

Bombay High Court

Jafferli Alibhai And Anr. vs S.R. Dossa & Co. And Anr. on 28 September, 1967

Equivalent citations: AIR 1969 Bom 66, (1968) 70 BOMLR 359

Bench: Vimadalal

ORDER

1. This is a Chamber Summons taken out by the plaintiffs to review and set aside an order of the Taxing Master with regard to the valuation of the suit for the purpose of Court-fees.

2. The suit, as framed, is a representative suit under Section 53 of the Transfer of Property Act by the creditors of the 1st defendant-firm to avoid the Deed of Assignment of moveable and immoveable properties by that firm in favour of the 2nd defendant which was dated 21st February 1966. The properties which are the subject-matter of the said Deed of the subject-matter of the value of Rs. 71/2 lacs. The plaintiffs have, in paragraph 17 of the plaint, valued the suit for the purpose of Court-fees under S. 6(iv)(j) of the Bombay Court-fees Act, 1959, and they paid a fixed court-fees of Rs.30 under the said section. On a reference to the Taxing Master under Section 5 of the said Act to determine the correct amount of Court-fees would be payable by the plaintiffs on the aggregate sum of Rs.2,26,998.14, being the total of the claims of the creditors set out in annexure "C" to the plaint, including the claims of the two plaintiffs. In arriving at the conclusion, the Taxing Master has proceeded on the footing that, since this is a representative suit as required by Section 53 of the Transfer of Property Act, all the creditors mentioned in the list must be considered to be parties to this suit. It may be mentioned that the Taxing Master had, before proceeding with the reference directed a notice to be given to the State of Maharashtra, and the State was represented by attorneys in the course of the hearing of the reference before the Taxing Master. Mr.Sanghavi who appeared on behalf of the State before me, sought my permission to appear at the hearing of this Chamber Summons, and I have permitted him to do so. It may further be mentioned that the State itself has taken out a Chamber Summons, and I have permitted him to do so. It may further be mentioned that the State itself has taken out a Chamber Summons dated 21st August 1967 for a review of the valuation arrived at by the same should be enhanced to Rs. 7,50,000 which was the value of the property involved in the suit. I am, however, for the present, considering the plaintiffs Chamber summons, and will pass orders in regard to the Chamber Summons taken out by the State separately hereafter.

2A. It would be convenient to refer at the very outset to the terms of Section 6(iv)(j) of the Bombay Court-fees Act. 1959. Clause (iv) of the said section deals with various types of declaratory suits and in sub-clause (j) thereof, it is provided that, it suits where a declaration is sought and "the subject-matter ink dispute is not susceptible of monetary evaluation and which are not otherwise provided for" by the said Act, the Court fee payable would be a fixed fee of Rs. 30. The questions that arise before me are, therefore, three, namely, (1) what is the subject-matter of the present suit as framed, (2) is that subject-matter susceptible of monetary evaluation, and (3) whether it is a suit which is otherwise provided for by the said Act.

3. Mr. Zaiwalla has, in the course of his argument, stated that four views are possible, namely (1) that the subject matter is the claim of the two plaintiffs aggregating about Rs. 18,000/- (2) that the

subject-matter is the aggregate claim of all the creditors on whose behalf the suit is filled as a representative suit aggregating to Rs. 2,26,998.14, (3) that the subject-matter is the value of the property comprised in the Deed of Assignment which is sought to be avoided by the present suit under S. 53 of the Transfer of Property Act, and (4) that the subject matter is merely the relief, namely, the declaration that the Deed of Assignment in question is void as against the creditors of the 1st defendants.

