Bharat Bhushan Gupta vs Pratap Narain Verma on 16 June, 2022

Author: Dinesh Maheshwari

Bench: Vikram Nath, Dinesh Maheshwari

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 4577 OF 2022
(Arising out of SLP (C) No. 9780 of 2019)

BHARAT BHUSHAN GUPTA ……

VERSUS

PRATAP NARAIN VERMA & ANR. .….

JUDGMENT

Dinesh Maheshwari, J.

Leave granted.

2. This appeal arises out of a suit for mandatory and prohibitory injunction as also recovery of damages for use and occupation of the suit property, as filed by the plaintiff-appellant against the defendants- respondents1 wherein, an application filed by the contesting defendant (respondent No.1 herein) under Order VII Rule 11 of the Code of Civil Procedure, 19082 during the course of plaintiff's evidence, for rejection of the plaint for want of pecuniary jurisdiction of the Trial Court, was considered and rejected by the Trial Court on 11.07.2018 but, the High Court has taken a different view of the matter in its impugned order dated 18.03.2019 with reference to the statement made by the plaintiff in his 1 Hereinafter, the parties have also been referred to as 'the plaintiff' or 'the defendant No. 1' or 'the defendant No. 2', as per their status in the suit. 2 'CPC', for short.

cross-examination as regards the value of the suit property; and has ordered return of the plaint for filing the same in the Court of appropriate jurisdiction.

2.1. It may be observed at the outset that after examining the petition seeking special leave to appeal in this matter on 26.04.2019, this Court, while issuing notice, stayed the operation of the impugned order of the High Court. It has been pointed out during the course of submissions that after the stay order of this Court, the trial of the subject suit proceeded further and ultimately, the suit was

decreed on 31.08.2021; and the appeal filed by the contesting defendant (respondent No. 1 herein) is pending.

3. In the given set of circumstances, we do not propose to dilate on all the factual aspects of the case as the matter is said to be pending in appeal and all the relevant aspects are required to be left open for examination by the First Appellate Court. The discussion herein, therefore, is confined only to the correctness and validity of the order passed by the High Court in regard to the suit valuation and not beyond. Thus, only a brief reference to the factual aspects, to the extent relevant for the present purpose, would suffice.

3.1. The plaintiff-appellant had filed the subject suit bearing No. 427419 of 2016 in the Court of Senior Civil Judge, South West District, Dwarka, New Delhi for mandatory and prohibitory injunction and recovery of damages. The nature of the suit is specified in the caption of the plaint that reads as under: -

> "Suit for mandatory injunction directing the Defendant No. 1 to remove himself with all his stuff from one room and open space (shown as 'A' and 'B' in the map plan) and the Defendant No. 2 to remove himself with all his stuff from two rooms (shown as 'C' and 'D' in the map plan) located in Plot No. RZ-28, Indira Park Extension, Near Hanuman Mandir, Uttam Nagar, New Delhi - 110059 measuring 252 sq. yards, and for permanent prohibitory injunction restraining both of them from creating any third party rights therein or raising any construction thereon, and for payment of damages with interest and cost." 3.2. The plaintiff averred that he was the owner of Plot No. RZ-28, Indira Park Extension, Near Hanuman Mandir, Uttam Nagar, New Delhi admeasuring 252 sq. yards, for having purchased the same in the year 1981. The plaintiff further averred that he had raised three-rooms tin shed on the said plot in the year 1983-84; that since the plot was lying unutilised, the defendant No. 1 (respondent No. 2 herein), elder brother of the plaintiff, made a request for using the plot for storage purposes in connection with his work as building contractor. Accordingly, the defendant No. 1 was admitted as a gratuitous licensee at will on the plot in question. The plaintiff further averred that in the year 1989-90, the defendant No. 1 again approached him with a request to permit the defendant No. 2 (respondent No. 1 herein), who was said to be working as Munshi with the defendant No. 1, to reside in two rooms of the tin shed, till such time when the plaintiff himself would require the same. The plaintiff alleged that the defendant No. 2 was, accordingly, permitted to reside in two rooms on the plot in question with the understanding that he would vacate the same as and when asked to do so; and he was also admitted as a gratuitous licensee at will.
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> 3.3. The plaintiff alleged that later on, when he planned to raise construction and asked the defendants to remove themselves and their belongings from the plot, they did not do so. The plaintiff further alleged that the defendant No. 2 himself had built and acquired his own double storey house opposite to the plot in question and yet did not remove himself with his belongings from the plot in question. It was also averred

