



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

APPEAL (L) NO.3786 OF 2020
WITH
INTERIM APPLICATION (L) NO.3787 OF 2020
IN
APPEAL (L) NO.3786 OF 2020

Zuberahmed Maqbool Ansari

Age : 45 Years, Occ: Business, residing at
Room No.8, Hayat Mohammed Chawl No.2,
Ghatkopar (West), Mumbai 400 086.

Appellant / (Orig.
.. Defendant No.2)

Versus

1. Messrs Devkaran & Co., Pvt. Ltd., a
Company incorporated under the Companies
Act, 1913, having its registered office at N.M.
Wadia Building, Ground Floor, Opposite HDFC
Bank, 123/125, Mahatma Gandhi Road, Fort,
Mumbai 400 001.

2. Shripati Hari Javal
Age : 76 Years, Occ: Business, residing at Jawal
Wadi, Taluka Mahabaleshwar, District Satara.

3. Office of the Sub-Registrar Andheri – 3
Khar MTNL Building, Ground Floor, Khar Pali
Road, Khar (West), Mumbai 400 052.

4. Ahmed Hussain Alimulah Chaudhary
Age : 44 years, Occupation : Business, having
address at Room No.E/3, M.N. D'Souza
compound, Khairani Road, behind Welcome
bakery, Sakinaka, Mumbai 400 072.

5. Mohd. Asraf Yasin Qureshi
Age : 63 Years, Occupation : Business, having
address at Classic Villa Row House No.15,
Bandivali Hill Road, near Malkani Tower,
Jogeshwari (West), Mumbai 400 102.

.. Respondents

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- Dr. Abhinav Chandrachud i/by Mr. Uttam S. Rane, Advocate for the Appellant.
 - Mr. Karl Tamboly i/by TRD Associates for Respondent No.1.
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CORAM : S.J. KATHAWALLA &
MILIND N. JADHAV, JJ.

DATE : 24 MARCH, 2021..

JUDGMENT : (PER : S.J. Kathawalla and Milind N. Jadhav, JJ.)

1. Heard Dr. Abhinav Chandrachud, Advocate for the Appellant and Mr. Karl Tamboly, Advocate for Respondent No.1.

2. By the present Appeal, the Appellant / original Defendant No.2 has challenged the legality and validity of the ad-interim order dated 24.09.2020 passed by the learned Single Judge of this Court in Interim Application No.2653 of 2020 in Suit (L) No.2648 of 2020 granting a temporary protective injunction in favour of Respondent No. 1 / original Plaintiff. The principal, and only ground on which the order impugned in the present Appeal has been assailed before us, is that the suit is not maintainable in this court due to want of pecuniary jurisdiction.

3. Before we advert to the submissions made by the respective parties, it would be apposite to briefly refer to the following relevant facts:

3.1. The present suit bearing lodging no. 2653 of 2020 has been filed by Respondent No.1 / original Plaintiff Company in respect of a Gala ad-measuring 204 sq.mtrs. (carpet area) consisting of ground plus mezzanine floor, situated at Nenshi Munji Compound, Saki Vihar Road, Opp. Ansa "C" Building, Saki Naka, Andheri, Mumbai 400 072

(hereinafter referred to as "**the suit premises**"). Briefly stated, the case of Respondent No. 1 / Orig. Plaintiff in the plaint, is as follows:

3.2. According to the Plaintiff, it is the sole owner of land admeasuring 4,862 sq. mtrs. Bearing CTS No. 679 (old Survey No. 40) situated at Saki Vihar Road, Opp. Ansa "C" Building, Saki Naka, Andheri, Mumbai 400 072 ("**the larger property**"). The Plaintiff had purchased the larger property under a registered indenture of sale dated 27.12.1968 bearing registration No.816/69 of Book No.1 from the original owners namely trustees of the Last Will and Testament of Ardeshir Hormasjee Wadia. The suit premises is situated on the eastern boundary of the larger property. The Plaintiff is the owner of the suit premises.

3.3. That the Plaintiff had permitted Respondent Nos. 4 and 5 / original Defendant Nos. 4 and 5 to occupy the suit premises for the purpose of carrying on their respective businesses. Defendant No. 4 has been using a part of the suit premises for storing iron girders since the past ten years, for his business run in the name and style of A. H. Traders. Defendant No. 5 has been using another portion of the suit premises to run a furniture store in the name and style of K. G. N. Furniture since the past five years.

3.4. According to the Plaintiff, sometime in the year 2018, Respondent No. 2 / original Defendant No. 1 attempted to forcibly trespass upon the suit premises, claiming that he had purchased the same. Thereafter, on 12th November 2018 Defendant No. 1 once again tried to illegally take possession of the suit premises with the help of Defendant No. 2 and one Rajesh Chindarkar. This led to Defendant Nos. 4 and 5 filing a police complaint with the Powai Police Station, and a First Information Report (FIR) came to be registered against

Defendant Nos. 1 and 2 and Rajesh Chindarkar. Subsequently, upon Defendant Nos. 1 and 2 and Rajesh Chindarkar giving assurances that they would not interfere with the suit premises, Defendant Nos. 4 and 5 agreed for quashing of the FIR. Defendant Nos. 1 and 2 and Rajesh Chindarkar filed Writ Petition No. 1059 of 2019 before this Court for quashing the FIR, in which they admitted that Defendant No. 1 was not the owner of the suit premises. This Court by an order dated 3rd April 2019 thereafter quashed the FIR by consent of Defendant Nos. 4 and 5 and Defendant Nos. 1 and 2 and Chindarkar.

