

Mr. Gajanfar Rafik Ahmed Mirajkar Vs Mrs. Jakiyabegum Siddi-Abdur Rehman Foujdar, Miss. Yasmeen Siddi Abdur Rehman Foujdar, Mr. Irfan Siddi Abdur Rehman Foujdar Through his attorney:- Mrs. Mahilka Irfan Foujdar. Address for Above: Jafarabad Sadan, Chikhal Pakhadi Naka, At and Post Janjira Murud, District: Raigad and Mrs. Zarina Farook Sheikh

Court: Bombay High Court

Date of Decision: Feb. 6, 2013

Acts Referred: Bombay Civil Courts Act, 1869 " Section 10, 11, 16, 21, 22
Civil Procedure Code, 1908 (CPC) " Order 20 Rule 12, 151, 24, 37, 38

Citation: (2013) 4 ABR 383 : (2014) 3 ALLMR 244 : (2013) 4 BomCR 747 : (2013) 2 MhLj 654

Hon'ble Judges: S.C. Dharmadhikari, J

Bench: Single Bench

Advocate: Gajanfar Rafik Ahmed Mirajkar, Applicant in both MCAs, Present in Person, for the Appellant;

Final Decision: Dismissed

Judgement

S.C. Dharmadhikari, J.

The Applicant (Gajanfar Rafik Ahmed Mirajkar) is the Plaintiff in Special Civil Suit No. 3/1983 decided on

23.08.2006. He filed an application being Miscellaneous Application No. 63/2009 invoking the Order XX Rule 12 of the Code of Civil

Procedure, 1908 seeking an inquiry for determination of mesne profit. He relies upon the Decree passed in the suit and sets out that the property is

valuable and has tremendous market potential. He, therefore, prays by this application that the Commissioner be appointed to take accounts of

income received by the original Defendant Nos. 1 to 4 from Supari, Banana and Coconut trees standing on the land admeasuring 353/4 Gunthas of

Survey No. 67, Hissa No. 1, City Survey No. 1693. He also prays that while deciding the quantum of mesne profit, all earnings from the sale of

coconut, banana etc. be taken into account. This application has been filed on 03.08.2009 in the Court of Civil Judge Senior Division, Alibag at

Alibag.

2. Equally, what has been filed by the present Applicant is execution proceedings being Special Darkhast No. 48/2009 seeking execution and

enforcement of the Decree passed in Special Civil Suit No. 3/1983.

3. Then, what transpires is that there is another suit filed by the original Judgment Debtor Nos. 1 to 3 against the Applicant before me and others,

in the Court of Civil Judge, Senior Division, Alibag being Special Civil Suit No. 204/2011 for partition.

4. Thus, in all there are three proceedings, namely, one Special Civil Suit No. 204/2011, Special Darkhast No. 48/2009 and Miscellaneous

Application No. 63/2009. All of which are pending in the Court of Civil Judge Senior Division, Alibag.

5. However, reliance was placed upon a circular issued by the District Court with regard to enhancement in the jurisdiction of the Civil Courts and

particularly the Courts of Civil Judge Junior Division and that it was prayed that any suits in which the Plaintiff is seeking to recover a sum of less

than Rs. 5 lacs, such suits have to be tried as Regular Civil Suits. If that circular is taken into account, the Special Civil Suit No. 204/2011 will have

to be transferred to the Court of Civil Judge Junior Division, Murud. If that suit or the claim therein is arising out of and is related to Special

Darkhast No. 48/2009 and Miscellaneous Application No. 63/2009, then, if the suit and these proceedings are before the distinct courts, there is

likelihood of conflicting judgments and orders. That would be doing injustice to the litigants. For all these reasons, it was prayed that the suit should

be transferred to another Court and should be tried and decided along with two applications which are pending before the Court of Civil Judge

Senior Division, Alibag. Such an application was made on 12.01.2012. On such application, an order was passed that in view of the circular

issued by the District Court, earlier execution proceedings, Miscellaneous Proceedings and the suit, are all of valuation of less than Rs. 5 lacs,

therefore, they are required to be transferred in the Court of Civil Judge Junior Division, Murud. Hence, the Application is rejected by order dated

12.01.2012.