that the defendant No. 1 had stopped working as contractor since the year 2005 and did not require the plot any more but, he also did not remove himself with his building material despite repeated assurances. 3.4. In reference to the above-stated background, the plaintiff averred that he got served legal notice dated 09.08.2016 terminating licenses of the defendants and asking them to remove themselves and also stated his entitlement to claim damages for unauthorised use and occupation of the plot in question after expiry of the period of notice. The plaintiff stated his grievance that after service of notice, when he visited the plot in question on 25.09.2016, the defendants were found planning to raise construction on the plot in question and to create third party rights so as to defeat the legal rights of the plaintiff. Suspecting foul play by the defendants, the plaintiff filed suit in question for mandatory and prohibitory injunction against the defendants as also for recovery of damages. The relevant plaint averments concerning cause of action, jurisdiction of the Trial Court and suit valuation and Court fees, as contained in paragraphs 10 to 12 of plaint, read as under: -

"10. That a cause of action accrued to the Plaintiff against the Defendants on 27.08.2016 with the expiry of the 15 days notice period from the date of the receipt thereof, and also on 25.09.2016 as stated above.

11. That this Hon'ble Court has territorial as well as pecuniary jurisdiction to try the present suit.

12. That the value for the purpose of court fees and jurisdiction is fixed as Rs. 250 for each relief for injunction and as Rs. 1 lac for damages, and court fees worth Rs. 3443.80 is attached." 3.5. The plaintiff claimed the reliefs in the following terms: -

"It is very humbly prayed before Your Honour to pass a decree for: -

i. mandatory injunction directing the Defendant No. 1 to remove himself with all his stuff from one room and open space (shown as 'A' and 'B' in the map plan) located in Plot No. RZ-28, Indira Park Extension, Near Hanuman Mandir, Uttam Nagar, New Delhi –110059 measuring 252 sq. yards; ii. mandatory injunction directing the Defendant No. 2 to remove himself with all his stuff from two rooms (shown as 'C' and 'D' in the map plan) located in Plot No. RZ-28, Indira Park Extension, Near Hanuman Mandir, Uttam Nagar, New Delhi-110059 measuring 252 sq. yards;

iii. permanent prohibitory injunction restraining the Defendants 1 & 2 from creating any third party rights therein or raising any construction thereon;

iv. recovery of damages to the tune of Rs. 1 lac for the period from 28.08.2016 to 27.09.2016; and v. recovery of further damages @ Rs. 1 lac per month w.e.f.

28.09.2016 till the actual vacation of the premises by the Defendants;

with interest and cost of litigation." 3.6. The defendant No. 2 (respondent No. 1 herein) took up the contest of the suit with the allegations, inter alia, that the plaintiff was having no right in the suit property and that the suit was based on false and fabricated documents; and further that the suit was filed by the plaintiff just to grab the suit property in connivance with his brother, the defendant No. 1. The defendant No. 2 also alleged that he was in hostile and undisputed possession of the plot in question.

3.7. The defendant No. 2 further alleged that there was no cause of action to file the suit; and, as regards valuation, the defendant No. 2 took the averments to the following effect: -

> "5. That the suit value of the suit property for which the plaintiff has claiming possession is more than Rs.2.5 Crores, hence this Hon'ble court has no pecuniary jurisdiction to try, entertain and adjudicate the present suit." 3.8. The following issues were framed on 28.11.2017 in this case when the parties went to trial3: -
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> "I Whether the suit is maintainable in the present form? OPD II Whether the plaintiff is entitled to decree of mandatory injunction against defendant no. 1, as prayed for in prayer clause (i)? OPP III Whether the plaintiff is entitled to a decree of mandatory injunction against defendant no. 2, as prayed for in prayer clause
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> (ii)? OPP IV Whether the plaintiff is entitled to a decree of permanent injunction against defendant no. 1, as prayed for in prayer clause
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> (iii)? OPP V Whether the plaintiff is entitled to a decree of recovery of damages alongwith cost of litigation, as prayed for in prayer clause
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> (iv) & (v)? OPP VI Relief." 3.8.1. We may, in the passing, also point out that at the late stage in the suit, the defendant No. 2 also moved an application under Order XIV Rule 5 CPC, seeking orders for framing additional issues. This application was dismissed by the Trial Court by a separate order dated 31.08.2021.