3.5. According to the Plaintiff, for some time Defendant Nos. 1 and 2 stuck to their assurances and did not interfere with the suit premises. However, sometime in October 2019, the Plaintiff became aware of a registered agreement for sale dated 01.08.2019 executed between Defendant Nos.1 and 2 under which Defendant No. 1 had purported to sell the suit premises as the alleged owner thereof to Defendant No. 2 on the basis of manufactured and fraudulently got up documents. The Plaintiff immediately lodged a police complaint on 14.10.2019 with the Powai Police Station upon learning of the same. The Plaintiff also filed a complaint dated 04.11.2019 in the office Defendant No.3, the Joint Sub-Registrar of Assurances, Andheri-3 with respect to the illegal and fraudulent execution and registration of the agreement for sale dated 01.08.2019 in respect of the suit premises.

3.6. According to the Plaintiff, Defendant No. 2 with the help of his goons attempted to forcibly take possession of the suit premises on 6th August 2020. Cross police complaints were filed by Defendant Nos. 4 and 5, Defendant No.2 as well as the Plaintiff through its director. Thereafter, Defendant No. 2 once again on 24th August 2020 violently tried to take forcible possession of the suit premises with the aid of several persons.

3.7. According to the Plaintiff, it is the owner of the suit premises. Defendant No. 4 and 5 are in settled occupation of the same with the Plaintiff's permission for the purposes of carrying on their respective businesses. At no point of time did Defendant No. 1 have any right, title or interest in the suit premises. The same has been admitted by Defendant Nos. 1 and 2 in the writ petition filed by them before this Court being Writ Petition No. 1059 of 2019. Despite this, Defendant No. 1 has purported to sell the suit premises to Defendant No. 2 under a fraudulently registered agreement for sale dated 04.11.2019. Defendant Nos. 1 and 2 have fabricated documents to try to contend that Defendant No. 1 had acquired the suit premises and was in possession thereof. Defendant No. 2, who is a habitual land grabbers, has made several attempts to forcibly takeover possession of the suit premises.

4. In these circumstances, the Plaintiff Plaintiff filed Suit (L) No.2648 of 2020 on 25.08.2020 praying for the following substantive reliefs:

- (a) That this Hon'ble Court be pleased to pass an Order declaring that the Plaintiff is the absolute owner of the Suit Premises;
- (b) That this Hon'ble Court be pleased to pass an Order declaring that the Agreement for Sale dated 1st August 2019 bearing reg. no. 8576/2016 executed between Defendant Nos. 1 and 2 (Exhibit A to the Plaintiff) is illegal, void ab-initio and also otherwise null and void;
- (c) That this Hon'ble Court be pleased to pass an Order declaring that the Defendant Nos. 1 and/or 2 have absolutely no right, title or interest in the Suit Premises;
- (d) That this Hon'ble Court be pleased to pass an Order directing Defendant No. 1 and/or 2 to deliver the original of the Agreement for Sale dated 1st August 2019 (Exhibit A to the Plaintiff) for cancellation;
- (e) That this Hon'ble Court be pleased to pass an Order directing Defendant No. 3 to record the cancellation of the said Agreement for Sale dated 1st August 2019 (Exhibit A to the Plaintiff) in its records;
- (f) That this Hon'ble Court be pleased to pass an Order

declaring that any other documents executed by the Defendant Nos. 1 and/or 2 with any third party with regard to the Suit Premises and/or under the Agreement for Sale dated 1st August 2019, if any, are void ab initio, illegal and also otherwise null and void.

- (g) That this Hon'ble Court be pleased to pass an Order of mandatory injunction of this Hon'ble Court be pleased to permanently restrain the Defendant Nos. 1 and 2, by themselves, their servants or agents from in any manner relying upon and/or using the said Agreement for Sale dated 1st August 2019 (Exhibit A to the Plaintiff) before any person or authority;
- (h) That this Hon'ble Court be pleased to pass an Order of mandatory injunction of this Hon'ble Court be pleased to permanently restrain the Defendant Nos. 1 and 2, by themselves, their servants or agents from in any manner from dealing with or disposing of or alienating or encumbering or transferring or surrendering or creating third party rights or inducting third party into or entering into any agreement or arrangement in respect of the Suit Premises with any person or persons; and/or from entering upon and/or remaining upon the said Suit Premises as described in Schedule B hereto or any part thereof and/or; or by taking steps either by way of any act of omission or commission whatsoever as to adversely affect the possession of and rights and interests of the Plaintiff in the Suit Premises or any part thereof;”

5. The Plaintiff took out Interim Application (L) No. 2653 of 2020, seeking interim measures of protection in the suit. The learned Single Judge passed an *ex parte* order dated 02.09.2020 in Interim Application (L) No. 2653 of 2020 filed by the Plaintiff, directing the Court Receiver, High Court Bombay, to depute a suitable person as a Commissioner to visit and inspect the suit premises and to make a report. The Court Receiver filed his report being Court Receiver's Report No.120 of 2020 recording that his representative had visited the suit premises on 7th September 2020 and what the said representative observed at the time of his visit.

6. The Appellant / original Defendant No.2 filed an Affidavit dated 19th September 2020 opposing Respondent No. 1 / original Plaintiff's Interim Application (L) No. 2653 of 2020.

7. After considering the rival contentions of the parties, the learned Single Judge by his order dated 24.09.2020 granted ad – interim relief to Respondent No. 1 / original Plaintiff in terms of prayer clause (c) of the interim application, which reads as follows:

“(c) That pending the hearing and final disposal of the present Suit, this Hon’ble Court be pleased to pass an Order of temporary injunction restraining the Defendant Nos. 1 and 2, by themselves, their servants or agents from, in any manner, dealing with or disposing of or alienating or encumbering or transferring or surrendering or creating third party rights or inducting third party into or entering into any agreement or arrangement in respect of the Suit Premises with any person or persons; and/or from entering upon and/or remaining upon the said Suit Premises as described in Schedule B hereto or any part thereof and/or; or by taking any steps either by way of any act of omission or commission whatsoever as to adversely affect the possession of and rights and interests of the Plaintiff in the Suit Premises or any part thereof.”

