MHRG140000092022

R.C.S. No. 3/2022

Order below Exh. 120

This is an application under Order VII Rule 3 and 11 (a) (b) and (d) of the Code of Civil Procedure 1908 (hereinafter referred to as 'the C.P.C.').

2. Plaintiffs have instituted this suit for partition and separate possession so also, for perpetual injunction restraining defendants from causing obstruction to their peaceful possession over suit properties. Plaintiffs have claimed that suit properties mentioned in para 1 to 7 are acquired by the Government for the purpose of development of Navi Mumbai. The property mentioned in para 8 is house property. Plaintiffs have claimed that suit properties are their joint family properties. They have demanded partition. However, defendants have refused to partition suit properties. Hence, this suit.

3. By this application, defendant no. 1 has claimed that the suit is under valued. The suit is barred by limitation. Plaintiffs were having information of suit properties since 2006. Various suits are subjudice in different Courts. Therefore, the suit is not maintainable. Plaintiffs have claimed partition in house no. 155 situated at village Dhutum, Tal. Uran, Dist. Raigad. The value of the said house is Rs. 1,05,96,750/-. Therefore, the suit is not maintainable. Hence, this application.

4. The application came to be opposed on the ground that the application is false. Plaintiffs have claimed that defendants are trying to cause delay. Plaintiffs have claimed that this application is filed by defendants when the suit is fixed for order on Exh. 5 after hearing arguments of both sides. Defendants have deliberately filed this application at the time order below Exh. 5. They could have filed this application at any earlier stage. Suit properties are acquired by the Government. The CIDCO has not allotted plots in exchange to suit properties. Therefore, valuation of proposed plots cannot be taken into consideration. There is no documentary evidence to show that valuation of house no. 155 is Rs. 20,90,740/-. Considering prayers of plaintiffs, present day valuation cannot be considered.

5. Plaintiffs have valued suit properties as per Sec. 6 (VII) (V) of the Maharashtra Court Fees Act. As per award, valuation of suit properties mentioned in para 3 to 7 is Rs. 2,60,861.10/-. Accordingly, Court fees is paid. The valuation of the house is Rs. 1,00,000/- and accordingly Court fees is paid. The total valuation of suit properties is Rs. 3,64,453.10/-. Therefore, plaintiffs have paid Court fees of Rs. 16,855/-. Hence, the suit is properly valued.

6. Plaintiffs have further claimed that there are suits bearing R.C.S. No. 59/2006, Spl.C.S. No. 131/2016 subjudice. Cause of action and limitation in said suits is applicable to defendants. Present plaintiffs are defendants in said suits. Defendants no. 1 and 2 are trying to alienate suit properties and have started construction over suit properties. Therefore, plaintiffs were constrained to institute the suit. As defendants are trying to alienate suit properties and started construction, plaintiffs have issued notice dated 29.10.2021 demanding partition. It was refused

by defendants. Hence, cause of action started on 29.10.2021. Therefore, the suit is will within limitation. Therefore, application is not maintainable.

7. I have heard both sides in details. Learned advocate Shri. C.B.Wadkar has submitted that the suit is under valued. The suit is barred for non-joinder of necessary parties. Properties are already acquired. The acquiring body is public servant. Therefore, this Court has no jurisdiction to try and entertain this suit. In land reference case, value is shown. As per said valuation, this Court has no pecuniary jurisdiction. There is no reason mentioned in the plaint as to why partition is claimed at belated stage. Value of the plot is Rs. 3,97,000/-. The suit is barred by limitation. R.C.S. No. 59/2006 is dismissed.

8. On the other hand, learned advocate Shri. Mhatre has submitted that the CIDCO is not Government. The execution proceeding is for additional compensation. As per Article 110 of the Limitation Act, time starts running on refusal of partition. Previous suit is not decided. Hence, res-judicata is not applicable. Non-joinder of necessary parties is not ground for rejection of plaint. He has submitted that provisions of Order VII, Rule 11 of the C.P.C. should be invoked in rarest rare cases. Properties no. 1 and 2 are properly valued. Proposed plots cannot be leased out. They are not allotted. Therefore, they cannot be valued. Rate is to be fixed as per compensation. Valuation is to be prepared as per compensation. He has further submitted that defendants no. 1 and 2 have started the construction and are trying to alienate suit properties. Plaintiffs are defendants in pending suits. Therefore, being defendants, plaintiffs are unable to claim any relief against defendants no. 1 and 2 for proposed alienation and construction. Therefore, plaintiffs were

compelled to institute this suit. The cause of action is mentioned in the plaint.