6. It appears that on obtaining knowledge of such direction and order, the present Applicant also made an application and urged that the order

dated 12.01.2012 be set aside. He relied on amendment to the Bombay Civil Courts Act, 1869 made by the Maharashtra Act No. XLIV of 2011

and styled as the Bombay Civil Courts (Amendment) Act, 2011. He relied upon the wording thereof and submitted that the wording of amended

provision would indicate that only the suits are liable to be transferred. The Special Darkhast No. 48/2009 and Miscellaneous Application No.

63/2009 are not suits and therefore, they cannot be transferred. The execution proceedings cannot be continued by the Court at Murud as that

would be barred by Sections 37 to 39 of the Code of Civil Procedure, 1908 as well.

7. The Applicant, therefore, made the following prayers in the said application:-

(a) The order dated 12.01.2012 of transferring the Spl. Darkhast No. 48/2009 and M.A. 63/2009 to Murud Court be set aside.

(b) Pending the hearing and final disposal of this application, the sending of records and proceedings of the said Darkhast and said Misc.

application be delayed.

(c) Any other relief as this Hon"ble Court deem fit and proper be granted.

8. This Application was made on 16.01.2012. On this application, the following order has been made on 24.01.2012 by the learned Civil Judge

Senior Division, Alibag:-

Perused the say and heard. It is submitted by the applicant the word suit excludes execution proceeding and therefore the provision of Bombay

Civil Courts (Amendment) Act are not applicable to the present execution proceeding.

This Court has passed order dated 12.01.2012 vide Exhibit-22 thereby transferring the suit as well as execution proceeding and Misc. application

having value not exceeding Rs. 5 lacs.

The ratio laid down in Ramchandra Aggarwal and Another Vs. State of Uttar Pradesh and Another, is not helpful in the present circumstances.

Hence application stands rejected.

The record and proceeding in SCS 204/11, S.D. No. 48/2009 and M.A. 63/2009 stands transferred to the court of CJJD Murud, having

competent to try and dispose of said proceedings.

9. It is aggrieved by this order and direction that this Miscellaneous Civil Application No. 38/2009 has been filed and the prayer is that the Civil

Judge Senior Division, Alibag alone should be conferred with powers to decide all three matters and by setting aside the orders passed on

12.01.2012 and 24.01.2012. These reliefs be granted by taking recourse to Section 24 and Section 151 of the Code of Civil Procedure, 1908.

10. It is on this application of 05.03.2012 that I have heard the Applicant, who is appearing in person.

11. He has also filed an affidavit on 06.06.2012 praying that to meets the ends of justice the Miscellaneous Application and the proceedings be

withdrawn from the Court at Murud and be transferred to the Court of Senior Division or Junior Division at Alibag.

12. The Applicant has also filed very bulky record consisting of pleadings in the suit, decree, etc.. He has also filed a Civil Application and prayer

therein is identical to that of the main application.

13. To appreciate the request of the Applicant, it is necessary to refer to the Bombay Civil Courts Act, 1869. It is an Act to consolidate and

amend the law relating to the District and other subordinate Civil Courts in the Presidency of Bombay. Part-II of the Act specifies what is district

and sadar station.

14. Part-III is entitled ""District Courts"". It contains Sections, 5, 6 and 7 which provide for District Judges, situation of District Courts and original

jurisdiction of District Courts. It also contains provisions relating to the appellate jurisdiction of District Courts and the control and inspection of

subordinate courts.

15. Section 9 thereof gives a power of general control over all Civil Courts and their establishments within the District and that power is conferred

in the District Judge. Section 10 provides for writs and orders which have to be obeyed by the District Judge. Section 11 provides for seal of the

District Judge.

16. Part-IV contains the provisions pertaining to the appointment and powers of the Joint District Judges or Additional District Judges and that

aspect is elaborated further in Part-V.

17. Then comes crucial provision contained in Part-VI. Section 21 therein provides for number of subordinate civil courts. Section 22 deals with

appointment of civil judges. Section 22A confers power to fix local limits of jurisdiction of civil judges and Section 23 deals with situation of

subordinate courts. Then comes Section 24 which reads as under:-

24. Classes of Civil Judges:- The Civil Judges shall be of two classes.

Jurisdiction of Civil Judge (Senior Division):- The jurisdiction of a Civil Judge (Senior Division) extends to all original suits and proceedings of a

civil nature. Jurisdiction of a Civil Judge (Junior Division):- The jurisdiction of a Civil Judge (Junior Division) extends to all original suits and

proceedings of a civil nature where in the subject matter does not exceed its amount or value Five Lakh rupees:

Provided that the State Government may increase the limit of Five Lakh rupees to seven lakh fifty thousand rupees in the case of any Civil Judge

(Junior Division) of not less than ten years" standing and specially recommended in this behalf by the High Court. A Civil Judge so empowered

shall continue to exercise this power so long and as often as he may fill the office of a Civil Judge (Junior Division), without reference to the District

in which he may be employed, unless the powers are withdrawn by the State Government.