8. It this ad-interim order dated 24.09.2020 which the Appellant / original Defendant No. 2 has impugned in the present Appeal.

9. On a perusal of the impugned order, we find that the Appellant had argued several points before the learned Single Judge. Even in the present memo of Appeal, several grounds have been pleaded to assail the impugned order. However, at the time when the present Appeal was heard by us, Dr. Chandrachud, the Learned Counsel for the Appellant, restricted his challenge to the impugned order to the ground that the suit before the learned Single Judge is not maintainable for want of pecuniary jurisdiction of this Court to try and decide the same.

10. In his Affidavit in reply to the interim application in the suit, the Appellant / original Defendant No. 2 has pleaded that this

Court does not have the pecuniary jurisdiction to try and decide the present suit. According to the Appellant, the primary relief sought in the suit is for cancellation of the agreement for sale dated 01.08.2019, and that all other reliefs in the suit are in aid of this primary relief. According to the Appellant, the suit must be valued on the basis of the consideration mentioned in the agreement for sale of which the Plaintiff seeks cancellation, which is Rs. 26,50,000/-, and not on the basis of the market value of the property. The Appellant has thus contended in his Affidavit in reply to the interim application that the value of the suit being less than Rupees One Crore, this court would not have the pecuniary jurisdiction to try and entertain the same.

11. Dr. Chandrachud, learned counsel appearing for the Appellant i.e. original Defendant No. 2 made the following submissions:

11.1. Dr. Chandrachud referred to the agreement for sale dated 01.08.2019 of which the Plaintiff has sought cancellation and pointed out that the purchase consideration payable by the Appellant / original Defendant No. 2 to Respondent No. 2 / original Defendant No. 1 is shown to be Rs.26,50,000/- under clause 2 thereof.

11.2. Dr. Chandrachud next submitted that on a plain reading of the plaint, and more specifically paragraph Nos. 4 and 6.8 to 6.18 as filed by the Plaintiff, the suit is principally for cancellation of the agreement for sale dated 01.08.2019 and all other reliefs prayed for are incidental and consequential to the same. He submitted that therefore, the suit would have to be valued according to the consideration stated in the agreement for sale which is sought to be cancelled and not according to the market value of the suit premises.

11.3. Dr. Chandrachud argued that the Plaintiff has incorrectly valued the suit according to the market value of the suit premises, which is patently erroneous in a suit for cancellation of an agreement for sale.

11.4. Dr. Chandrachud argued that such suits seeking cancellation of a sale deed would be covered by the provisions of Section 6(iv)(ha) of the Maharashtra Court Fees Act, 1959 (“the said Act”), read with Section 8 of the Suit Valuations Act, 1987.

11.5. Dr. Chandrachud argued that the learned Single Judge did not consider the application of the ratio of the decisions of this Court in the cases of *Deepak Laxmichand Badlani Vs. Neesar Gulam Ahmed Khamkar*¹ and *Manaskhlal Depar Khimashiq Vs. Ramshankar Kalikaprasad Mali*², wherein it was held that a suit for cancellation of sale agreement must be valued under Section 6(iv)(hv) of the said Act according to the consideration set out therein, and not according to the market value of the suit property, as the said provision does not contemplate or use the words "market value".

11.6. Dr. Chandrachud submitted that the learned Single Judge of this Court should not have entertained the plaint or the interim application in view of its lack of pecuniary jurisdiction, and that the impugned order is therefore bad in law, and deserves to be set aside.

11.7. In support of his contentions Dr. Chandrachud has referred to and relied upon the following decisions:

*i. Deepak Laxmichand Badlani Vs. Neesar Gulam Ahmed Khamkar;*¹

1 (2016) SCC Online Bom. 1968

2 (2016) SCC Online Bom. 3604

- ii. ***Manskhilal Depar Khimashiq Vs. Ramshankar Kalikaprasad Mali***²
- iii. ***Vasant Kisan Idhol Vs. Manjulabai Kisanrao Idhol***³;
- iv. ***Laxmi Ammal Vs. K.M. Madhavakrishnan and Ors***⁴.

11.8. In the case of Deepak Laxmichand Badlani (*supra*), the Plaintiffs' instituted a suit for (i) partition and separate possession of their 19/20th share in the suit properties; (ii) for a declaration that certain registered sale deeds *inter se* Defendant Nos. 1 and 2 in that case were illegal and not binding on the Plaintiffs' share in the suit properties; and (iii) for a perpetual injunction restraining the Defendants therein from obstructing the Plaintiff's possession or creating third party interest in respect of the suit properties. The Trial Court framed a preliminary issue as to whether it had the necessary pecuniary jurisdiction to try the suit. The Trial Court found that the prayer for a declaration that the suit sale deeds were not binding on the Plaintiff was covered by section 6(iv)(ha) of the said Act. The Trial Court found that the consideration amount shown in the 3 sale deeds in respect of which a declaration was sought by the Plaintiff before it was Rs. 2,20,000.00, Rs,2,00,000.00 and Rs.71,625.00 totalling to Rs.4,91,625.00. The Trial Court accordingly held that the suit was within its pecuniary jurisdiction. The Defendants in the suit challenged the order of the Trial Court by filing a writ petition before this Court. According to the Defendants, the market value of the property involved in the first sale deed was Rs.7,88,000.00, the market value of the property involved in the second sale deed was Rs.4,50,000.00 and the market value of the property involved in the third sale deed was Rs.2,00,000.00. Whilst disposing of the writ petition and upholding the order of the Trial Court, this Court referred to the provisions of

