Case note: The case focused on the scope of the term 'land', given under Section 6 (v) of the Bombay Court-Fees Act, 1959, in respect of a suit for possession of tank, thereby questioning whether land included land under water. The court ruled that as the term 'land' given by Section 6 (v) of the Act included land under water, therefore, the suit in question was a suit for possession of land.

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AIR1978Bom344

IN THE HIGH COURT OF BOMBAY AT NAGPUR

Decided On: 21.02.1978

Madhavrao Sitaram Kohali and Ors.
v.
The State of Maharashtra

Hon'ble Judges:
Tulpule, J.

ORDER

1. This revision application is directed against the order passed by the Civil Judge, Senior Division, Bhandara, in Special Civil Suit No. 14 of 1964, directing the plaintiff to pay ad valorem court-fee on Rs. 15,16,500 holding that the suit is under Section 6(iv)(d) third proviso of the Court-Fees Act.

2. The suit was commenced on 17th of Aug. 1963 and was preceded by a litigation between the defendant and plaintiffs which went up to the Supreme Court. The plaintiffs claimed that they were the descendants of one Chimna Patel and Kolhu Patel of Tahsil Sakoli, District Bhandara; that they held lands described in plaint para 1 and that they are persons holding interest of their ancestors Chimna Patel and Kolhu Patel; that these two persons were their ancestors. According to them, in this Tahsil Sakoli somewhere in the 17th Century their ancestors constructed a tank called the 'Navegaon Bandh' at a cost of about a lakh of rupees and the said tank was their private property; that from this tank they used to take water to their crops of sugarcane and rice and also used to enjoy the tank waters and exploit it for fishery purposes as well as lease it out for cultivation of Singadha; that this was being used and enjoyed by them peacefully and without any hindrance or obstruction for the last 300 years; that this was their private property viz., of their ancestors. According to the plaintiffs, this lake was recognised in the First Settlement Report of the year 1867. A mention of their ownership over this tank, according to them, also finds place in the Settlement Report as also later in the gazetteer compiled by Russel. Extensive references were made in the plaint to the extracts from these two documents. The plaintiffs then referred to the fact that in the Government records the lake was recorded in the names of their ancestors and their title to that lake

was established and acknowledged in all the subsequent revenue documents; that they were held in possession all along and the lake thus was their private property viz., of their ancestors before them and thereafter of the plaintiffs. Further, according to the plaintiffs, they were recognised as proprietors under the Land Revenue Code of the year 1881 and 1917. Their interest in the properties and the lake as proprietors thereof and in the lake being their private property was not destroyed.

3. Then comes a reference to the Madhya Pradesh Abolition of Proprietary Rights Act, 1950. According to the plaintiffs, the said Act does not apply and its provisions did not affect the property of the plaintiffs in this lake which was their private property, and was not a proprietary right as contemplated by the provisions of the said Act. These provisions did not touch this kind of property, according to the plaintiffs, which was a tank. According to them, this Act deals with ponds and tanks. The plaintiffs submitted that it does not deal with lakes, which apparently according to the plaintiffs, was an artificially constructed lake as references to it will go to show both in the Gazetteer, as well as in the 1867 Settlement Report. The plaintiffs further alleged that the defendants, acting or purporting to act under the Madhya Pradesh Abolition of Proprietary Rights Act, sought to take over the possession of this lake and took certain actions against the plaintiffs, which actions, according to them, purporting to be under that Act, are illegal, void and had no effect and did not destroy or extinguish the proprietary rights of the plaintiffs in the lake known as 'Navegaon Bandh'; that the plaintiffs' predecessor Sitaram Patel took out a proceeding by way of writ petition under Article 226 of the Constitution on 14th July 1952; that prior to that he had taken out proceedings before the Revenue Authorities, contending that the lake was not subject to the provisions of the Act. As the writ petition was disposed of after an observation that the question involved raises complicated issues of various facts and law, the plaintiffs commenced the present suit.

