

Abdul Gaffar Abdul Samad Vs. Niranjan Kumar Ramnath Prasad Dwivedi and ors.

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Court : Mumbai

Decided On : Dec-08-2004

Reported in : AIR2005Bom259; 2005(3)ALLMR179; 2005(3)BomCR879

Judge : Dharmadhikari B.P., J.

Acts : Bombay Court Fees Act - Sections 6, 8, 9 and 18; Bombay Court Fees (Amendment) Act, 1996 - Sections 6

Appeal No. : Writ Petition Nos. 4167 and 4505 of 2004

Appellant : Abdul Gaffar Abdul Samad

Respondent : Niranjan Kumar Ramnath Prasad Dwivedi and ors.

Advocate for Def. : R.T. Anthony, Adv. for respondent No. 2 in W.P. No. 4505/2004 and ;N.K. Dwivedi, Adv. for respondent Nos. 1 to 3 in W.P. No. 4167/2004

Advocate for Pet/Ap. : R.T. Anthony, Adv. in W.P. No. 4167/2004 and ;N.K. Dwivedi, Adv. in W.P. No. 4505/2004

Disposition : Petition dismissed

Judgement :

Dharmadhikari B.P., J.

1. Both these writ petitions are infact counter to each other and are filed by original plaintiff as also original defendants challenging the order dated 18-8-2004 by which the learned trial Court has upheld the objection regarding valuation of suit taken by original defendant and has directed the plaintiff to value his suit at Rs. 2,50,000/- by holding that the suit falls under Section 6(iv)(ha) of Bombay Court Fees Act. In Writ Petition No. 4167 of 2004 the plaintiff contends that his suit falls under residuary clause i.e. Section 6(iv)(j) and Court Fees of Rs. 200/- paid by him by valuing the suit at Rs. 1,000/- is just and proper.

In Writ Petition No. 4505 of 2004 the defendant contends that the suit ought to have been valued at Rs. 28,50,000/- or in any case at Rs. 6,00,000/- and as it is multi-farious suit contemplated by Section 18 of the Bombay Court Fees Act, Court should have directed payment of Court fees in relation to both the reliefs claimed by the original plaintiffs. In alternative the defendant has prayed for direction to the trial Court to carryout inquiry into valuation of the suit property and to direct the plaintiff to pay Court Fees in accordance with valuation arrived at in such inquiry.

2. As the petitions are counter petitions, this Court has admitted the petitions and hearing was expedited. However, in Writ Petition No. 4167 of 2004 stay of impugned order of trial Court was granted. After hearing the Advocate for defendant who opposed initially the prayer for stay of the proceedings itself. Later on the defendant has filed civil application for stay of the proceedings in regular civil suit and a separate civil application for grant of early hearing by fixed date. Both the Counsel agreed to submit list of their citations and for final decision of the matter as the plaintiff as also defendant have got urgency in it. As the issue involved is small, the matter has been heard finally.

3. The suit filed by the plaintiff is for declaration that agreement for development dated 28-3-1997 executed by defendant No. 1 Niranjan in favour of defendant No. 3 Ramratan (petitioner in W.P. No. 4505/2004) is void and not binding upon him. The plaintiff has also sought perpetual injunction restraining them from interfering with or disturbing his possession. The plaintiff has stated that he has entered into an agreement of sale dated 7th March, 2003 for Rs. 1,30,000/- with defendant No.

1. He states that he has paid an amount of Rs. 24,000/- towards part payment and was given possession on 10th July, 2002. He states that defendant No. 1 permitted him to affix a gate and accordingly after affixing gate he has also put his lock on it. He states that the sale-deed was to be executed in the month of January, 2003, He further states that an agreement of sale for Rs. 1,30,000/- was executed on 7th March, 2003 and on that date he has paid entire amount of consideration to the owner and its receipt is acknowledged by the owner. He states that thereafter some differences cropped up between him and defendant No. 1 and therefore, defendant No. 1 executed some documents in favour of defendant No. 3 and defendant No. 3 is trying to take forcible possession of the suit plot from him. It is stated by him that the agreement for development executed by defendant No. 1 in favour of defendant No. 3 is dated 20th March, 1997 and is not legally valid and also a void document. He has stated that cause of action arose on 10-3-2003 when defendant No. 3 lodged false complaint against him. The suit has been valued at Rs, 1,000/- and Court Fees of Rs. 200/- has been paid upon it.