3 2017 (5) ALL MR 158

4 (1978) 4 SCC 15

Section 6(iv)(ha) of the said Act which states that for the purpose of computation of court fees payable in suits for declaration that any sale or contract for sale or termination of contract for sale of any movable or immovable property is void, the Court fee payable would be one half of *ad valorem* fee leviable on the value of the property. The learned Single Judge of this Court found that the expression used in the above section is 'value of the property' and not the market value of the property and in view thereof the consideration amount mentioned in the 3 sale deeds was rightly considered by the learned Trial Judge for the purpose of valuation of the suit. Based on this, Dr. Chandrachud for the Appellant submitted that that the present suit ought to have been valued according to the purchase consideration recorded in the agreement for sale dated 01.08.2019 between his client and Respondent No. 2 / original Defendant No. 1 viz. Rs. 26,50,000/- and not on the basis of the market value of the suit premises. He submitted that the above ratio was directly on the point and fortified the submissions advanced by the Appellant i.e. the Orig. Defendant No. 2 in the present case on the applicability of the provisions of Section 6(iv)(ha) of the said Act.

11.9. He has stressed on the findings in paragraph Nos.2, 8, 9 and 10 of the aforesaid judgment which are extracted as under :-

"2. By this Petition under Article 227 of the Constitution of India, the petitioner, hereinafter referred to as 'defendant No.2' has challenged the judgment and order dated 4.1.2016 passed by learned Civil Judge, Junior Division at Shriwardhan on preliminary issue framed below Exh.36 in Regular Civil Suit No.40/2015. By that order, learned trial Judge held that the Court has pecuniary jurisdiction to entertain and try the suit. The Court directed the respondent Nos.1 to 10, hereinafter referred to as the 'plaintiffs', to properly value the suit as observed in the order and accordingly pay deficit court fees within one month.

8. I have considered the submissions advanced by Mr. Gawada. I have also perused the material on record. Learned trial Judge held that the plaintiffs will have to value

the suit as per Section 6(iv)(ha) of the Act. Section 6(iv)(ha) of the Act reads thus :

“6. Computation of fees payable in certain suits :

(iv) (ha) for avoidance of sale, contract for sale, etc. In suits for declaration that any sale, or contract for sale or termination of contract for sale, of any moveable or immoveable property is void – [one half] of ad valorem fee leviable on the value of the property;” [Emphasis supplied]

9. *Perusal of the above said provision shows that one half of ad valorem fee leviable 'on the value of the property'. In para-8 of the impugned order, learned trial Judge has noted that the words 'market value' are not used in Section 6(iv)(ha) of the Act. In the sale deed dated 13.12.2006, the consideration amount mentioned is undisputedly Rs.2,20,000/ and the market value prevailing as on that date was shown as Rs.7,88,000/-. In the sale deed dated 7.2.2009 the consideration amount mentioned is Rs.2,00,000/- and the market value prevailing as on that date was shown as Rs.4,50,000/-. In the sale deed dated 21.1.2009, the consideration amount mentioned is Rs.71,625/- and the market value prevailing as on that date was shown as Rs.2,00,000/-. Mr. Gawada therefore submitted that even if the market value on the date of execution of the sale deeds is considered and not on the date of institution of the suit, still it exceeds Rs.5 Lakh which is the upper limit of pecuniary jurisdiction of the Court of Civil Judge, Junior Division.*

10. *I do not find any merit in these submissions. Undoubtedly, the consideration amount in three sale deeds is shown as Rs.2,20,000/-, Rs.2,00,000/- and Rs.71,625/- i.e. totaling to Rs.4,91,625/- which is less than Rs.5 Lakhs. Learned trial Judge has rightly held that in Section 6(iv)(ha) of the Act, the expression used is 'value of the property' and not the market value of the property. In view thereof, no case is made out for interfering with the impugned order. Hence, the petition fails and the same is dismissed."*

11.10. In the case of Mankhlal Depar Khimashiq (*supra*) Defendant No. 1 in that suit had challenged the judgment and order dated 31.01.2013 passed by the 3rd Joint Civil Judge, Junior Division, Vasai in Regular Civil Suit No.294 of 2011, rejecting the application of Defendant No.1 under Section 9A of the Code of Civil Procedure, 1908 for dismissing the suit on the ground that the Court of Civil Judge, Junior Division had no pecuniary jurisdiction to entertain and try the

suit. In that case, the Plaintiffs had executed a development agreement in favour of Defendant No.1 and valued the suit for the purpose of court fees and jurisdiction at Rs.1,000.00 and paid the court fees under Section 6(iv)(j) of the said Act. The Trial Court opined that the suit would have to be valued under section 6(iv)(ha) of the said Act. The learned Trial Judge held that since the development agreement was valued at Rs.5,00,000.00, the suit was within the pecuniary jurisdiction of the Court of Civil Judge, Junior Division and therefore the Trial Court had jurisdiction to entertain and try the suit. The learned single Judge of this Court held that the court fee payable was one half of *ad valorem* fee leviable on the value of the property i.e. Rs.5,00,000.00 as stated in the development agreement and not on the market value of the property as on the date of the institution of the suit as per Section 6(iv)(ha) of the said Act. The learned Single Judge of this Court therefore directed the Plaintiff to pay one half of *ad valorem* fee leviable on Rs.5,00,000.00 and deposit the deficit court fees in the Trial Court. Dr. Chandrachud referred to and relied upon paragraph No.7 of the said judgment which reads thus:

"7. Perusal of Section 6(iv)(ha), extracted herein above, shows that in a suit for declaration that any sale, or contract for sale or termination of contract for sale, of any movable and immovable property is void, one-half of *ad-valorem* fee leviable on the value of the property is payable. Perusal of this Section shows that one half of *ad-valorem* fee is leviable on the value of the property and not market value of the property as on the date of institution of the suit. In the present case, clause 1 of the Development Agreement provides for consideration of Rs. 5 lacs for which the plaintiffs have agreed to grant development rights of the suit property to defendant no.1. In para 8 of the impugned order, the learned trial Judge has correctly observed that the plaintiffs are liable to value the suit as per section 6(iv)(ha) of the Act and not under section 6(iv)(j) as claimed in paragraph 32 of the plaint. At the same time, in paragraph 9 the learned trial Judge observed that even if the plaintiffs are required to value the suit property under section 6(iv)(ha), having regard to consideration mentioned in the Development Agreement

which is of Rs. 5 lacs, it is certainly within the pecuniary limits of the Court of Civil Judge, Junior Division. In view thereof, I do not find that the learned trial Judge has committed any error in rejecting the application filed by defendant no.1 under section 9-A of C.P.C. Hence, Application fails and the same is dismissed."

11.11. In the case of Vasant Kisan Idhol (*supra*) the Plaintiff (mother) in the suit before the Trial Court sought a declaration that a gift deed stated to have been executed by her in favour of her son, the Defendant, with respect to certain agricultural land, was without her consent and by exercise of fraud upon her and was null and void. The Plaintiff sought cancellation of the gift deed with a further prayer for a permanent injunction against the Defendant from disturbing her possession or from creating third party rights in respect of the immovable property in question. The Plaintiff valued the suit under the provisions of Section 6(iv)(j) of the said Act which states that where declaration is sought with or without injunction or other consequential reliefs and the subject matter in dispute is not susceptible to monetary evaluation and which is not otherwise provided for under the said Act, the court fee payable is Rs.1,000.00. The Defendant son filed his written statement and opposed the claim stating that the claim had been under valued, and ought to have been valued for the purposes of payment of court fees on the basis of the market value of the property under the provisions of section 6(iv)(d) of the said Act. The Trial Court found that the suit had been properly valued under section 6(iv)(j) of the said Act. A learned Single Judge of this Court in revision against the Trial Court's order found that as per the plaint in that case, the Plaintiff was not seeking possession of the suit property, but was seeking a declaration that the gift deed in respect thereof was null and void. The learned Single Judge of this Court held that what has to be seen whilst considering the question of

appropriate valuation in the subject matter of the dispute. In that case, the subject matter in dispute was a gift deed, which was without any consideration. This Court distinguished the decision in the case of *Pushparaj Surajprasad Modh Vs. Sayyed Altaf Sayyed Wazir*⁵ on the ground that in that case the Plaintiffs had sought for a declaration that they were the owners of the suit property, which was not the case in the matter before the learned Single Judge. It was held that in the facts and circumstances of the said case the expression "subject matter" as appearing in Section 6(iv)(j) of the said Act would mean the bundle of facts that have to be proved in order to entitle the Plaintiff to the relief claimed and thus the Trial Court had correctly determined that the suit plaint filed by the mother for the bundle of rights was properly valued under the provisions of Section 6(iv)(j) of the said Act and the provisions of Section 6(iv)(d) would not be applicable. Dr Chandrachud referred to and relied upon on paragraph Nos.7 to 11 of the said judgment which are extracted as under:

"7. I have heard the learned counsel for the parties at length and perused the documents filed on record.

8. As per the averments in the plaint, it has been pleaded that the entire suit property was in cultivating possession of the plaintiff. On 29th June, 2012, the defendant had got executed a Gift-Deed from her without her consent and by playing fraud. On that basis, suit came to be filed seeking declaration that the Gift-Deed was null and void and that the plaintiff was, in fact, the lawful owner and possessor of the suit field. A decree for permanent injunction seeking to protect her possession and from creating any third party rights was also sought. The claim was valued under provisions of Section 6(iv)(j) of the said Act.

9. Under provisions of Section 6(iv)(d) of the said Act, if a declaration in respect of ownership or nature of tenancy, title etc. of immovable property is sought, then 1/4th of the ad valorem fee leviable for a suit for possession on the basis of title has to be paid. As per the third proviso, when any consequential relief other than possession is sought, then the amount of fee would be half of the ad valorem fee. Under provisions of Section 6(iv)(j) of the said Act, where

5 2000 (4) Mh.L.J. 492

declaration is sought with or without injunction or other consequential relief and the subject matter in dispute is not susceptible to monetary evaluation and which is not otherwise provided for under the said Act, the court fee payable is Rs.1,000/-.

10. As noted above, the averments in the plaint indicate that the non-applicant is not seeking possession of suit property. The relief sought by her is for declaration that the Gift-Deed dated 29th June, 2012 was null and void. What has to be seen while considering the question of appropriate valuation is the "subject matter in dispute". In the present case, the subject matter in dispute is the alleged fraudulent execution of the Gift-Deed dated 29th June, 2012. There is no consideration passed for execution of said Gift-Deed. The expression "subject matter" would mean the bundle of facts that have to be proved in order to entitle the plaintiff to the relief claimed as observed in Vallabh Das Vs. Madanlal & others [AIR 1970 SC 987].

In the judgment of the Gujrat High Court in Sanatkumar Bhikhabai Patel (*supra*), the suit therein was filed to avoid a Gift-Deed. The submission that the subject matter of the suit was not immovable property but the transaction of the Gift-Deed itself was accepted. It was held that the valuation of the suit would be under provisions of Section 6(iv)(j) of the Act.