4. In the case of *Ratilal Manilal v. Chandulal Chhotalal*, 49 Bom LR 552=(AIR 1947 Bom 482) which was a suit for possession of a house in which the plaintiff claimed that the defendant was in possession as his licensee, in holding that court-fee was payable according to the market-value of the house, it was observed by Macklin, J. in the judgment of the Division Bench at p. 554 (of Bom LR)= (at p. 483 of AIR ) that, in plain English the subject-matter of a suit is what the suit is about and that it is not the same thing as the object of the suit. The learned Judge then proceeded to state that the object of the suit before him was the claim, or, in other words, possession of the house, but the subject of the suit was the house itself. On a consideration of the various clauses and sub-clauses of Section 7 of the Court-fees Act, 1870, the learned Judge came to the conclusion that the said section contemplated the subject-matter of a suit for the possession of land as being the land, the subject matter of a suit for the possession of a garden as being the garden and the subject-matter of a suit for the possession of a house as being the house, and there was no suggestion anywhere that the subject matter ought to be taken to mean anything else.

5. Turning to the present suit, as framed, in the light of the decision in *Ratilal Manilal's* case, 49 Bom LR 552= (AIR 1947 Bom 482) just cited by me, in my opinion, as a matter of plain language, the claim of the two plaintiffs aggregating to Rs. 18,000 cannot, therefore, be said to be the subject-matter of the suit. On parity of reasoning, the claim of all the creditors, on whose behalf this representative suit is filed by the plaintiffs, cannot be said to be the subject-matter of the suit. Moreover, it would be impossible in any given case for the plaintiffs to be able to say what is the aggregate value of the claims of all the creditors, some of whom may even be unknown to the plaintiffs. From the practical point of view also., therefore, it would be impossible to compute Court fees on that footing . The first two of the four possible views in regard to this listed by Mr. Zaiwalla must, therefore, be rejected, and the question resolves itself-matter of the suit can be said to be the property comprised in the Deed of Assignment which is sought to be declared void and not binding on the creditors by the present suit.

6. In order to decide the question, it is necessary for me to refer to the frame of the present suit. It is quite clear that prayer (a) of the suit does not seek to set aside the Deed of Assignment, but merely seeks a declaration that the same is void as against the plaintiffs and the other creditors of the 1st defendants, and the other creditors of the 1st defendants, and that is also the averment in the body of the plaint in paragraph 13. In the case of *Abdullakhan Daryakhan v. Purshottam Damodar*, 49 Bom LR 875=(AIR 1948 Bom 265) which was a decision in appeal from the decision of Lokur, J. reported in 46 Bom LR 613= (AIR 1944 Bom 267) one of the questions which arose was what was the Article of the Limitation Act which would govern a suit by a creditor under Section 53 of the Transfer of Property Act. In considering the applicability of Article 91 of the Limitation Act, 1908, which applies to suits to cancel or set aside instrument, it was observed in the judgment of the

Division Bench delivered by Gajendragadkar, J. that, prima facie, suits to set aside instruments can be filed only by persons who are parties to the instruments in question, and the object of such suits is, as the Article itself expressly states, to cancel of set aside instruments. The learned Judge then went on to observe (at p. 877 of Bom LR) = (at p.268 of AIR) as follows;

"On the other hand, suits under S. 53 of the Transfer of Property Act are instituted by creditors who are not parties to the transactions impeached and the claim made in such suits is not to cancel or set aside such transfers, but to obtain a declaration that such transfers do not bind the creditors on whose behalf such suits are filed. Even if such suits are decreed, the instruments evidencing the transfers in question are not cancelled or set aside but are only held to be not binding on the creditors of the transferors. The nature of such suits is, in our opinion, substantially different from that of the suits referred to by Art. 91. In that view we are not prepared to hold the suits brought by creditors under S. 53 of the Transfer of Property Act are governed by Art, 91. In our opinion, such suits would be governed by Art. 120 of the Indian Limitation Act."