18. A bare perusal thereof would show that the jurisdiction of the Civil Judge Senior Division extends to all original suits and proceedings of a civil

nature whereas that of Civil Judge Junior Division extends to all original suits and proceedings of a civil nature wherein the subject matter does not

exceed the amount or value of Rs. 5 lacs. Proviso thereto makes it clear that the State Government may increase this limit of Rs. 5 lacs to Rs. 7.50

lacs in the case of any Civil Judge Junior Division of not less than ten years" standing and specially recommended in this behalf by the High Court.

19. Then Section 25 enacts special jurisdiction of Civil Judge Senior Divisions. Section 26 provides for appeals against decisions in all suits where

the amount or value of the subject matter exceeds Rs. 10 lacs and that jurisdiction is conferred in the High Court. Section 27 confers appellate

powers and therefore, the appellate jurisdiction of Civil Judge Senior Division or the Judge of Court of Small Causes is elaborated. Then comes

Section 28 which gives power to invest the Civil Judges with small cause powers. Then comes Sections 28A and 28B, which really fall for

consideration and they read as under:-

28A. Power to invest Civil Judges with jurisdiction under certain Acts X of 1865, V of 1881, V of 1908:-

(1) The High Court may by general or special order invest any Civil Judge within such local limits and subject to such pecuniary limitation as may

be prescribed in such order, with all or any of the powers of a District Judge or a District Court as the case may be, under the Indian Succession

Act, 1865, the Probate and Administration Act, 1881 or paragraph 3 of Schedule III to the Code of Civil Procedure, 1908.

(2) Every order made by a Civil Judge by virtue of the powers conferred upon him under sub-section (1) shall be subject to appeal to the High

Court or the District Court according as the amount or value of the subject-matter exceeds or does not exceed ten lakh rupees.

(3) Every order of the District Judge passed an appeal under sub-section (2) from the order of a Civil Judge shall be subject to an appeal to the

High Court under the rules, contained in the CPC applicable to appeals from appellate decrees.

B. Transfer of pending suits and appeals.- On the commencement of the Bombay Civil Courts (Amendment) Act, 2011:

(1) all suits in which the amount or value of the subject matter does not exceed rupees five lakhs and which are pending before the Court of Civil

Judge Senior Division, immediately, before such commencement, shall stand transferred to the concerned Court of Civil Judge Junior Division and

such court may deal with such suit from the stage which was reached before such transfer or from any earlier stage or de-novo as such court may

deem fit;

(2) all appeals in which the amount or value of the subject matter does not exceed rupees ten lakhs and pending before the High Court immediately

before such commencement, shall stand transferred to the concerned District Court and such District Court may deal with such appeal from the

stage which was reached before such transfer or from any earlier stage or de-novo as such court may deem fit:

Provided that, this section shall not apply to any suits and appeals which are pending before the Court of Civil Judge Senior Division or as the case

may be, before the High Court, which are statutorily provided under the relevant enactment before such court.

20. The contention of the Applicant is that on commencement of the Bombay Civil Courts (Amendment) Act, 2011, it is only the suits where the

amount or value of the subject matter does not exceed Rs. 5 lacs and which are pending before the Civil Judge Senior Division immediately before

commencement of the Amendment Act, shall be transferred to the concerned courts of Civil Judge Junior Division and such courts may deal with

such suits from the stage which was reached before such transfer or from any earlier stage or denovo as such courts may deem fit. The argument is

that the proceedings other than suits cannot be, therefore, transferred in the light of this specific provision. It is that controversy which is being dealt

with by me and therefore, other part or sections of this Act need not be referred to.

