

IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION  
CIVIL APPEAL NO. 2758 OF 2013  
(Arising out of SLP(C)No.15094/2011)

SANTOSH RAMCHANDRA TADSARE

...Appellant

VERSUS

SUBHASH RAMCHANDRA GUJJAR AND ORS.

...Respondents

O R D E R

Leave granted.

Having failed to convince the learned Single Judge of the Bombay High Court to set aside the order passed by 2nd Joint Civil Judge (Junior Division), Chiplun, Maharashtra (hereinafter referred to as, 'the trial Court') rejecting his prayer for adjudication of the preliminary issue relating to pecuniary jurisdiction of that Court, the appellant has filed this appeal.

The appellant purchased the suit property from respondent No.2 - Vivekbhai Lalsingh Vichare by registered sale deed dated 20.5.2009 for a sum of Rs.14,25,000/- and raised construction. Respondent No.1, who is the son of respondent No.3 (original owner), filed Civil Suit No.78/2010 for partition and separate possession of 1/2 undivided share in the suit property. He impleaded the appellant's vendor as defendant No.1, the appellant as defendant No.2 and his father Shri Ramchandra Shivram Gujjar as defendant No.3 and pleaded that the sale deed executed by respondent No.2 in favour of the appellant was illegal and the latter does not have any right over the suit property. He further pleaded that by taking advantage of the old age of his father (respondent No.3), respondent No.2 persuaded him to sell the suit property, got its user changed from agricultural to non-agricultural and then sold the same to the appellant. He also questioned the legality of the permission obtained by the appellant for raising construction by asserting that no such permission could have been granted in respect of agricultural land. However, he neither prayed for cancellation of the sale deed executed by respondent No.2 in favour of the appellant nor questioned the permission granted by the competent authority for raising construction. For the sake of reference, the relevant portions of paragraphs 2, 4, 5, 6 and the prayer clauses (a), (b) and (c) of the plaint are reproduced below:

"2. ....Defendant No. 1 is husband of Mrs. Vanshri Vivekbhai Vichare who is daughter of Defendant No.3. Thus, relations between plaintiff and defendants are stated here which show that they are related to each other.

4. .... Due to plaintiff's mother's death defendant No.3 started feeling lonely and became weak emotionally. He suffered with high blood pressure and shaking of his body. In the year 2000, Defendant No.1 went to Chiplun and met Defendant No.2. At that time, Defendant No.3 was thinking of giving suit properties to Shri Arvind Ganapat Lakeshri for developing. That time, Defendant No.1 convinced Defendant No.3 that if he gives the suit property

to outsiders or to third party then they will eat all the profit and he will suffer irreparable loss. Then Defendant No. 1 himself informed Shri Lakeshri that he himself is developing the properties so that he will not take any objection. This was told to Defendant No.3 by Defendant No.1. Defendant No.1 became successful in convincing Defendant No.3 that his own son-in-law will do the construction which will help his daughter financially and the suit properties will also remain in his name with this background and with excuse of making development agreement, Defendant No.2 executed sale deed of suit properties in his favour on dt,22.01.09 with the help of Defendant no.3 who put his signature as vendor. ....

5. Now the name of Defendant No. 1 is on revenue records. Taking advantage of this fact, Defendant No. 1 got transferred the suit properties to non-agricultural status. But the status of the suit land as non-agricultural and also the sale deed of the suit properties in which has untransferred or unpartitioned share of the plaintiff is totally illegal. Defendant No.1 has now transferred the said disputed lands to Defendant No.2 on dated 21.05.2009 on sale deed. The said sale deed was executed for the amount of Rs.14,25,000/- (Rupees Fourteen lacs twenty five thousand only).

6. After the execution of the said sale deed, Defendant No.2 has started construction work on the disputed land after getting necessary permissions for construction. Presently the construction work is at the centering fixing stage on the first floor. In fact, the share of plaintiff in the suit properties is not transferred to the Defendant No.3. But Defendants have illegally taken permissions and other certificates like non-agricultural use by taking advantage of entry of the name in revenue records which is also done by present in facts falsely. Therefore, approval for starting construction, certificate of NAC and other permissions are not binding on the plaintiff. ...."

Prayer clauses

"(a) order for part partition of the suit properties and declaring 1/2 share of the suit properties in the name of plaintiff and further order for handing over open and peaceful possession to the plaintiff of his share.

(b) Order for partition to be effected by Respondent Collector and handing over the possession of plaintiffs share to the plaintiff under supervision of respondent / Collector / District Officer.

(c) Order to demolish the construction done by Defendant No.2 in the disputed land."

Along with the suit, respondent No.1 filed an application for temporary injunction. On receipt of the notice of the application, the appellant filed an application without mentioning the particular provision and pleaded that the suit does not reflect correct valuation of the property and this was done to avoid payment of court fees and to bring the suit within the jurisdiction of the trial Court. He further pleaded that the current market value of the suit property was Rs.21,25,000/- and value of the construction which was sought to be demolished was Rs.70,00,000/- and, as such, the trial Court did not have the pecuniary jurisdiction to entertain the same. He prayed that a preliminary enquiry be conducted on the issue of court fees and

pecuniary jurisdiction of the trial Court.