I am not concerned, on the present application, with the rest of the judgment in the said case. If the present suit, which is admittedly a suit under Section 53 of the Transfer of Property Act, is construed in the manner stated by construed in the manner stated by Gajendragadkar, J. in Abdullakhan's case 49 Bom LR 875=(AIR 1948 Bom 265) as not being a suit to set aside the Deed of Assignment, I fail to see how it can be said that this suit is about the property comprised in the deed of assignment. As Mr. Zaiwalla has rightly pointed out, even if the plaintiffs succeed in the present suit, they do not get that property, or any part of it. It does not become available to the plaintiffs until they have proved their respective claims in independent litigations and perhaps, not even then. Reference may also be made in this connection to the decision of V. S. Desai, J. in the case of Society of Servants of God v. Major Hanmantrao Narayanrao, (1065) 67 Bom LR 210 in which the question which arose was, what was the provision of the Court-fees Act which the question which arose was, what was to provision of the Court-fees Act which would be applicable to a suit by a subtenant of the original tenant claiming that he was entitled to become the direct statutory tenant of the original tenant claiming that he was entitled to become the direct statutory tenant of the landlord on the termination of the tenancy of the head tenant by reasons of the provisions of Section 14 of the Bombay Rent Act. In holding (at p. 213) that the suit would be governed by Section 6(iv)(j) of the Bombay Court fees Act, 1959, the learned Judge stated that, since what the plaintiffs sought was a declaration relating to statutory tenancy, it could not be said to be a declaration in respect of the nature of their tenancy of any immovable property. It is pertinent to note that it was not held that the suit was "about" the immovable property, and even the contention that it would be governed by S. 6(iv)(d) was rejected by the learned Judge. This decision provides an answer to the argument of Mr. Sanghavi that, where it is possible to relate the relief claimed to some property and to value that property, even approximately, the provisions of Section 6(iv)(j) cannot be invoked.

7. Reliance was placed by Mr. Zaiwalla on the decision of a Division Bench of our High Court in the case of Chhotalal Kalidas v. Laxmidas Mayaram, . The reliefs claimed by the plaintiffs in that suit who were the mortgagors were a claim for a declaration that a certain sale effected by defendant No. 1 who was the mortgagee, in favour of defendant No. 2 was illegal, void, invalid, ineffective and bad in law and the same be set aside, and for an injunction against the two defendants restraining them

from proceeding further with the completion of the sale. The plaintiffs had valued the claim for Court-fee and jurisdiction at Rs. 420, but the defendants contended that the value of the suit properties being above Rupees 25000 the suit was beyond the jurisdiction of the City Civil Court was, therefore, incompetent to entertain the suit. That case fell to be decided under the provisions of the Court -fees Act, 1870. The trial Judge upheld the contention of the defendants and ordered that the plaint be returned for presentation to the proper Court . On appeal, Bavdekar, J. held that the City Civil Court had jurisdiction to entertain the suit and reversed the order passed by the trial Court, directing the trial Court to proceed with the suit according to law. It may be mentioned that under Section 7(iv)(c) of the Court-fees Act, 1870, in a suit to obtain a declaratory decree or order, where consequential relief was prayed for the plaintiff was entitled to pay court-fees according to the amount at which the relief was valued by him in the plaint, but Section 8A of the same Act provided that if the Court was of opinion that the subject-matter of a suit had been wrongly valued, it could revise the valuation by holding the necessary inquiry for that purpose. The plaintiffs put their own valuation on the said suit under the provisions of S. 7(iv)(c), and the Division Bench, in considering the question as to whether the valuation put by the plaintiffs should be accepted, or an inquiry ordered under the provisions of Section 8A, observed that though the right of the plaintiffs under S. 7(iv)(c) to put his own valuation was indisputably subject to the provisions of S. 8A, it was only if there was some standard by reference to which it would be possible to value the subject-matter of a suit and the Court could come to the conclusion that the valuation made by the plaintiff was wrong, that it was open to the Court to revise the valuation under S. 8A. It was then observed in the judgment in the said case (at p. 593 of Bom LR)= (at p. 518 of AIR)as follows:

"But in this case it cannot be said that there was a standard by reference to which the valuation made by the plaintiffs of the subject-matter of the suit can be demonstrated to be wrong. The claim made by the plaintiffs is a claim for a declaration that a certain sale effected by defendant No. 1 in favour of defendant No. 2 was 'illegal, void, invalid, ineffective and bad in law' and for an injunction against the two defendants; and we are unable to appreciate by reference to what standard the valuation of the subject-matter by the plaintiffs of a suit for a declaration that a particular sale is 'invalid, ineffective and bad in law' can be rectified".