21. I am unable to accept the contentions of the Applicant appearing in person. The statement of objects and reasons of the Amendment Act,

2011 reads as under:-

Under the existing provisions of the Bombay Civil Courts Act, 1869 (Act No. XIV of 1869), the pecuniary appellate jurisdiction of the District

Court with regard to the amount or value of the subject matter for the purpose of appeal is upto two lakh rupees and of the High Court exceeding

two lakh rupees. The pecuniary jurisdiction of the Courts of the Civil Judge (Junior Division), with regard to the amount or value of the subject

matter is upto rupees one lakh.

2. With the passage of time there is a tremendous appreciation of the value of the properties situated in the cities and mofussil areas since the year

1999, when these pecuniary jurisdictions were lastly enhanced and considering the commitment of the State to bring justice at the doorstep of the

common man, the State Government considers it expedient to enhance the said limits of pecuniary jurisdiction from rupees two lakhs to rupees ten

lakhs and from rupees one lakh to rupees five lakhs and for the purpose to amend sections 16, 24, 26 and 28A of the Bombay Civil Courts Act,

1869, suitably. This will facilitate the filing of suits wherein the amount or value of the subject matter does not exceed rupees five lakhs in the

nearest Taluka courts. The appeals arising from the decrees passed in such suits and the appeals arising from the decrees passes by the Civil Judge

(Senior Division), the amount or value of the subject matter of which does not exceed rupees ten lakhs will be entertained by the District Judges.

Thus, only the appeals arising from the decree, the amount or value of the subject matter of which exceeds rupees ten lakhs will be entertained by

the High Court. This will save the expenses and avoid inconvenience to the litigants.

3. The State Government also, considers it expedient to transfer, by inserting new section 28B in the Bombay Civil Courts Act, 1869, all such suits

in which the amount or value of the subject matter does not exceed rupees five lakhs and which are pending before the Civil Judge (Senior

Division) to the Court of Civil Judge (Junior Division), as well as all appeals in which the amount or value of the subject matter does not exceed

rupees ten lakhs and pending before the High Court to the concerned District Court.

4. Hence, this Bill.

22. A bare perusal of the statement of objects and reasons would indicate that the enhancement of jurisdiction is with an avowed object. It is with

some purpose, namely, commitment of the State to bring justice at the doorstep of the common man. Therefore, interpretation which will fulfill this

object and purpose must be placed on the provision and by reading the provision in isolation so also the word "suit", without reference to the

context and other sections will result in an absurdity and anomaly by which there will be inconvenience, confusion and chaos. In such

circumstances, to my mind, the real guide would be as summed up by the Honourable Supreme Court that a bare mechanical interpretation of the

words and application of a legislative intent devoid of concept of purpose will reduce most of the remedial and beneficent legislation to futility. As

the Honourable Mr. Justice V.R. Krishna Iyer (as His Lordship then) in The Chairman, Board of Mining Examination and Chief Inspector of

Mines and Another Vs. Ramjee, held thus:

5.... Law is meant to serve the living and does not beat its abstract wings in the jural void. Its functional fulfilment as social engineering depends on

its sensitized response to situation, subject-matter and the complex of realities which require ordered control. A holistic understanding is simple

justice to the meaning of all legislations. Fragmentary grasp of rules can misfire or even backfire as in this case....

23. Equally, the following principles in New India Assurance Company Ltd. Vs. Nusli Neville Wadia and Another, would guide me:-

49. The literal interpretation of the statute, if resorted to, would also lead to the situation that it would not be necessary for the landlords in any

situation to plead in regard to its need for the public premises. It could just terminate the tenancy without specifying any cause for eviction.

50... With a view to read the provisions of the Act in a proper and effective manner, we are of the opinion that literal interpretation, if given, may

give rise to an anomaly or absurdity which must be avoided. So as to enable a superior court to interpret a statute in a reasonable manner, the

court must place itself in the chair of a reasonable legislator/ author. So done, the rules of purposive construction have to be resorted to which

would require the construction of the Act in such a manner so as to see that the object of the Act fulfilled; which in turn would lead the beneficiary

under the statutory scheme to fulfill its constitutional obligations as held by the court inter alia in Ashoka Marketing Ltd. (supra).

51. Barak in his exhaustive work on "Purposive Construction" explains various meanings attributed to the term ""purpose"". It would be in the fitness

of discussion to refer to Purposive Construction in Barak's words:

Hart and Sachs also appear to treat ""purpose"" as a subjective concept. I say ""appear"" because, although Hart and Sachs claim that the interpreter

should imagine himself or herself in the legislator's shoes, they introduce two elements of objectivity: First, the interpreter should assume that the

legislature is composed of reasonable people seeking to achieve reasonable goals in a reasonable manner; and second, the interpreter should

accept the non-rebuttable presumption that members of the legislative body sought to fulfill their constitutional duties in good faith. This formulation

allows the interpreter to inquire not into the subjective intent of the author, but rather the intent the author would have had, had he or she acted

reasonably.