4. The defendant No. 1 filed application under Sections 8 and 9 of Bombay Court Fees Act has stated that the subject-matter of the suit is 1500 sq.ft./ of land with construction upon it and its value is more than Rs. 4,50,000/-while value of construction is above Rs. 1,50,000/-. He has further stated that price of land as fixed by Government of Maharashtra is Rs. 3,000/- per sq. mtr. He further states that the suit of present nature ought to have been valued as per provisions of Section 6(v) of the Bombay Court Fees Act and the Court fees of Rs. 16,430/- ought to have been paid. He further states that as per Government valuation the value of the subject-matter is Rs. 28,50,000/-because the agreement for development dated 28-3-1997 is for development of 950 sq.mt. of area. He further states that as that agreement is being clear the suit ought to have been valued at Rs. 28,50,000/- in accordance with Section 6(iv)(d) of Bombay Court Fees Act. He has also stated that as there two different causes of action, the suit ought to have been treated as multi farious suit as contemplated by Section 18 of Bombay Court Fees Act and total Court fees of Rs. 40,445/- should have been paid.

5. The said application was opposed by the plaintiff who pointed out that the suit has been properly valued in accordance with its subject-matter and the provisions of Section 6(iv)(j) of Court Fees Act are applicable. The learned trial Court after hearing both the sides has passed impugned order on 18-8-2004. It has held that as the plaintiff is not seeking declaration of ownership, provisions of Section 6(iv)(d) and Section 6(v) are not applicable. It has further held that the provisions of Section 6(iv)(j) will apply only if the three conditions required therein are satisfied. It has thereafter, held that in the suit for declaration that agreement of sale is void or not binding is covered under Clause 6(iv)(ha). It is found that the said agreement dated 28-3-1997 shows that the market value of the property at Rs. 2,50,000/- and has directed the plaintiff to pay Court fees upon it. It has further held that in so far as demand for inquiry in relation to valuation of the property is concerned, no application for appointment of Commissioner was moved and no evidence was made available to ascertain market value of the property. As already stated above this order is challenged by both the parties.

6. The learned Counsel for plaintiff has placed reliance upon the ruling which are reported at *Jafferli v. Dossa and Co.* : AIR1969 Bom66 , *Inder v. Khialdas* A.I.R. 1971 Guj. 86, *Madhaorao v. State of Maharashtra* 1971 Mh.L.J. 528 and judgment reported at *Balgonda Appanna v. Ramgonda*, 71 Bom.L.R. 582. In : AIR1969 Bom66 *Jafferli v. Dossa and Co.*, creditors of the firm filed suit to avoid Deed of Assignment of movable and immovable properties executed by the firm in favour of second defendant on 26th February, 1966 and the learned Single Judge of this Court held that the suit is one which is not otherwise provided for by Bombay Court Fees Act. It has therefore, been held that it is the suit of residuary nature which falls under Section 6(iv)(j). It is further observed that the subject-matter of that suit is not property comprised in it and assigned which was sought to be set aside but is relied by way of declaration itself namely declaration that Deed of Assignment was void as against the plaintiff. This is apparent from paragraph Nos. 2 and paragraph No. 7 of the said judgment, in A.I.R. 1971 Guj. 86 *Inder v. Khialdas*, the plaintiff filed suit to have agreement to sale his shop declared as void and the learned Single Judge of Gujarat High Court held that in suit of such a nature where title of the plaintiff is not in dispute the Court Fees will have to be paid in accordance with Section 6(iv)(j) of Bombay Court Fees Act. In Apex Court

ruling reported at 1971 Mh.L.J. 528, Madhaorao v. State of Mah, question was of possession of tank and it was treated as suit for possession of land. The Hon'ble Apex Court has held that where subject-matter of the suit is house or garden, in suit for possession, Court fees is to be paid according to market value of the house or garden and where the subject matter is land Court fees has to be calculated according to the provisions made therefor in Sub-clauses (a), (b) and (c) of Section 6(v) of Bombay Court Fees Act. It has held that if the land is not falling under any of these sub-clauses Court fees will have to be calculated under some other provisions of the Act but Court fees will not be required to be paid on the basis of market value of the land. Perusal of paragraph Nos. 4 and 5 of this judgment reveals this position. Last ruling reported at Vol. LXXI of Bom.L.R. 582 Balgonda Appanna v. Ramgonda, again shows that the Court there was concerned with valuation of the suit which is not otherwise provided for by the Act. The Court has held that the rights claimed by the plaintiff there are incapable of monetary evaluation as the plaintiff was in possession of the suit land and hence, proper Court fees payable on plaint under Section 6(iv)(j) was Rs. 30/-. Perusal of page 584 of this ruling reveals these facts.

