

Ajay and Others Vs. Mrunali Prabhakar Gadgil and Others

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Court : Mumbai Nagpur

Decided On : Sep-10-2014

Judge : A.S. Chandurkar

Appeal No. : Writ Petition No. 2595 of 2013

Appellant : Ajay and Others

Respondent : Mrunali Prabhakar Gadgil and Others

Judgement :

Oral Judgment:

1. By this petition, the petitioners original plaintiffs have challenged the order dated 4-5-2013 passed below Exhibit-46 in Regular Civil Suit No.124 of 2013 whereby it has been held that the Court of the 4th Joint Civil Judge (Jr. Dn.), Akola had no pecuniary jurisdiction to entertain and try the said suit.
2. On 10-5-2013, notice for final disposal of the writ petition was issued to the respondents. Accordingly, I have heard Shri S. A. Mohta, the learned Counsel for the petitioners, Smt. P.M. Chandekar, the learned Counsel for the respondent No.1 and Shri A. R. Deshpande, the learned Counsel for the respondent No.3.
3. Rule. Heard finally with the consent of the parties.

4. The petitioners are the original plaintiffs. It is the case of the petitioners that their predecessor, Bhalchandra Nandedkar had purchased the suit property from defendant No.1 vide registered sale deed dated 14-4-1977. It is their case that they being the legal heirs of said Bhalchandra Nandedkar, were the owners and occupiers of said suit property. The plaintiffs and the defendant No.4 thereafter settled at Nagpur and the suit property was being looked after by their relatives at Akola. It is their further case that they were informed by their relatives that certain construction work was being undertaken on the suit property and on making enquiries, they learnt that on 2-3-2012, the defendant No.1 had sold the suit property to defendant No.2 and thereafter, on 4-10-2012, the defendant No.2 had sold the suit property to defendant No.3. As the request made by the plaintiffs to stop the construction work was not acceded to, a police report was lodged and thereafter on 15-3-2013, the aforesaid suit for permanent injunction seeking to restrain the defendants from selling or transferring the suit property, from disturbing and interfering with their possession as well as from making any kind of construction thereon was filed. Similarly, there was a prayer for grant of mandatory injunction for removal of the construction erected thereon and to restore the suit property to its original position.

5. Along with the aforesaid suit, the petitioners moved an application for grant of temporary injunction. The defendant No.3 raised an objection to the pecuniary jurisdiction of the Court on the ground that the plaintiffs were seeking possession of the suit property by making a prayer for mandatory injunction. On 20-3-2013, a preliminary issue was framed as regards pecuniary jurisdiction of the Court to try the suit. After hearing both sides, the learned Judge of the Trial Court on 4-5-2013 held that the Court of Civil Judge, Junior Division had no pecuniary jurisdiction and the plaintiffs were directed to value the suit for relief of possession at Rs.40,00,000/- and deposit requisite Court fees. Said order has been assailed by the plaintiffs in this writ petition.

6. Shri S. A. Mohta, the learned Counsel for the petitioners submitted that the plaintiffs had not prayed for possession of the suit property. The suit was, in fact, a simplicitor suit for permanent injunction. The mandatory injunction sought was to remove the construction alleged to be illegally made by the respondent No.3 and

to restore the suit property to its original position. He submitted that in absence of there being any prayer for possession, the trial Court erred in holding that the suit was, in fact, one for possession. He further sought to rely upon the order passed by the trial Court vide Exh.5 wherein temporary injunction was granted restraining the defendants from carrying out any construction work or from alienating the suit property. He, therefore, submitted that the impugned order deserves to be set aside.