3.9. Reverting to the proceedings leading to the present appeal, it is noticed that on 20.03.2018, during the cross-examination of the plaintiff, a 3 The issues have been extracted from the copy of judgment dated 31.08.2021, as placed on record with an application for permission to file additional documents. question was put to him as regards market value of the suit property at the time of filing of the suit, which he stated to be around Rs. 1.8 crores. The said question and its answer read as under: -

> "Q. What was the market value of the suit property at the time of filing of the suit?
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> A. The approximate value of the suit property was around Rs. 1.8 crores, at the time of filing the suit." 3.10. After the answer aforesaid, the defendant No. 2 moved an application under Order VII Rule 11 CPC with the submissions that as per the admitted value of the property at Rs. 1.8 crores, the suit was not of the jurisdiction of

the Trial Court and hence, the plaint was required to be rejected. This application was duly contested by the plaintiff and was rejected with costs by the Trial Court after noticing that the suit had been valued as per the reliefs claimed in the plaint. The Trial Court observed and concluded as under: -

"4. For the purpose of deciding an application under Order 7 Rule 11 CPC, only the plaint has to be looked into and the pleadings of defendant or the evidence led by the parties cannot be looked into. Further, on consideration of the plaint filed by the plaintiff, this court is of the view that the same does disclose a cause of action. Further, the plaint has been properly valued as per the reliefs claimed in the plaint. Therefore, the application of defendant no.2 under Order 7 Rule 11 CPC is found to be not maintainable and the same is dismissed with a cost of Rs.2000/- to be deposited with the DLSA."

4. The order aforesaid was challenged by the defendant No. 2 in the High Court. Long drawn submissions were made by the respective parties which were dealt with by the High Court in its impugned detailed order dated 18.03.2019 with extensive extractions from the cited decisions. 4.1. The High Court took note of its previous decisions including that in the case of Mulk Raj Khullar v. Anil Kapur & Ors. in CS (OS) No. 1855 of 2011 decided on 03.10.2013 [reported as (2013) 139 DRJ 303] as also the decision of this Court in the case of Sant Lal Jain v. Avtar Singh:

AIR 1985 SC 857. The High Court, inter alia, observed that in terms of the decision in Sant Lal Jain (supra), the suit for mandatory injunction had not been filed after much delay of termination of alleged licenses. The High Court also observed that though the contesting defendant had denied the factum of license but, all such aspects could only be determined in trial.

4.2. The High Court further proceeded to observe that the facts of the present case were in pari materia with those of the case of Mulk Raj Khullar (supra) and as a consequence, the suit for mandatory injunction had appropriately been instituted, where the plaintiff had the discretion to value the suit for the purpose of Court fees and jurisdiction. To this extent, the High Court expressed its disinclination to accept the submissions of the contesting defendant but, thereafter, took note of the observations in Mulk Raj Khullar (supra) that there was no argument therein to the effect that the suit for mandatory injunction was valued in a whimsical manner.

After reproducing such a passage from the cited decision, the High Court referred to the statement made by the plaintiff about market value of the suit property being around Rs. 1.8 crores at the time of filing of the suit and for this reason, the High Court abruptly arrived at the conclusion that the valuation of the suit for the purpose of Court fees and jurisdiction at Rs. 250 for each of the reliefs of the injunction was wholly arbitrary. 4.3. With the aforementioned discussion and reasoning, the High Court ordered return of the plaint so as to be filed in an appropriate Court as per valuation. The relevant passages from the impugned order, as regards reasoning and conclusion of the High Court, could be usefully extracted as under: -

"17. However, it cannot be overlooked that the reliance that has been placed on behalf of the respondent no.1 on the verdict of this Court in "Mulk Raj Khullar Vs. Anil Kapur & Ors." (supra) though in facts virtually in pari materia with the facts of the instant case, as a consequence of which, presently, the suit would have to be held to be one filed for a mandatory injunction and appropriately so instituted and thus, granting a discretion to the respondent no.1 herein to value the suit for the purpose of Court fees and jurisdiction, yet it cannot be overlooked that in the said verdict relied upon "Mulk Raj Khullar Vs. Anil Kapur & Ors." (supra) itself vide para 30 thereof, it has been observed to the effect: -

"30. There is no argument stating that the plaintiff has not valued the suit for mandatory injunction in any whimsical manner. I hold that the plaintiff has properly valued the suit for the purposes of Court Fee and jurisdiction."