4. In para 9 of the plaint, the plaintiffs asserted that they are all along in possession of their rights and are in possession even on the date of the suit. However, they also further pointed out that in case the Court comes to the conclusion or the defendant claims possession at any time having gone to them after the litigation or during its pendency, then the plaintiffs asked for a decree for possession of the said lake and consequential injunction to restrain the defendants from interfering with their possession. Then follow some of the clauses in the plaint with which we are not concerned.

5. Para 16 is the prayer clause in the plaint, and para 16 (a) is the clause which deals with the valuation of the claim. In para 16 the plaintiffs sought possession and stated 'the defendant be ordered to deliver the possession of the tank to the plaintiffs as the Abolition of Proprietary Rights Act does not apply to the facts of this case'. Alternatively it was also prayed, if it was found that the Act applies, the plaintiffs be granted a declaration that the plaintiffs are entitled to water and all the water rights over the tank. They also asked for a relief in regard to the mesne profits.

6. As regards the valuation of the suit for the purpose of court-fees, the plaintiffs stated that since the tank is situated in Mahal No. 3 of village Navegaon and this Mahal is assessed to Rs. 35 as land revenue, the value of the land covered by the tank is Rs. 637.50

under Clause 6 (v) of the Bombay Court-Fees Act They, therefore, stated that the court-fee payable for the relief of possession was Rs. 65 and having paid the court-fee of Rs. 120 no separate court-fee apparently, according to the plaintiffs was payable.

7. It appears that a preliminary objection was taken to this suit, contending that the suit was not properly valued for the purposes of court-fee, and issues were framed to that effect. Those two issues which were tried as preliminary issues were issues Nos. 5 and 6 which raise the question of valuation of the suit property and court-fees payable thereon. Upon hearing both the plaintiffs and the defendant, the learned trial Judge came to the conclusion that the suit was not properly valued for the purposes both of court-fees and jurisdiction. According to him, it was imperative for the plaintiffs to show that they were the owners of the property in question and, therefore, as such "the principal relief would be the relief of declaration of title and other relief for possession a consequential relief." In short he held:--

"As this was a suit for declaration of ownership with consequential relief for possession it falls under third proviso to Section 6(iv)(d) of Bombay Court-fees Act."

8. He, therefore, directed the plaintiffs to pay ad valorem court-fee on the value of the land which he calculated at Rs. 15,16,500. It is against this order and judgment that the present revision application is filed.

9. It may be pointed out that this is the second occasion when the plaintiffs have come to this Court on the same question. It may also be pointed out that in holding that the suit is covered by provisions of the third proviso to S. 6(iv)(d), the learned trial Judge has acted in contravention of the decision of the Supreme Court in this matter. As I have pointed out a Revision Application had been filed by the plaintiff to this Court being Revn. Appln. No. 32 of 1965 (Bom) when he challenged the orders passed on 31-10-1964 and 7-12-1964 passed by the then Civil Judge. Senior Division, Bhandara in this very suit in which the trial Court had directed the plaintiff to pay ad valorem court-fee on the value of the tank which was fixed then by him at Rs. 25,00,000. This Court then held-

"Since the subject matter of the present suit, namely, 'tank' is a land, the court-fee payable will be according to the value of the subject matter, namely, the value of the tank. What should, therefore, be the value of the land would be a pertinent point to be investigated into for the purpose of calling upon the plaintiffs to value the suit for a particular amount and to make them pay the appropriate court-fee thereon."

10. This Court, therefore, had directed the Civil Judge to investigate into the value of the tank in accordance with the directions it gave.

11. Against that judgment an appeal was filed to the Supreme Court being Civil Appeal No. 1728 of 1967 which was decided on 29th Jan. 1971: MANU/SC/0009/1971. By that judgment, their Lordships of the Supreme Court held that the suit was one under Section 6(v) of the Bombay Court-Fees Act and that it being the 'land' in the circumstances 'it

must be valued in the same way as houses and gardens and court-fee should be paid on that value'. It was further observed (at p. 46):--

"If, however, it is found that the land underneath the tank is assessed to land revenue then there is no difficulty and the court-fee has to be calculated in accordance with the provisions of Section 6(v). But if the court-fee cannot be determined under that provision it will be for the trial Court to decide, under which provision court-fee is payable and the appellant shall be required to pay that amount of court-fee which is payable under the appropriate provision." Earlier, their Lordships said-

"In our judgment Section 6(v) does not admit of any such method of calculating the court-fee where the subject-matter is land."