11. In Pushparaj Surajprasad Modh (*supra*), the plaintiffs had sought declaration that they were the owners of the suit property. On that basis, it was held that the valuation was required to be made as per Section 6(iv)(d) of the said Act. Similarly, in G.V. Iyengar & another (*supra*), a declaration was sought that the plaintiff was in possession as a legal heir of the deceased allottee and was also a member of the Society. It was found that the declaration sought was as a legal heir and it was, in fact, a declaration of ownership. The said decision is, therefore, clearly distinguishable and not applicable to the facts of the present case."

11.12. In the case of Laxmi Ammal (*supra*) decided by the Supreme Court, Dr. Chandrachud has referred to and relied upon paragraph No.2 of the said judgment which is extracted herein:

"2. It is unfortunate that long years have been spent by the courts below on a combat between two parties on the question of court fee leaving the real issues to be fought between them to come up leisurely. Two things have to be made clear. Courts should be anxious to grapple with the real issues and not spend their energies on peripheral ones. Secondly, court fee, if it seriously restricts the rights of a

person to seek his remedies in courts of justice, should be strictly construed. After all access to justice is the basis of the legal system. In that view, where there is a doubt, reasonable of course, the benefit must go to him who says that the lesser court fee alone be paid."

11.13. Dr. Chandrachud emphasised on the observation of the Supreme Court that in a dispute between two parties on the question of court fee if the court fee seriously restricts the rights of a person to seek his remedies in courts of justice, the same should be strictly construed. Moreover, where there is a doubt, the benefit must go to the party who says that lesser court fee alone be paid.

11.14. Dr. Chandrachud submitted that applying the above ratios of the aforesaid judgments to the facts to the case in hand, the court fee would be payable under the provisions of section 6(iv)(ha) of the said Act based on the consideration stated in the agreement for sale i.e. Rs.26,50,000.00 and not on the market value of the suit premises as decided by the impugned order. In that view of the matter, in his submission, the pecuniary jurisdiction would therefore lie with the Bombay City Civil Court and not this Court, since the suit value is less than Rupees One Crore.

11.15. In view of the above decisions which according to him support the Appellant's case, Dr. Chandrachud submitted that the impugned order deserves to be set aside and the suit plaint as filed by the Plaintiff company be relegated to the Bombay City Civil Court for trial.

12. PER CONTRA Mr. Karl Tamboly, learned counsel appearing for Respondent No.1 / original Plaintiff Company, made the following submissions:

12.1. Mr. Tamboly submitted that the present suit is primarily for a declaration of the Plaintiff's ownership rights in respect of the suit premises, and not merely for cancellation of the agreement for sale dated 01.08.2019 between Defendant Nos. 1 and 2 in respect of the suit premises. He submitted that a perusal of substantive reliefs sought for in the plaint would amply demonstrate the same. He submitted that the Plaintiff's case as pleaded in paragraphs 4, 6.15 to 6.18, 7 and 8 of the plaint make it clear that by the present suit, the Plaintiff has sought a declaration in respect of its title to the suit premises in view of the repeated attempts by Defendant Nos. 1 and / or 2 to illegally and fraudulently usurp the same.

12.2. In view of the above, Mr. Tamboly submitted that the present suit would therefore have to be valued under the provisions of section 6(iv)(d) of the said act.

12.3. Mr. Tamboly submitted that the Appellant had incorrectly interpreted the present suit to be one merely for cancellation of the agreement for sale dated 01.08.2019 between Defendant Nos. 1 and 2 in respect of the suit premises, or that the other reliefs were consequential or incidental to the same. He submitted that on the contrary, the present suit was primarily for a declaration of the Plaintiff's title to the suit premises, in view of several attempts by Defendant Nos. 1 and / or 2 to usurp the same. Since one of the attempts to usurp the suit premises was by execution of the fraudulent agreement for sale dated 01.02.2019 between Defendant Nos. 1 and 2, the Plaintiff has sought for cancellation of the same. According to Mr. Tamboly, this relief is consequential to the Plaintiff's primary relief for declaration of its title to the suit premises, and not the other way around as contended by the Appellant. For these reasons, Mr. Tamboly submitted that the Appellant was incorrect in saying that the present

suit ought to be valued under section 6(iv)(ha) of the said Act.

12.4. Mr. Tamboly drew our attention to Exhibit 'A' to the plaint i.e. the copy of the agreement of sale deed dated 01.08.2019 which is the subject matter of challenge in the suit and to be found at page 57 of the paper book. He has submitted that on page 68 of the paper book there is an adjudication certificate issued under Section 32(l)(b) of the Bombay Stamp Act, 1958 by the Collector of Stamps, Andheri on 07.05.2019 which records that the market value of the suit premises ad-measuring 204 sq.mtrs. carpet area is Rs.2,52,91,000.00 and the stamp duty payable is Rs.15,17,460.00. He submitted that on page 69 of the paper book the copy of registration certificate issued in respect of the said agreement once again records the market value of the property at Rs.2,52,91,000.00. These certificates of adjudication evidently show that the value of the property cannot be Rs.26,50,000.00 which is the purchase consideration shown in clause 2 of the agreement for sale dated 01.08.2019 and the same is computed according to the ready reckoner at Rs.2,52,91,000.00. Therefore, according to him, the Plaintiff has correctly paid Rs.3,00,000.00 i.e. the maximum court fee payable on the basis of market value of the suit premises.

12.5. Mr. Tamboly submitted that the court fee is payable on the basis of the market value of the suit premises as per section 6(iv)(d) of the said Act and not on the consideration amount stated by the parties in the document or under the provisions of Section 6(iv)(ha) of the said Act.