18. In the facts and circumstances of the instant case, the testimony of the plaintiff has been recorded and the plaintiff has himself stated to the effect that the market value of the suit property was around Rs.1.8 crores at the time of the filing of the suit. It is apparent thus, that the valuation of the suit for the purpose of Court Fees and jurisdiction at Rs.250 for each of the reliefs of injunction is wholly arbitrary.

19. In view of the valuation of the property at being thus, at Rs. 1.8 crores as per the testimony of the plaintiff himself, the plaint is directed to be returned by the learned Trial Court to the plaintiff of the said suit to be filed before a Court of appropriate jurisdiction.

20. The learned Trial Court that would be seized of the matter where the plaint is instituted after appropriate valuation within a period of 30 days from the date of return of the plaint by the learned Trial Court, shall proceed with the proceedings from the stage where the proceedings were last fixed before the learned Trial Court with all the evidence recorded therein, to be also read in the case.

21. The petition is disposed of accordingly."

5. Seeking to challenge the order so passed by the High Court, learned senior counsel for the appellant has made elaborate submissions as regards merits of the case while controverting the case of the contesting defendant-respondent. These submissions concerning merits do not require any comment herein because, as already noticed, an appeal against the judgment and decree of the Trial Court is pending; and all the relevant aspects of merits need to be left open for examination by the First Appellate Court.

5.1. Learned counsel for the appellant has also made extensive submissions concerning maintainability of the suit seeking the reliefs of injunction, particularly in the case of a license. The learned counsel would argue that there lies difference between a title suit for possession and a suit for mandatory injunction against a licensee to remove himself and his belongings from the premises

after determination of license. The learned counsel has particularly referred to the decisions in Maria Margarida Sequeira Fernandes & Ors. v. Erasmo Jack de Sequeira (dead) through LRs.: 2012 (5) SCC 370 and Sant Lal Jain (supra). In this regard too, it is noticed that in the impugned order, the High Court has not decided the question of maintainability of the suit against the plaintiff-appellant.

5.2. As regards valuation, learned counsel for the appellant has referred to Section 7(iv)(d) of the Court-fees Act, 18704 and has submitted that the relief of mandatory injunction to direct the defendants to remove the belongings and to vacate the premises after termination of license is maintainable; and the present suit has, accordingly, been valued for the purpose of the reliefs of injunction in terms of Section 7(iv)(d) of the Court Fees Act and is not required to be valued under Section 7 (v) thereof. That being the position, according to the learned counsel, the present suit cannot be considered as undervalued; and there is no such requirement of law for valuation of such a suit for injunction as per the market value of the property in question. Apart from the decision of this Court in Sant Lal Jain (supra), the learned counsel has referred to various decisions of Delhi High Court, including those in the cases of Mulk Raj Khullar (supra) and Malik Mohd Tanveer v. Uzma Malik & Anr.: CM(M) 663 of 205, decided on 18.07.2016.

6. Per contra, learned counsel for the defendant-respondent No. 1 has also attempted to make several submissions in relation to the merits of the case with reference to the assertions that the contesting defendant is in an undisputed possession of the suit property for last 30 years. As observed, these aspects pertaining to the merits of the case are being left without any comment, for their appropriate consideration by the Court dealing with the pending appeal against decree.

4 Hereinafter also referred to as 'the Court Fees Act'. 6.1. As regards suit valuation, learned counsel would submit that the impugned order calls for no interference under Article 136 of the Constitution of India for the reason that the suit property was admittedly having the market value of more than Rs. 1.8 crores and the pecuniary jurisdiction of the Senior Civil Judge, Dwarka, New Delhi was only Rs. 3 lakhs and hence, the suit could not have been tried by the said Court. 6.2. According to the learned counsel, the suit having not been properly valued, the plaint has rightly been ordered to be returned for presentation in the appropriate Court after proper valuation. Learned counsel has referred to the decision of this Court in the case of Commercial Aviation and Travel Company and Ors. v. Vimla Pannalal: 1988 (3) SCC 423 to submit that there cannot be any arbitrary valuation even in terms of Section 7(iv)(d) of the Court Fees Act. It has also been submitted that for construing the plaint, substance thereof has to be examined, as observed by the Full Bench of Delhi High Court in the case of Mahant Purshottam Dass & Ors. v. Har Narain & Anr.: AIR 1978 Delhi 114.