12. They pointed out that so far as the house or garden is concerned, the method of valuing it would be the market value, but in case of land the court-fee has to be calculated according to what has been provided in the sub-clauses (a), (b) and (c) with regard to different categories of land. After the matter went back to the trial Court, the plaintiffs carried out various amendments to which I have made a reference and in particular added paras 16-A and 16-B in the prayer clause which were the clauses by which the plaintiffs valued the claim and also set out the alternative relief to which I have made a reference.

13. In these circumstances of the case and in view of the judgment of the Supreme Court inasmuch as it was held that this was a suit for possession of land and fell, therefore, under Section 6(v), the course which the learned trial Judge had to adopt was clearly to fix the market value for himself since the subject matter was land, and he had to proceed to find out whether the said land falls within one of the Sub-clauses namely (a), (b) and (c). He had then to decide, if it did not fall under any of those clauses, then which other clause of the Court-Fees Act would be applicable. Instead of proceeding in that fashion and first coming to the conclusion as to which of the Sub-Clauses of Clause (v) was applicable, whether (a), (b) or (c) was applicable, he held that the suit fell under a different clause and para of Section 6 namely, Section 6(iv). In the course of his judgment he has referred to the allegation of the plaintiffs that the tank is situated in Mahal No. 3 and was assessed to Rs. 35 as land revenue. On the other hand, the Patwari who was examined and the certificate which was produced before the trial Court seemed to suggest that it is Khasra No. 883/1-K with the area of land under Navegaon Bandh tank admeasuring 3033.63 acres and that it is not assessed to land revenue.

14. He then referred to the contention of the plaintiffs and observed-

"Admittedly the suit tank is not assessed to land revenue and that being so court-fee cannot be paid treating the land revenue of Mahal as the basis."

15. I do not find anything to support this statement or observation that the said tank is 'admittedly not assessed to land revenue'. On the contrary, it has been the plaintiffs' case all along that the tank was a part of Mahal No. 3 and that the entire Mahal was assessed to land revenue which was fixed at Rs. 35, The fact that the Mahal was assessed to land

revenue and that the tank was situated in Mahal No. 3 is admitted by the defendants in their written statement para 16-A. What is stated by the defendants is-

"It is admitted that the tank is situated in Mahal No. 3. However, this Mahal No. 3 has everything which the village can have. It is also admitted that Mahal No. 3 is assessed to land revenue of Rs. 35. However, it is submitted that this assessment has nothing to do with the tank in question. The suit tank is on unoccupied area and this land under the tank was never assessed to land revenue."

16. It seems to be, therefore, that the contention of the defendant is that though this tank is situated in Mahal No. 3, though the entire Mahal No. 3 is assessed to land revenue of Rs. 35 while assessing this Mahal at Rs. 35, the tank was taken as unoccupied area being under water and was not assessed to land revenue. The defendant-State, therefore, contended that the market value of the land should be taken into account.

17. As I have pointed out, the course which the learned trial Judge had to adopt was clearly charted out before him. He had first to determine whether this tank, which was land, was assessed to land revenue under any of the Clauses (a), (b) and (c) of Section 6(v). Instead of proceeding to decide that he proceeded to find as to whether the suit falls under Section Sub-clause (v) or any other clause which was not permissible to him to do. As it was pointed out by this Court and also referred by the Supreme Court that the word 'land' includes 'land under water'. The definition of land as is found in M. P. Land Revenue Code Section 2, Sub-section (9) covers such a tank. It is for this reason the suit was held to be a suit for possession of land, though the subject-matter of the dispute was land covered by water in the form of a tank.