12.6. Mr. Tamboly distinguished the judgments in the cases of *Deepak Laxmichand Badlani* and *Manskhlal Depa Khimashiq* (supra) cited by the learned Counsel for the Appellant, by stating that in those

cases, declaration with respect to title to immovable property was not the subject matter of the suits in question. Accordingly, the learned Single Judge of this Court who decided those cases had no occasion to examine the provisions of section 6(iv)(d) of the said Act, which is the provision which applies in the facts of our case. Hence, according to Mr. Tamboly, these two judgments are inapplicable to the present case.

12.7. Mr. Tamboly distinguished the judgment in the case of *Idhol* (supra) relied upon by the learned Counsel for the Appellant, by stating that in that case, the principal relief was for cancellation of a gift deed stated to have obtained by the Defendant son by playing fraud upon the Plaintiff mother. No declaration with respect to ownership of the Plaintiff in that suit property was sought, which is very different from the plaint in hand in our case. Moreover, in that judgment, the learned Single Judge of this Court has distinguished the judgment in the case of *Pushparaj Surajprasad Mohd* (supra) by stating that in *Pushparaj's* case, since the Plaintiffs had sought declaration that they were the owners of the suit property, the court fee valuation was required to be done under section 6(iv)(d) of the said Act. Mr. Tamboly submitted that this in fact supports his submission that the present suit seeking declaration of the Plaintiff's title in the suit premises is to be valued under section 6(iv)(d) of the said Act and not section 6(iv)(ha). He submitted that the judgment in *Idhol's* case upon which the Appellant has placed reliance in fact speaks contrary to its own case.

12.8. Mr. Tamboly submitted that the judgment of the Supreme Court in the case of *Laxmi Ammal* (supra) would have no application in the facts of the present case. According to him, there is no doubt, reasonable or otherwise about the court fee to be paid, and hence the

benefit going to he who pleads that a lesser court fee must be paid does not arise in the facts of our case. He moreover submitted that this judgment must be contextually read. It was passed in the context of protecting a litigant from being restricted from seeking remedies in a court of justice on the ground of insufficiency of court fees. This is different from the facts of our case where it is the Plaintiff who has filed the suit contends that a higher court fee is payable, and has paid the higher court fee, and it is the Defendant who contends that a lower court fee is payable. He accordingly submitted that this judgment will not apply in the facts of our case.

13. We have examined the Plaint, the interim application taken out by the Plaintiff therein and the reply filed by the Appellant / original Defendant No. 2 thereto. We have considered the submissions made by learned counsel for the parties as noted above, and our findings in respect of the same are as follows.

14. Before we proceed to adjudicate upon the submissions made on behalf of the parties, it will be apposite to briefly refer to the relevant statutory provisions relied upon by the Counsel for both sides.

15. Section 6 of the said Act pertains to computation of Court fees payable in certain suits. Section 6(iv)(d), which is relevant, is extracted as under:

"6 (iv)(d) for ownership etc. of immovable property, etc.

In suits for declaration in respect of ownership, or nature of tenancy, title, tenure, right, lease, freedom or exemption from, or non-liability to, attachment with or without sale or other attributes, of immovable property, such as a declaration that certain land is personal property of the Ruler of any former Indian State or public trust property or property of any class or community one-fourth of *ad valorem* fee leviable for a suit for possession on the basis of title of the subject-matter, subject to a minimum fee of [one hundred rupees]. *[emphasis supplied]*

Provided that if the question is of attachment with or without sale the amount of fee shall be the *ad valorem* fee according to the value of the property sought to be protected from attachment with or without sale or the fee of [sixty rupees], whichever is less:

Provided further that, whenever the defendant is or claims under or through a limited owner, the amount of fee shall be [one third] of such *ad valorem* fee, subject to the minimum fee specified above:

Provided also that, in any of the cases falling under this clause except its first proviso, when in addition any consequential relief other than possession is sought the amount of fee shall be one-half of *ad valorem* fee and when the consequential reliefs also sought include a relief for possession the amount of fee shall be the full *ad valorem* fee."

16. Section 6(iv)(ha) of the said Act is also extracted as under:

""6(iv)(ha) for avoidance of sale, contract for sale, etc.

In suits for declaration that any sale, or contract for sale or termination of contract for sale, of any moveable or immovable property is void (one half) of *ad valorem* fee leviable on the value of the property."

17. To answer the question of valuation we may refer to the relevant pleadings in the suit plaint filed by the Plaintiff. We find the following extracts of paragraphs 5, 6.16, 6.17, 6.18, 7, 8, 13 and 14 of the Plaint to be relevant to the issue at hand:

"5. Now recently on 6th August, 2020, the Defendant No.2 has attempted to illegally and forcibly enter into and / or trespass into the Suit premises. The Defendant No.2 is also making various false allegations against the Plaintiff and its Directors, in a malafide attempt to coerce the police to register false FIRs and/or to otherwise threaten the Plaintiff. In such circumstances, the Plaintiff has filed this present Suit seeking inter alia a declaration of Plaintiff's title to the Suit Premises, cancellation of the fraudulent Agreement for Sale dated 1st August 2019, an Order declaring that the Defendant Nos.1 and 2 have absolutely no right, title or interest in the Suit Premises and for appropriate orders restraining the Defendant Nos.1 and 2 from interfering in the Suit Premises in any manner, and other consequential and further reliefs.

6.16. However, recently on 6th August, 2020, the Defendant No.2 again attempted to illegally and forcibly enter into and / or trespass into the Suit Premises..... However, the Defendant No.2 also filed a Police Complaint making false allegations against the occupants and falsely claiming ownership over the Suit premises.