6.3. Learned counsel for the respondent No. 1 would submit that in the present case, the plaintiff is, in fact, seeking possession of the suit property in the garb of mandatory injunction; that the respondent No. 1 was in undisputed possession of the suit property for more than 12 years; and that the ownership of the appellant and the relationship of licensor and licensee has never been accepted by the contesting defendant. Thus, according to the learned counsel, the present suit for mandatory injunction is not maintainable and in the garb of mandatory injunction, the appellant is seeking recovery of possession whereas such a relief is beyond the jurisdiction of the Trial Court. It has also

been urged that despite objection by the respondent No. 1, the Trial Court did not frame the issue on the point of jurisdiction and even the prayer for framing of additional issue was erroneously rejected.

7. Having given thoughtful consideration to the rival submissions and having examined the material placed on record with reference to the law applicable, we are clearly of the view that the impugned order dated 18.03.2019, as passed by the High Court with reference to the statement made by the plaintiff in his cross-examination on the value of the suit property, does not stand in conformity with law and cannot be sustained.

8. While dealing with the rival submissions, it would be relevant to take note of the provisions as contained in Section 7(iv)(d) of the Court Fees Act, which would read as under: -

> "7. Computation of fees payable in certain suits. - The amount of fee payable under this Act in the suits next hereinafter mentioned shall be computed as follows: -
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> .....
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> (iv) In suits-

....

for an injunction. – (d) to obtain an injunction, ...

according to the amount at which the relief sought is valued in the plaint or memorandum of appeal;

In all such suits the plaintiff shall state the amount at which he values the relief sought;"

9. The nature of the present suit, as noticed hereinabove, makes it evident on the face of record that the plaintiff-appellant has sought the reliefs of mandatory injunction against the defendants for removing themselves and their belongings from the plot in question, while alleging that the defendants were in occupation thereof only as licensees; and were obliged to remove themselves after termination of respective licenses. The plaintiff has also prayed for the relief of perpetual prohibitory injunction that the defendants may not create any third-party rights in the suit property or raise any construction thereon. The plaintiff has valued the suit for the purpose of Court fees and jurisdiction at Rs. 250 for each of the reliefs for injunction and at Rs. 1 lakh for damages; and has paid the Court fees accordingly.

9.1. It remains trite that it is the nature of relief claimed in the plaint which is decisive of the question of suit valuation. As a necessary corollary, the market value does not become decisive of suit valuation merely because an immovable property is the subject-matter of litigation. The market value of the immovable property involved in the litigation might have its relevance depending on the nature of relief claimed but, ultimately, the valuation of any particular suit has to be decided primarily with reference to the relief/reliefs claimed.

9.2. So far as the present suit is concerned, the plaintiff has alleged the defendants to be the licensees and has sought mandatory injunction obliging them to remove themselves and their belongings. Not much of discussion is required to find that with such pleadings, claim of relief of mandatory injunction is not unknown to the legal process. For ready reference, we may refer to the relevant passage from the decision in Maria Margarida Sequeira Fernandes (supra) as under: -

> "65. A suit can be filed by the title-holder for recovery of possession or it can be one for ejectment of an ex-lessee or for mandatory injunction requiring a person to remove himself or it can be a suit under Section 6 of the Specific Relief Act to recover possession." 9.3. Further in the case of Sant Lal Jain (supra), this Court referred to a decision of the Jammu & Kashmir High Court 5 with approval and held as under: -
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> "...In Milka Singh v. Diana AIR 1964 J & K 99, it has been observed that the principle that once a licencee always a licensee would apply to all kinds of licenses and that it cannot be said that the moment the licence is terminated, the licensee's possession becomes that of a trespasser. In that case, one of us (Murtaza Fazal Ali, J. as he then was) speaking for the Division Bench has observed:
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> "After the termination of the licence, the licensee is under a clear obligation to surrender his possession to the owner and if he fails to do so, we do not see any reason why the licensee cannot be compelled to discharge this obligation by way of a mandatory injunction under S. 55 of the Specific Relief Act. We might further mention that even under the English Law a suit for injunction to evict a licensee has always been held to be maintainable.
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> ...where a licenser approaches the court for an injunction within a reasonable time after the licence is terminated, he is entitled to an injunction. On the other hand, if the licenser causes huge delay, the court may refuse the discretion to grant an injunction on the ground that the licenser had not been diligent and in that case, the licenser will have to bring a suit for possession which will be governed by Section 7 (v) of the Court-Fees Act."
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> 7. In the present case it has not been shown to us that the appellant had come to the Court with the suit for mandatory injunction after any considerable delay which will disentitle him to the discretionary relief. Even if there was some delay, we think that
> 5 In the case of Milka Singh v. Diana: AIR 1964 J & K 99.