18. It is true that it was after the decision of the Supreme Court that the plaint came to be amended so far as the relief clause was concerned. But it is obvious that neither the character of the suit and subject-matter, nor the reliefs which were sought by the plaintiffs had undergone any change. This Court, therefore, having held, which finding was confirmed by the Supreme Court, that this was a suit for possession of land which fell under Section 6(v), the only duty of the trial Court was to find out the mode of valuation and determination of the court-fees. As pointed out by the Supreme Court if the 'land under water fell within the meaning of Section 6(v) and it did not fall under any of the Sub-clauses (a), (b) or (c) then it had to find out under which other clause of the Bombay Court-Fees Act the suit would fall. But it could not be said that it was a suit other than a suit for possession of land. The learned trial Judge, therefore, fell in a error when he proceeded to consider as to what was the subject-matter of the suit and whether it fell under any of the clauses of Section 6(v) and came to the conclusion that it fell under Section 6(iv)(d) third proviso.

19. Even on merits, I am inclined to think that the learned trial Judge was in error in coming to the conclusion that the principal relief in this case was for declaration and that the relief for possession was merely a consequential relief. In fact the principal relief which the plaintiffs want is the relief for possession. If the relief for possession was granted to them, the relief of declaration becomes unnecessary and redundant. Where a

person sues for possession on he basis of his existing title, it is true that; he has to show and establish that he had title to the properly in question But it is not necessary for him to obtain a declaration in regard to that title because the foundation of relief of possession is his title to the property. If he is entitled to relici of possession which is incidental to his title, then it becomes unnecessary for him to seek any relief of declaration. This question has also, in my opinion, been settled by the Division Bench judgment of our High Court in Waman Vinayak Paranjape v. Narayan Hari, reported in 43 Bom LR 193: (AIR 1946 Bom 303). There a suit filed was for possession, redemption and also for declaration that the sale deed which was passed was illegal and that the plaintiff way the owner of the property. The plaintiff alleged therein that he was a son of one Hari, the adopted son of Narayan. This Narayan was the son of Ballal, who had a brother by name Antaji Antaji left a widow by name Laxmibai and this Laxmibai purported to sell the property in question for a sum of Rupees 2,000 as being property belonging to Antaji. The two brothers Antaji and Narayan had not separated. Therefore, according to the plaintiff, on the death of Antaji, Narayan became the sole surviving coparcener, and the property passed on to Narayan. He being the grandson of Narayan was entitled to the property and that Laxmibai had no right, title or interest in the property, that she could not, therefore, sell the property which she purported to do. He also contended that the sale deed which Laxmibai had effected, though purporting to be a sale deed apart from it not being for legal necessity, was in the nature of mortgage. The plaintiff-Narayan therefore, besides suing for possession and for redemption asked for two declarations, that the document of 1912 was an illegal document and was not binding upon him, and that the property was of his ownership.

20. In the trial Court it was held that this was a suit for declaration and consequential relief and for the purposes of declaration and consequential relief the plaintiff had valued the suit at Rs. 2,000 and, therefore, within the jurisdiction of the Court.

21. On behalf of the defendant, it was contended that the suit was outside the jurisdiction of the trial Court since the value of the subject-matter was over Rs. 10,000. It was urged that the declaration that the document was illegal and that the plaintiff was owner of the property in question were unnecessary. Two Full Bench decisions of Allahabad and Patna High Courts were cited and it was observed by this Court that-

"Both these cases emphasise the necessity for the Court to ascertain the real nature of the relief sought, irrespective of the form in which the prayer or prayers for relief are framed; for instance, in every case it would perhaps be possible to ask for some kind of declaration, but it is obvious that every one of such cases is not intended to be covered by the words used in Clause (c) of Section 7(iv) of the Court-Pees Act (former)."

22. This Court held that the claim for declaration in question cannot be treated as a claim really necessitated by the nature of the suit, the real or principal remedy sought by the plaintiff being a decree for possession.