7. It is to be noticed that provisions of Section 6(iv)(ha) to which recourse has been taken by learned trial Court have been added by Maharashtra Act No. 9 of 1970. All the above decisions relied upon by the plaintiff consider the situation when the said Sub-clause 6(iv)(ha) was not on statute book.

8. The learned Counsel appearing for defendant has placed reliance upon ruling reported at 1985(87) Bom.L.R. 308, and also Parekh Market Premises Co-operative Societies Ltd. v. Padmanabh Builders 1998(2) All. M.R. 313 : 1998(1) Bom.L.R. 1. He has relied upon page Nos. 314 and 315 of the first ruling in which learned Single Judge of this Court (Justice R.A. Jahagirdar) has held that if the suit is for declaration that any sale is invalid irrespective of where any consequential relief is claimed or not, that suit must necessarily be covered by Clause (ha). It has been held that the provisions of Clause (j) have no application in such suits. Perusal of this ruling also reveals that the Court here has taken notice of the fact that Clause (ha) has been placed on statute book by Maharashtra Act No. 9 of 1970 and the Court has held that Clause (ha) provides

for payment of Court Fees in suits for declaration that any sale or contract for sale or termination of contract for sale of any movable or immovable property is void 1/4th of ad valorem Court fees leviable on the market value of the property is required to be paid on such suit by this Sub-clause (ha). It is to be noticed that in : AIR1969 Bom66 challenge was to the Deed of Assignment of movable and immovable property and as this Clause (ha) did not exist, learned Single Judge there has held that the suit would fall under Clause 6(iv)(j). This ruling is also referred to by Justice Jahagirdar and has been distinguished. It has been held that it is no longer a good law in so far as question of calculation of Court Fees payable in suit for declaration that sale of a particular property is void and illegal. It is further held that such suits fall under Section 6(iv)(ha) the residuary provision namely Section 6(iv)(j) will have no application. Next ruling on which reliance has been placed 1998(8) All. M.R. 313, specify the circumstances in which provisions of Section 6(iv)(j) are attracted. It is held that the suit must be for declaration, subject-matter thereto should not be susceptible of monetary evaluation and there is no other provision governing such suit in the Act. It is held that Section 6(iv)(j) is residuary provision.

9. In the light of discussion above it is apparent that the provisions of Bombay Court Fees Act is contained in Section 6(iv)(ha) are correctly invoked by the learned trial Court in the facts. The said provision as amended by Amendment Act of 1996 reads as under :

'(ha) for avoidance of sale, contract for sale, etc.

In suits for declaration that any sale, or contract for sale or termination of contract for sale, of any moveable or immoveable property is void (one half) of ad valorem fee leviable on the value of the property.'

The suit of present plaintiff is for avoidance of contract for sale and development. Perusal of Clause Nos. 14 and 15 of the said agreement dated 28th March, 1997 reveal that the defendant No. 1 has given to defendant No. 3 power to nominate buyers and has agreed to execute sale deed in favour of such buyer. The defendant No. 1 has also agreed to execute and registered sale deeds of proportionate undivided share and interest in the land in favour of prospective

buyers of the tenements to be nominated by party No. 2 and defendant No. 3 has agreed to pay consideration of Rs. 2,50,000/- to defendant No. 1 and has in fact, paid Rs. 50,000/- on the date of that agreement to defendant No. 1. It is this, clear that the view taken by the trial Court is illegal and no fault can be found with it.

10. Coming to Writ Petition No. 4505 of 2004 which is filed by original defendant, the learned trial Court has found that no steps were taken before it to show the market value of the property and to conduct inquiry about valuation. It has therefore, accepted the valuation as mentioned in the agreement dated 28-3-1997 between defendant No. 1 and defendant No. 3 as the said agreement is sought to be avoided by the plaintiff before it. As such, I do not find anything wrong with the same, The argument of defendant that the suit is multi-farious suit falling under Section 18 of Bombay Court Fees Act is equally misconceived. The suit does not embrace two or more distinct subjects as required by said Section. The subject-matter of the suit is agreement for development dated 28-3-1997 and relief sought is of declaration in relation thereto and consequential relief of perpetual injunction. Hence, even on that count the impugned order does not call for any interference.

In the circumstances both writ petitions are dismissed. Rule discharged. No order as to costs.