9. Considering rival submissions it is seen that defendant no. 1 is claiming rejection of the plaint on the ground of valuation of the suit and limitation. First of all it is to be seen that whether the suit is within limitation. Article 110 of the Limitation Act provides for limitation of 12 years when the exclusion becomes known to the plaintiff for suit by person excluded from joint family property to enforce right to share therein. The defendant no. 1 has claimed that R.C.S. No. 59/2006 was pending against plaintiffs for partition of suit properties. Plaintiffs were well aware of the pendency of said suit. The fact of pendency of said suit is not in dispute. The defendant no. 1 has claimed that the present suit is barred by limitation. On the other hand, plaintiffs have claimed that they are defendants therein. Defendants have started construction and are trying to alienate suit properties. They could not sought for any relief in R.C.S. No. 59/2006. Moreover, learned advocate for the defendant no. 1 has submitted that the said suit is dismissed in default. Plaintiffs have claimed that due to above reason they have to institute this suit.

10. It may be noted that plaintiffs have sought for relief of partition and perpetual injunction restraining defendants from alienating and carrying out construction over suit properties. Plaintiffs have claimed that cause of action arose on 20.12.2021 when they issued notice to defendants and on 05.12.2021 when plaintiffs met defendants and demanded partition. Defendants have declined the share of plaintiffs. Suit is instituted on 06.01.2022. Therefore, the suit is within limitation.

11. As far as the question of Res-judicata is concerned, it is

settled that the said question cannot be decided at the stage of the application under O. VII Rule 11 of the C.P.C.

12. The defendant has claimed that the suit is against the CIDCO. The officers of CIDCO are public servants. Therefore, this is suit against Government. It may be noted that CIDCO is a corporation. Moreover, there is no relief claimed against CIDCO. Therefore, it will not be suit against the Government. Hence, I do not find any substance in the submission that the suit is against the Government.

13. The defendant no. 1 has claimed that the suit is under valued. The defendant no. 1 has relied on the valuation of the house no. 155. He has claimed that valuation of the suit house as per assessment extract is Rs. 1,05,96,750/-. He has relied on the copy of assessment extract.

14. The plaintiff has relied on decision of the Hon'ble Supreme Court of India in ***Shakti Bhog Food Industries Ltd. Vs. Central Bank of India in Civil Appeal No. 2514 of 2020*** wherein it has been held that, '*the basic question to be decided while dealing with an application under O. 7 R. 11 of the Code is whether real cause of action has been set out in the plaint or something illusory has been stated with a view to get out of O. 7 R. 11 of the Code*'.

15. He has further relied on decision of the Hon'ble Bombay High Court in ***Kumar Ratanchand Makhija Vs. Girish Kumar Makhija in Civ. Revision Application No. 646/2015*** wherein it has been held that, '*perusal of Sec. 6 (vii) shows that in a suit for partition and separate*

possession of a share of joint family property or joint property, or to enforce right to his share in any property, suit has to value according to the value of the share in respect of which suit is instituted. In other words, this Section does not require valuation to be made according to market value of the share in respect of which the suit is instituted'.

16. He has further relied on decision of the Hon'ble Bombay High Court in ***Municipal Corporation of Greater Mumbai Vs. State in 2006 (1) ALL MR 499*** wherein it has been held that, '*valuation register cannot be an evidence to determine market value of the property. It cannot be substantive piece of evidence*'.

17. He has further relied on decision of the Hon'ble Supreme Court of India in ***Jawajee Nagnatham Vs. The Revenue Divisional Officer reported in 1994 (4) SCC 595*** wherein it has been held that, '*the register does not confer any express power to the Government to determine the market value of the lands prevailing in particular area. The order of the Collector is not final*'.