7. On the other hand, Smt. P. M. Chandekar, the learned Counsel appearing for the respondent No.1 and Shri A. R. Deshpande, the learned Counsel for the respondent No.3 submitted that the trial Court rightly found that the prayer for mandatory injunction was such that under its garb, the plaintiff was seeking possession of the suit property. It was submitted that the averments in the plaint revealed that it was the case of the plaintiffs that the construction was being undertaken on the suit property and the same, therefore, made it clear that it was the defendant No.3 who was in possession and it was he who was making construction thereon. The learned Counsel for the respondents relied upon the judgment of learned Single Judge of this Court in the case of **Vijaya wd/o Vijay Vitthalani and others Vs Jagdish Kanjubhai Vitthalani**, reported in **2010 (3) Mh.L.J., 624** and in the case of **Ram Gopal Gupta vs. Rajesh J. Kothari**, reported in **1990(3) Bom. C. R. 569** in support of their contentions.

8. I have carefully considered the aforesaid submissions. I have also gone through the plaint in Regular Civil Suit No.124 of 2013. Before considering the challenge to the impugned order, it would be necessary to refer to the settled position of law that can be gathered from the following decisions of the Supreme Court.

(a) The question of court-fees must be considered in the light of the allegations made in the plaint and its decision cannot be influenced either by the pleas in the written statement or by the final decision of the suit on merits. **AIR 1958 SC 245, Sathappa Chettiar v. Ramanathan Chettiar.**

(b) For the purposes of valuation of the suit for determination of the court fees payable thereon, what is relevant is the plaint. The averments made and relief sought in the plaint determines the character of the suit for the purposes of the

court fees payable thereon. What is stated in the written statement is not material in this regard. **1994 (4) SCC 349, Ram Narain Prasad and another Vs. Atul Chander Mitra and others.**

(c) The court fee has to be paid on the plaint as framed and not on the plaint as it ought to have been framed unless by astuteness employed in drafting the plaint the plaintiff has attempted at evading payment of court fee or unless there be a provision of law requiring the plaintiff to value the suit and pay the court fee in a manner other than the one adopted by the plaintiff. The court shall begin with an assumption, for the purpose of determining the court fees payable on plaint, that the averments made therein by the plaintiff are correct.

It is the substance of the relief sought for and not the form which will be determinative of the valuation and payment of court fee. The defence taken in the written statement may not be relevant for the purpose of deciding the payment of court fee by the plaintiff. If the plaintiff is ultimately found to have omitted to seek an essential relief which he ought to have prayed for, and without which the relief sought for in the plaint as framed and filed cannot be allowed to him, the plaintiff shall have to suffer the dismissal of the suit. **2002 (1) SCC 304, Kamaleshwar Kishore Singh vs. Paras Nath Singh and others.**

9. It is, therefore, necessary in this background to consider the averments made in the plaint. In para 3 thereof, it has been stated thus:

3. It is submitted that late Bhalchandra Nandedkar has purchased the suit property, from defendant no.1 by a registered sale deed dated 14-04-1977 (Fourteenth day of April Nineteen Seventy Seven) for valuable consideration and on the date of sale deed, the defendant no.1 has handed over actual physical possession of the suit property to him. In this way since 14-04-1977 (Fourteenth day of April Nineteen Seventy Seven) deceased Bhalchandra Nandedkar was owing and possessing the suit property, as its absolute owner and after his death, since from 15-07-1984 (Fifteenth day of July Nineteen Eighty Four) and onwards continuously till today, the plaintiffs no.1 to 4 along with defendant no.4 are owing and possessing the suit property.

Thereafter in para 9, it has been stated as under:

9. It is most humbly and respectfully submitted that since after 14-04-1977 (Fourteenth day of April Nineteen Seventy Seven), neither the defendant no.1 was owner nor she was in possession of the suit property and therefore, the defendant no.1 is having no right, power or authority to transfer the title and ownership or to hand over the possession of the suit property to any body else.

It is submitted that the defendant no.1 to 3 cannot contend and cannot allege that on the basis of alleged sale deeds, the plaintiffs have been ousted from the possession of the suit property. It is submitted that as on today also the plaintiffs, along with defendant no.4, are in possession of the suit property as per the law. Therefore it is necessary to grant injunction against the defendant no.1 to 3. Hence, this suit.