23. These observations I think, are apposite in the present case also, and the real nature of the relief which the plaintiff is seeking and which is the whole substantive and main relief

is the relief for possession. The declaration that he has title or subsisting title to the property in question, or that the subject-matter of the suit is not covered by the provisions of M. P. Abolition of Proprietary Rights Act is not a declaration which is necessary or obligatory before the relief for possession can be had. As I have pointed out, a person suing for possession has to prove not only the title on which he is suing, but that the said title still subsists. If the M. P, Abolition of Proprietary Rights Act has the effect of extinguishing the plaintiffs' title, the foundation of the plaintiffs' claim itself would be knocked out. In that event the plaintiffs will not be entitled to possession. But it is unnecessary for him to ask for any declaration, and he has not asked for any such declaration, touching the effect of the M. P. Abolition of Proprietary Rights Act. Besides, as I have pointed out, this Court as well as the Supreme Court having held that this was a suit for possession of land and, therefore, covered by Section 6(v) of the Act, the trial Judge could not travel beyond those findings and hold that the nature of the suit was different. All that it had got to find out was the mode or method of valuation of the land.

24. Even in that regard the Supreme Court had pointed out in its judgment, which part of its observation I have quoted earlier, that if there was any difficulty in finding out whether the land was assessed to land revenue, then the Court had to decide under which other provision of the Court-Fees Act the court-fee will be payable. But it would not in that event be open for the court to convert the suit from one for possession of land to any other suit like a suit for declaration and consequential relief.

25. Unfortunately, though this question of court-fees and valuation is being agitated from the year 1964 till now, there is no finding as to whether this land is assessed to land revenue and whether it falls under any of the Clauses (a), (b) and (c). The learned Assistant Government Pleader, when asked, was unable to say whether the land falls under any of the Clauses (a), (b) and (c). I have already pointed out the contents of the statement in the written statement of the defendant. Exh. 30 which was produced before the trial Court goes to show that a large area of land admeasuring about 3525.29 acres which was together numbered as Mahal No. 3 in Patwari Halka No. 35 of Navegaon Bandh of Sakoli Tahsil was assessed to Rupees 35/-. That it was so assessed to Rs. 35/-is also a part of admission of defendant in para. 16-A. Prima facie this would mean that the entire land whether occupied or unoccupied, and taking into account the circumstances that it was occupied or unoccupied, as the case may be, was assessed by the State to Rs. 35/-as assessment. That this area under the tank was not taken into account would be prima facie not possible to accept in view of the acreage of this land in the unit of area called and known as Mahal No. 3 admeasuring 3526.29 acres. It is not in dispute that this includes the land under water in the tank. If that is so, on the basis of it at least, it will have to be held that it was assessed to land revenue pf Rs. 35/-. In that case, the valuation made by the Plaintiffs will have to be upheld and the court-fee paid held to be correct.

26. There is, however, one more difficulty which has arisen on account of Plaintiffs' amendment to the plaint and the alternative relief clause. The alternative relief sought by the Plaintiffs is, that in the event it is held that the M .P. Abolition of Proprietary Rights Act applies to the land and the Plaintiffs are divested of their property or their title under the circumstances, must be deemed to be extinguished, the plaintiffs alternatively sought

a declaration in respect of water rights. In the valuation clause of the plaint, the Plaintiff's have not proceeded to value this alternative relief. It seems to me that the Plaintiffs must value this alternative relief for the purpose of court-fee. If the plaintiffs want to claim right to the water in the tank, then that right ought to be valued and court-fee paid thereon and the suit valued accordingly.

27. This alternative relief in regard to the water right does involve a grant of declaration. Such a suit would be covered by Section 6(iv)(c) of Bombay Court-fees Act and fixed court-fee of Rs. 15/-would be payable. It would, therefore, be proper for the Plaintiffs to amend the plaint to that effect.

28. The result, therefore, is, the Revision Application is allowed. The order passed by the trial Court is set aside and it is held that the suit is correctly valued. The Plaintiffs are directed to amend the plaint so as to value the alternative relief and to pay court-fee thereon as indicated above.

29. There will be no order as to costs in this Revision Application.

30. Revision allowed.

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