18. He has further relied on decision of the Hon'ble Rajasthan High Court in ***M/s. Lakhara Vs. M/s. Shivakaran in AIR 1995 RAJASTHAN 17*** wherein it has been held that, '*jurisdiction of the Court is mix question of law and fact. It cannot be decided at the stage of deciding application for temporary injunction and for that only avernments in the plaint could be seen*'.

19. The defendant no. 1 has relied on valuation of the house property as per assessment extract of the house property. Considering

rival submissions it is seen that defendant no. 1 is claiming rejection of the plaint on the ground of valuation of the suit. First of all it is to be seen that whether the suit is within limitation.

20. Now it is to be seen that whether the suit is under valued. The plaintiff has claimed valuation of the suit house is Rs. 1,00,000/-. The plaintiff has also filed the report of valuation by Government valuer which is below Rs. 1,00,000/-. Whereas, the defendant no. 1 has relied on the value shown in assessment extract which is above pecuniary jurisdiction of this Court. Now, at this stage, question appears as to which valuation is to be considered for the purpose of O. 7, R. 11 (d) of the Code.

21. It is settled that to reject the plaint on the ground that the suit is barred by any law, only avernments in the plaint will have to be referred to. Defence made by the defendant in suit must not be considered while deciding merits of the application. With respect to non payment of Court fee, a plaint would only be rejected, if the plaint is written on a paper that is insufficiently stamped, and the Court requires the plaintiff so to supply requisite stamp paper within a time fixed and despite such an order, the plaintiff fails to do so. It is clear that in order to consider O. 7 R. 11, Court has to look into the avernments in the plaint and same can be exercised by the trial Court at any stage of the suit. It is also clear that the avernments in the written statement are immaterial and it is the duty of the Court to scrutinize avernments/pleas in the plaint. In other words, what needs to be looked into in deciding such application, are the avernments in the plaint. At that stage, the plea is taken by the defendant in the written statement are wholly irrelevant.

22. Considering above discussion, it is clear that for the purpose of this application only avernments in the plaint are required to be considered. The defendant no. 1 has relied on the value of the suit house as per assessment extract. Whereas as per the law laid down in the case of **Kumar Ratanchand** (Supra) value of the share is to be considered. The market value of the suit property cannot be considered at this stage.

23. The plaintiff has claimed that valuation of the house is about Rs. 1,00,000/-. It is to be seen whether as per avernments in the plaint, this Court has pecuniary jurisdiction to try and entertain the suit. As per above discussion, valuation mentioned in the plaint has to be taken into consideration. Moreover, as per law laid down in cases of **Municipal Corporation of Greater Mumbai** (Supra) and **Jawajee** (Supra), value of the ready reckoner cannot be evidence to determine market value of the property. Therefore, the valuation done by the plaintiff has to be taken into consideration. The plaintiff has valued the suit house at the rate of Rs. 1,00,000/- and considering the valuation of other properties, I have no hesitation to held that the claim of the plaintiff is well within pecuniary jurisdiction of this Court. Hence, it cannot be said that the suit is under valued.

24. As far as the decision of the Hon'ble Bombay High Court in **Ramchandra Babaji Thali** (Supra), suit has to be valued under Sec. 6 (vii) of the Maharashtra Court Fees Act. In the present case, the plaintiff has valued the suit as per Sec. 6 (vii) of the Maharashtra Court Fees Act. This Court has pecuniary jurisdiction upto Rs. 5,00,000/-. As per avernments in the plaint, the valuation of the suit is Rs. 3,64,453.10/-. Plaintiffs have paid Court fees of Rs. 16,855/-. Therefore, it is seen that the relief claimed is not under valued. Hence, this Court has pecuniary

jurisdiction to try and entertain this suit. Considering the above discussion, the application deserves to be rejected. Consequently, I pass following order.

ORDER

1. The application is rejected.
2. Costs in Cause.

Uran, (Vikas D. Bade)
Date : 07.10.2023 Civil Judge, J.D., Uran