(Aharon Barak, Purposive Interpretation in Law, (2007) at pg. 87)

51. In Bharat Petroleum Corpn. Ltd. Vs. Maddula Ratnavalli and Others, , this Court held:

The Parliament moreover is presumed to have enacted a reasonable statute (see Breyer, Stephen (2005): Active Liberty: Interpreting Our

Democratic Constitution, Knopf (Chapter on Statutory Interpretation-pg. 99 for ""Reasonable Legislator Presumption"").

24. The word ""suit"" appearing in Section 28B will have to be thus construed broadly and comprehensively to include any proceeding in a Court of

Justice by which an individual pursues that remedy which the law affords. It is in the context it can be said to be a generic term and applying to the

different stages so as to make it a pursuit or prosecution of some claim.

25. To my mind, from reading of the provision it may appear that only suits have to be transferred, but this provision cannot be read in isolation

and will have to be read with all sections appearing in Part-VI of the Act. If Part-VI deals with civil judges, number of subordinate civil courts,

appointments, power to fix local limits of jurisdiction and situation of subordinate courts and then sets out classes of civil judges together with their

jurisdiction and which jurisdiction extends to all original suits and proceedings of a civil nature, then, to my mind Section 28B cannot be read as

suggested by the Applicant and as stand alone. It will have to be read harmoniously and together with other sections so as to make a consistent

enactment of the whole. The principles of harmonious interpretation will have to be adopted or else what would happen is that a Civil Judge Junior

Division, whose jurisdiction extends to all original suits and proceedings of a civil nature, will in terms of the amended provision Section 28B deal

with only suits in which the amount or value of the subject matter is less than Rs. 5 lacs and then the execution proceedings will remain on the file of

the Civil Judge Senior Division. Further, by virtue of such reading, what would happen is that the suit in which the amount or value of the subject

matter does not exceed Rs. 5 lacs, is decreed by the Civil Judge Junior Division in terms of powers conferred and his jurisdiction, for execution

and enforcement of such Decree the litigant will have to approach the Court of Civil Judge Senior Division and which may not be within the close

vicinity. Therefore, if the litigant or consumer of justice is the focal point and it is his interest which will have to be placed in the forefront, then,

having such dual jurisdiction and powers would surely inconvenience him. The litigants will suffer hardship and will have to face unnecessary and

avoidable problems resulting in delay. Therefore, to my mind, the District Court as also the Civil Court in question did not commit any error in

arriving at the conclusion that the main suit as also the connected Miscellaneous and Execution proceedings, both have to be transferred to the

Court of Civil Judge Junior Division, Murud as it is competent to deal with and decide the same. The argument based on reading of only Section

28B will not sub-serve the object and purpose of enhancing the jurisdiction of the Court of Civil Judge Junior Division and investing it with power

to decide original suits and proceedings of a civil nature in which the amount or value of the subject matter does not exceed Rs. 5 lacs. That being

the aim and object sought to be achieved by the Amendment Act an interpretation which will advance the same will have to be placed on the

provision or else the very reason for enhancing pecuniary limits and enacting Section 28B would be defeated and frustrated.

26. To my mind, such a provision really is in furtherance of the constitutional mandate of access to justice. If justice has to be administered cheaply

and firmly and to all sections and stratas of the Society, then, a Court located near their place of residence or work and competent to deal with

their cases would be easily approachable and accessible to them. Establishing such courts and not conferring them with adequate and complete

powers makes a mockery of the constitutional goal of ensuring justice to all. It is with that end that this provision will have to be interpreted broadly

and in the light of the legislative intention of doorstep justice. That has to be taken further and that is how I have adopted the principle of

harmonious interpretation and equally applied the "mischief rule".

27. As a result of the above discussion, I do not find any merit in this Misc. Civil Application No. 38/2012 and it is dismissed. No costs. In view of

disposal of the Misc. Civil Application No. 38/2012, the other Misc. Civil Application No. 39/2012 and all Civil Applications therein would not

survive and they are also disposed of. No costs.