in a case of this kind attempt should be made to avoid multiplicity of suits and the licensor should not be driven to file another round of suit with all the attendant delay, trouble and expense. The suit is in effect one for possession though couched in the form of a suit for mandatory injunction as what would be given to the plaintiff in case he succeeds is possession of the property to which he may be found to be entitled. Therefore, we are of the opinion that the appellant should not be denied relief merely because he had couched the plaint in the form of a suit for mandatory injunction." 9.4. In fact, in the case of Mulk Raj Khullar (supra) as referred by the High Court in its impugned order, the

aforesaid decision in Sant Lal Jain as also another decision in the case of Joseph Severance & Ors. v. Benny Mathew & Ors.: (2005) 7 SCC 667 were taken note of and the High Court concluded as follows: -

> "16. The legal position that follows is that where a suit is filed with promptitude against a licensee whose license is terminated, a Suit for mandatory injunction is maintainable....." 9.5. The aforesaid discussion as regards maintainability of suit for mandatory injunction does not require much elaboration for the settled position of law as also for the relevant fact that even in the order impugned, the High Court has not stated anything to the contrary, so far as the question of maintainability of the suit seeking relief of mandatory injunction is concerned. The High Court rather placed this aspect of the matter beyond the pale of doubt while observing, after its extensive reference to the various decisions, that the facts of the present case and that of the case of Mulk Raj Khullar (supra) were in pari materia. To this extent, the consideration of the High Court had been in tune with the applicable legal principles. However, immediately on the next step, the High Court, with respect, committed serious error by referring to a passage in Mulk Raj Khullar's case in isolation and detached from the substance, where the Court had indicated want of any argument about whimsical valuation. That observation in paragraph 30 in the decision of Mulk Raj Khullar's case came in the context of observations in another decision of Delhi High Court in the case of Padmavati Mahajan v.

Yogender Mahajan & Anr.: (2008) 152 DLT 363, wherein the Court had observed that a suit for injunction could be valued by the plaintiff in his/her discretion subject to the condition that such discretion ought not to be whimsical. The use of generalised expression "whimsical", without specifications, has been picked up by the High Court in the impugned order and then, the market value of the plot in question, as stated by the plaintiff in his cross-examination, has been taken by the Court to be indicative of arbitrariness in valuation. With respect, the High Court even missed out the relevant statement of law in the very passage reproduced in Mulk Raj Khullar, wherein it was stated in clear terms that such a suit was 'not required to be valued at the market value of the property'.

10. The High Court has not even considered the overall circumstances of the present case where the plaintiff has valued the reliefs of mandatory and prohibitory injunction at the nominal Rs. 250 but, at the same time, has also valued the suit with reference to the claim of damages at Rs. 1 lakh and had paid the Court fees accordingly. It is apparent on the face of the record that despite unquestionable principle of law that such a suit for mandatory and prohibitory injunction is not required to be valued at the market value of the property, the High Court has relied only upon the market value of the property to hold the valuation of the present suit to be "arbitrary". Such a conclusion of the High Court neither stands in conformity with law nor with the frame and the nature of the present suit.

11. The decision in the case of Commercial Aviation (supra) does not further the cause of the respondent No. 1 in any manner whatsoever. The said decision related with a suit for rendition of

accounts, which is one of the species of the suits envisaged by clause (iv) of Section 7 of the Court Fees Act. Even in that context, this Court, inter alia, observed that the plaintiff's assessment in such a plaint about the amount due to his share was a guesswork in the absence of any cogent material and would not constitute objective standard of valuation. This Court explained the principles governing the valuation of the suits falling under Section 7(iv) of the Court Fees Act in the following terms:

> "7. So far as suits coming under Section 7(iv) of the Court Fees Act are concerned, the legislature has left the question of valuation of the relief sought in the plaint or memorandum of appeal to the plaintiff. The reason is obvious. The suits which are mentioned under Section 7(iv) are of such nature that it is difficult to lay down any standard of valuation. Indeed, the legislature has not laid down any standard of valuation in the Court Fees Act. Under Section 9 of the Suits Valuation Act, the High Court may, with the previous sanction of the State Government, frame rules for the valuation of suits referred to in Section 7(iv) of the Court Fees Act. Although the Punjab High Court has framed rules under Section 9 of the Suits Valuation Act which are applicable to the Union Territory of Delhi, such rules do not lay down any standard of valuation with regard to suits coming under Section 7(iv) of the Court Fees Act. It has already been noticed that under Rule 4(i) of the Punjab High Court Rules, the value of suit for accounts for purposes of court fee will be as determined by the Court Fees Act, which means that the valuation of the relief will have to be made by the plaintiff under Section 7(iv)(f) of the Court Fees Act." 11.1. The observations occurring in paragraph 13 of the said decision, which are sought to be relied upon by the contesting respondent, read as under: -
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> "13. But, there may be cases under Section 7(iv) where certain positive objective standard may be available for the purpose of determination of the valuation of the relief. If there be materials or objective standards for the valuation of the relief, and yet the plaintiff ignores the same and puts an arbitrary valuation, the court, in our opinion, is entitled to interfere under Order VII, Rule 11(b) of the Code of Civil Procedure, for the court will be in a position to determine the correct valuation with reference to the objective standards or materials available to it. In Urmilabala Biswas, v. Binapani Biswas [AIR 1938 Cal 161: 42 CWN 192: 177 1C 893] a suit was instituted for declaration of title to provident fund money amounting to a definite sum with a prayer for injunction restraining the defendant from withdrawing the said money. It was held that there was no real distinction between the right to recover money and the right to that money itself, and that the relief should have been valued at the provident fund amount to which title was claimed by the plaintiff. Thus, it appears that although in that case the suit was one under Section 7(iv) (c) of the Court Fees Act, there was an objective standard which would enable the plaintiff and the court too to value the relief correctly and, in such a case, the court would be competent to direct the plaintiff to value the relief accordingly." 11.2. These observations were, in fact, taken note of by the High Court in the impugned judgment too but they cannot be read to mean that in a suit for mandatory injunction concerning a property and

thereby seeking certain mandates over the acts/omissions of the defendant, the suit is required to be valued as per the market value of the property. Such a proposition, for suit valuation on the market value of the property involved, irrespective of the nature of relief claimed, if accepted, would render the whole scheme of the Court Fees Act concerning suit valuation with reference to the nature of relief going haywire. This argument is required to be rejected.

12. The decision of the Full Bench of Delhi High Court in the case of Mahant Purushottam Dass (supra) has also been unnecessarily cited.

The suit therein was for declaration and perpetual injunction where the Court found that the plaintiff could not have asked for the relief of injunction without seeking declaration and the suit, on its nature, was held to be governed by clause (v) of the Section 7 of the Court Fees Act. The said decision has no relevance or application to the present case.

13. Before concluding, we may also observe that the submission made on behalf of respondent No. 1 concerning want of framing of the necessary issues by the Trial Court despite his prayer does not require much comments. This is for the simple reason that irrespective of the issues framed, the respondent No. 1, while contesting the suit, chose to raise the objection regarding suit valuation and jurisdiction of the Trial Court by way of the application under Order VII Rule 11 CPC during the course of cross-examination of the plaintiff. That application was rightly rejected by the Trial Court. The High Court's decision to the contrary is not being approved by us. That being the position, the contention about want of framing of issues does not hold water any more.

14. For what has been discussed hereinabove, we may simply put the upshot in other words that the High Court has totally omitted to consider the applicable provision of law i.e., Section 7(iv)(d) of the Court Fees Act as also the principles of law stated in the very same decision being referred to and relied upon in the impugned order itself. Thus, the impugned order deserves to be set aside.

15. Accordingly, and in view of the above, this appeal succeeds and is allowed; the impugned order dated 18.03.2019 is set aside and that of the Trial Court dated 11.07.2018 is restored. Needless to observe that we have not made any observations relating to the merits of the case, which shall remain open for examination in pending appeal before the First Appellate Court.

15.1. There shall be no order as to costs of this appeal.

.....J. (DINESH MAHESHWARI) .....J. (VIKRAM NATH) NEW DELHI;

JUNE 16, 2022.