Prayer clauses (b)(c) and (d) of the plaint are as under:

(b) The defendant no.1 to 3, their agents and servants and any person claiming through the defendants, be kindly permanently restrained from disturbing and from interfering with the possession of the plaintiffs over the suit property, in any mode or manner.

(c) The defendant no.3, his agents and servants and any person claiming through the defendant no.3, be kindly permanently restrained from making any kind of development or construction work on the suit property in any mode or manner.

(d) A decree for mandatory injunction be passed against defendant no.3 and thereby the defendant no.3 be directed to remove the construction erected on the suit property and to refill pits and to restore back the suit property to its original position by removing entire articles therefrom, at his cost and expenses and on failure of the defendant no.3 to do same, the plaintiffs be kindly allowed and permitted to do same at the cost and expenses of defendant no.3.

10. Under provisions of Order VI Rule 2, material facts are required to be pleaded on which the party pleading relies for his claim. The prayers made are for the purposes of seeking relief on the basis of such averments made in the plaint. The

prayer clauses cannot be read in isolation, but they have to be read in conjunction with the pleadings in the plaint. In fact, the prayers would have to be understood in the context of the pleadings made in that regard.

11. The pleadings in the plaint indicate that it is the specific case of the plaintiffs that after purchase of the aforesaid property by Bhalchandra Nandedkar on 14-4-1977, he was put in actual possession. Said possession continued thereafter without any interruption. There are specific assertions in the plaint that even on the date of filing of the suit, it was the plaintiffs who were in possession. In this background, if the prayers as made are examined, it would be clear that the same proceed on the premise that the plaintiffs were in possession. Therefore, reading prayer clause (d) in the plaint along with other averments in the plaint, it cannot be said that the plaintiffs were seeking possession of the suit property by virtue of making said prayer. When it is the consistent case of the plaintiffs that they were always in possession of the suit property till filing of the suit, then prayer clause (d) cannot be read in a manner that would negate the averments made in the plaint. In fact, on a plain reading of said prayer clause, it cannot be said that the plaintiffs were seeking possession of the suit property. Moreover, the Court would have to proceed on the basis of assumption that the averments made in the plaint are correct. On reading the plaint as a whole, the prayers made in that regard would have to be considered. The valuation of the suit as arrived at would be on the basis of such prayers. It cannot be held to be a case of astute drafting of the plaint as sought to be urged by the learned Counsel for the respondent No.3, more so when the plaint is read in its entirety.

12. In so far as the decisions relied upon by the learned Counsel for the respondents are concerned, the same proceed on the basis of the facts noted therein. In *Vijaya* (supra), it was observed that to claim physical possession, a person should be in such a position that he can deal with the property to the inclusion of others. The said observations have been made when this Court was considering a second appeal on merits. Similarly, in *Ram Gopal Gupta* (Supra), it was observed that if a plaintiff seeks to evict the defendant from the suit premises by an order of injunction, it would, in effect, be a case where he was seeking recovery of possession. In view of the specific averments of the plaintiffs, the

observations made in both the aforesaid judgments cannot be made applicable to the facts of the present case.

13. The learned Judge of the trial Court has proceeded to lay much emphasis on prayer clause (d) in the plaint to hold that the plaintiffs were seeking possession of the suit property. The specific averments made in the plaint whereby the plaintiffs have asserted their possession even on the date of filing of the suit have been ignored. It is, therefore, clear that the learned Judge of the trial Court committed a serious error while holding that the Court had no pecuniary jurisdiction to entertain the suit. The impugned order if permitted to operate would result in a jurisdictional error and hence, the same will have required to be corrected in writ jurisdiction.

14. In view of aforesaid, I pass the following order.

ORDER

(i) The order dated 4-5-2013 passed below Exh.46 is quashed and set aside.

(ii) It is held that the Court of Civil Judge, Junior Division has pecuniary jurisdiction to try the suit on the basis of the valuation as made in para 12 of the plaint.

(iii) Rule is made absolute with no order as to costs.

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