The learned Judges, therefore, agreed with the decision of Bavdekar, J. that the valuation made by the plaintiffs not being shown to be wrong, the Court was incompetent to revise it. It was further observed that a suit for a declaration that a sale is 'invalid and ineffective' was not a suit to set aside an alienation. In the next paragraph of the judgment in the said case, dealing with the argument of Mr. Trivedi that the suit fell within the provisions of Article 17(iv) or (vii) of Schedule II to the Court-fees Act, 1870, it was observed that the said suit could not be said to be a suit where it was not possible to estimate at a money value the subject-matter in dispute and which is not otherwise provided for by the Act. Mr. Sanghavi contended that this decision is of no assistance to the plaintiffs, because, though the valuation of the plaintiffs to the said suit was accepted, this was a case in which ad-valorem Court-fees were computed on that valuation. These matters, however, do not, in my opinion, affect the points on which Mr. Zaiwalla has relied as far as this decision is concerned, and they are that, in a case in which a declaration was sought that a sale was ineffective and invalid, the view taken was that there was no standard by reference to which the valuation which the plaintiffs had themselves put on the subject-matter of the suit could be said to be wrong. That could

only be on the footing that the subject matter in a suit framed as a suit for a declaration that a sale of certain property is ineffective, is not the property itself. It also supports Mr.Zaiwalla's second contention that such a suit is not susceptible of monetary evaluation. In my opinion, there is no difference between saying, as was said in the judgment in Chhotalal's case, that there was no standard by which the suit could be valued otherwise than by the plaintiffs' own valuation, and saying that the suit was not susceptible of monetary evaluation within the terms of Section 6(iv)(j) of the Bombay Court fees Act. 1959, as the two expressions mean much the same thing. In the result, I hold that the subject-matter of the present suit, as framed is not the property comprised in the Deed of Assignment which was sought to be set aside, but is the relief by way of declaration itself, namely, the declaration that the Deed of Assignment was void as against the plaintiffs, as Mr. Zaiwalla khas rightly contended, and that the same is not susceptible of monetary evaluation and is governed by Section 6(iv)(j) of the Bombay Court-fees Act, 1959. Some other decisions were also referred to in the course of the arguments before me in this case, but it is unnecessary for me to deal with any of them, except the decision of the Supreme Court in the case of State of Maharashtra v. Mishrilal Tarachand, in which it has been laid down (para 9) that the Court-fees Act is a taxing statute and its provisions, therefore, have to be contoured strictly in favour of the subject-litigant.

8. That leaves for my consideration only the question as to whether this is a suit which is otherwise provided for by the Bombay Court-fees Act, 1959. It was sought to be argued by Mr. Sanghavi for the State that this suit is expressly provided for by the Bombay Court-fees Act, 1959. It was sought to be argued by Mr. Sanghavi for the State that this suit is expressly provided for by Article 1 to 7 of Schedule I to the said Act, but, I am afraid, there is no subtonic in that contention of Mr.Sanghavi, for the simple reason that both those Article 1 of Schedule I that it applies to cases of plaint or memorandum of appeal "not otherwise provided for in this Act" and in Article 7 that it applies to any "other" plaint etc. Moreover, as Mr. Zaiwalla has contended the present suit, as framed, falls specifically with in the terms of Section 6(iv)(j) of the said Act, and, under the circumstances, there is no question of its being governed by any other provision of that Act.

9. In the result, I make this Chamber Summons absolute in terms of prayers (a) and (b). The State must pay the plaintiffs' costs of this chamber summons. Counsel certified.

10. Order accordingly.