The trial Court considered the rival contentions, referred to Section 6(v) and (vii) of the Bombay Court Fees Act, 1959 (for short, 'the 1959 Act') as also Section 8 of the Suits Valuation Act, 1887, as applicable to the State of Maharashtra, and held that the suit for partition was rightly valued in terms of Section 6(vii) and the court fees paid by respondent No.1 was adequate. The trial Court further held that it has the jurisdiction to entertain the suit.

The appellant challenged the order of the trial Court by filing a petition under Article 227 of the Constitution, which was dismissed by the learned Single Judge by recording a cryptic order. He opined that as per the averment contained in the plaint, the suit property was agricultural and, therefore, valuation done by respondent No.1 was proper and the court fees paid by him was adequate.

We have heard learned counsel for the parties and carefully perused the record. Section 6(v) and (vii) of the 1959 Act, which has bearing on the decision of the question raised in this appeal, reads as under:

"(6) 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 follow:

(i) to (iv)           xxx       xxx       xxx

(v) For the possession of land, houses and gardens - In suits for the possession of land, houses and gardens -- according to the value of the subject-matter; and such value shall be deemed to be where the subject-matter is a house or garden -- according to the market value of the house or garden and where the subject-matter is land and -

(a) where the land is held on settlement for a period not exceeding thirty years and pays the full assessment to Government -- a sum equal to forty times the survey assessment;

(b) Where the land is held on a permanent settlement, or on a settlement for any period exceeding thirty years, and pays full assessment to Government -- a sum equal to eighty times the survey assessment; and

(c) where the whole or any part of the annual survey assessment is remitted -- a sum computed under sub-paragraph (a) or sub-paragraph (b), as the case may be, in addition to eighty times the assessment or, the portion of assessment so remitted;

(vi)                   xxx       xxx       xxx

(vii) For share in joint property - In suit for partition and separate possession of a share of joint family property or of joint property, or to enforce a right to a share in any property on the ground that it is joint family property or joint property whether or not the plaintiff is in actual or constructive possession of the property of which he claims to be a co-parcener or co-owner-according to the value of the share in respect of which the suit is instituted;

Explanation :- For the purposes of this paragraph, if the property in which a share is claimed consists of or includes any land assessed to land revenue for the purpose of agriculture, the value of such land shall be deemed to

be the value as determined under paragraph (v) of this section.

(viii) to (xii) xxx xxx xxx"

A reading of the above-reproduced provisions make it clear that in terms of the explanation appearing below Section 6(vii), the value of the land assessed to land revenue for the purpose of agriculture shall be deemed to be the value as determined under Section 6(v).

If the land sold by respondent No.2 to the appellant was agricultural, then the view taken by the trial Court and the learned Single Judge cannot be faulted. However, the averments contained in paragraphs 2, 4, 5 and 6 of the plaint leave no manner of doubt that despite the assertion of respondent No.1 that the suit property continues to be agricultural, it is clear that the same had already been converted into non-agricultural. The statement contained in paragraph 5 of the plaint unmistakably shows that respondent No.2 had converted the suit property from agricultural to non-agricultural and the same was sold to the appellant as non-agricultural property. If that was not so, the competent authority would not have given permission to the appellant to raise construction over the suit property.

In the premise aforesaid, we hold that the trial Court and the High Court committed grave error by holding that the valuation of the suit property done by respondent No.1 was correct and the trial Court had the jurisdiction to entertain the suit.

In the result, the appeal is allowed, the impugned order as also the one passed by the trial Court are set aside and the matter is remitted to the trial Court for deciding the issue of jurisdiction afresh after requiring respondent No.1 to pay court fees keeping in view the fact that suit property was non-agricultural.

The parties are directed to appear before the trial Court on May 13, 2013.

The Registry is directed to send a copy of this order to 2nd Joint Civil Judge (Junior Division), Chiplun, Maharashtra by fax.

.....J.  
(G.S. SINGHVI)

.....J.  
(KURIAN JOSEPH)

NEW DELHI;  
March 18, 2013.

ITEM NO.46 COURT NO.3 SECTION IX

S U P R E M E C O U R T O F I N D I A  
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Civil) No(s).15094/2011

(From the judgement and order dated 24/03/2011 in WP No.1388/2011 of The HIGH COURT OF BOMBAY)

SANTOSH RAMCHANDRA TADSARE Petitioner(s)

VERSUS

SUBHASH RAMCHANDRA GUJJAR AND ORS. Respondent(s)  
(With prayer for interim relief and office report )

Date: 18/03/2013 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE G.S. SINGHVI  
HON'BLE MR JUSTICE KURIAN JOSEPH

For Petitioner(s) Mr. Amol Chitale, Adv.

For Respondent(s) Mr. Heshu Kayina, Adv.

UPON hearing counsel the Court made the following  
O R D E R

Leave granted.

The appeal is allowed in terms of the signed order.

The parties are directed to appear before the trial Court  
on May 13, 2013.

The Registry is directed to send a copy of this order to  
2nd Joint Civil Judge (Junior Division), Chiplun, Maharashtra by fax.

(Parveen Kr.Chawla)	(Phoolan Wati Arora)	
Court Master	Court Master	

(signed order is placed on the file.)

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