of jurisdiction in so far as the suits, which come within the purview of paragraphs (v), (vi), (x) and clause (d) of paragraph (xi) in section 6 of the Bombay Court-fees Act, are concerned. We will have, therefore, to find some guide line in the Suits Valuation Act itself.

5. Section 4 of the Suits Valuation Act is regarding the valuation of relief in certain suits relating to land. Under this section, where a suit mentioned in paragraphs other than those mentioned in section 8 of the Suits Valuation Act relates to land or 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. Therefore, the Legislature appeared to be contemplating to value for the purposes of: jurisdiction on the basis of the value of the land or interest. It is not determinable on the basis of the value for the purposes of the court-fees. Moreover, u/s 11 of the Suits Valuation Act, a procedure where objection is taken on appeal or revision that a suit or appeal was not properly valued for jurisdictional purposes, is laid down. This also contemplates that the valuation for the purposes of jurisdiction should be on the basis of the market value. It appears to me, therefore, that the learned Civil Judge was not right when he decided that the plaintiff's valuation according to the market value for the purposes of jurisdiction is not proper.

6. We have also several rulings of our own High Court which support my view, In *Dayaram v. Govardhandas* I L R 31 Bom. 73 this Court has taken the same view. Mr. Justice Russel observed during the course of the judgment in this case that the Court-fees Act, section 7, clause (4) (which is equal to section 6, clause (5), of our Bombay Court-fees Act), provides that for the purpose of determining the amount of court-fee payable, the value of certain classes of suits should be taken to be the amount at which the plaintiff values the relief sought. But his Lordship did not think that the Legislature ever intended to leave it to the plaintiff to choose the Court in which he should bring his suit for possession or partition of property by assigning an arbitrary value to the subject-matter of the suit. According to his Lordship, the provisions of the Suits Valuation Act (sections 7, 8 and 11), clearly indicated that that was not the intention of the Legislature, In the absence of any rule made by the State Government, his Lordship thought that the correct rule to follow was that indicated in the observation of Garth C J., in *Kirty Chum Mitter v. Aunath Nath Deb* I L R 17 Cal. 680 that for purposes of jurisdiction in partition suits we should be

guided by the value of the property in suit. A similar view was also taken by this Court in [Govindbhai Lallubhai Patel Vs. Dahyabhai Nathabhai Patel and Others](#), During the course of the judgment, Justice Broomfield has observed as follows:

"Where a suit is for declaration and possession, in so far as the suit is for a declaration, section 8, Suits Valuation Act, has no application since that section is restricted to suits in which court-fees are payable ad valorem and the court-fee in a suit for a declaration is not payable ad valorem but a fixed fee is payable. In so far as relief of possession is concerned the suit is to be valued for fiscal purposes u/s 7, para- 5, Court-fees Act, but such suits are excepted from the operation of section 8 as stated therein and so section 8 has no application in this case also. Therefore, in a suit seeking declaration and possession, the value for fiscal purposes is not to be the value for purposes of jurisdiction. The value for jurisdiction in such a case is to be the real value of the subject-matter in view of Order 7, rule 1 (1), Civil Procedure Code."

7. For the aforesaid reasons, therefore, it appears to me that the order passed by the trial Court is illegal. This appeal, therefore, will have to be allowed. I, therefore, allow this appeal, set aside the order of the trial Court and direct the respondent to pay the costs of the appellant. Case papers should be sent back to the trial Court for trial according to law.