6.17. Meanwhile, on 15th August, 2020 the Plaintiff came across a defamatory post published by Defendant No.1 on the social platform-Facebook falsely claiming ownership over the Suit premises and alleging that on 6th August, 2020 it is the said occupants who attempted to take possession of the Suit premises and threatened him.

6.18. Thereafter, as late as on 24th August , 2020 the Defendant No. 2 again attempted to forcibly, illegally and violently enter and take possession of the Suit Premises. The Plaintiff states that the coercive and illegal attempts of Defendant No. 2 to take forceful possession of the Suit premises, including making false complaints, obtaining orders on the basis of false statements, forging and fabricating documents.....

7. In light of the above facts, it is clear that the Defendant No. 1 has without any right, title or interest in the Suit Premises fabricated documents and purported to sell the Suit Premises to Defendant Nos. 2 illegally and collusively to defraud the Plaintiff of its valuable rights in the Suit Premises. Without prejudice to the fact no title can be conferred under such false and fabricated document, there is an impending threat on the title of the Plaintiff in the Suit premises, necessitating the filing of this Suit. It is evident from the documents produced by the Plaintiff dating back to 1968 that the Plaintiff is the absolute owner of the entire Larger property, including the Suit Premises. The Plaintiff has never entered into any transaction with either Defendant No. 1 or Defendant No. 2 and therefore, there is no question of either of them having any rights in the Suit Premises. In fact, as stated above, Defendant No. 1 and Defendant No. 2 have on oath in the said Writ Petition No. No. 1059 of 2019 accepted the fact that they are neither the owners of the Suit Premises, nor are they in possession of the Suit Premises. In the teeth of such admission, clearly the Defendant No. 1 could never have sold the Suit premises or transferred any right therein to Defendant No. 2 since Defendant No. 1 had none in the first place. The very fact that despite being aware of these facts the Defendant No. 2 has executed such fraudulent Agreement for Sale clearly shows that the said transaction is not only bonafides by ex-facie and patently dishonest. This is further fortified by the fact that even in the said fraudulent Agreement for Sale there is no document showing the alleged acquisition of title by Defendant No. 1, even the fleeting reference to an alleged Sale Deed is bereft of particulars. To cover up this crucial lacuna, the Defendant Nos. 1 and 2 have sought to rely upon various fabricated documents purporting to be records allegedly

pertaining to the Suit premises. Such a paper trail can never confer title.

8. In the circumstances, the Plaintiff is constrained to file the present Suit seeking inter alia declaration of Plaintiff's title to the Suit Premises, cancellation of the fraudulent Agreement for Sale dated 1st August 2019, an Order declaring that the Defendant Nos.1 and 2 have absolutely no right, title or interest in the Suit Premises and for appropriate orders restraining the Defendant Nos.1 and 2 from interfering in the Suit Premises in any manner, and other consequential and further reliefs.....

13. The Plaintiff states that present suit is a suit for land, in respect of the suit premises situated in Andheri, Mumbai and the entire cause of action has arisen in Mumbai. Hence, this Hon'ble Court has jurisdiction to entertain, try and dispose of the present suit.

14. The Plaintiff states that the value of the suit premises as per the ready reckoner is Rs.2,52,91,000/- (Rupees Two Crores Fifty Two lakhs Ninety One Thousand Only) and accordingly, the Plaintiff has valued the reliefs in the suit under the Maharashtra Court Fees Act and paid the maximum court fees of Rs.3,00,000/- thereon."

18. The prayers in the suit are found at Paragraph No.17 of the plaint. The substantive reliefs in the suit are found at prayer clauses (a) to (h), which read thus:

"17. The Plaintiff, therefore, prays :-

(a) That this Hon'ble Court be pleased to pass an Order declaring that the Plaintiff is the absolute owner of the Suit Premises ;

(b) That this Hon'ble Court be pleased to pass an Order declaring that the Agreement for Sale dated 1st August 2019 bearing reg. no. 8576/2016 executed between Defendant Nos. 1 and 2 (Exhibit A to the Plaintiff) is illegal, void ab-initio and also otherwise null and void;

(c) That this Hon'ble Court be pleased to pass an Order declaring that the Defendant No.1 and/or 2 have absolutely no right, title or interest in the Suit Premises;

(d) That this Hon'ble Court be pleased to pass an Order directing Defendant No.1 and /or Defendant No.2 to deliver the original of the Agreement for Sale dated 1st August 2019 (Exhibit A to the Plaintiff) for cancellation;

(e) That this Hon'ble Court be pleased to pass an Order directing Defendant No.3 to record the cancellation of the

said Agreement for Sale dated 1st August 2019 (Exhibit A to the Plaintiff) in its records;

(f) That this Hon'ble Court be pleased pass an Order declaring that any other documents executed by the Defendant No.1 and /or 2 with any third party with regard to the Suit Premises and / or under the Agreement for Sale dated 1st August 2019, if any are void ab-initio, illegal and also otherwise null and void;

(g) That this Hon'ble Court be pleased to pass an Order of mandatory injunction of this Hon'ble Court be pleased to permanently restrain the Defendant Nos. 1 and 2, by themselves, their servants or agents from in any manner relying upon and/or using the said Agreement for Sale dated 1st August 2019 (Exhibit A to the Plaintiff) before any person or authority;

(h) That this Hon'ble Court be pleased to pass an Order of mandatory injunction of this Hon'ble Court be pleased to permanently restrain the Defendant Nos. 1 and 2, by themselves, their servants or agents from in any manner from dealing with or disposing of or alienating or encumbering or transferring on surrendering or creating third party rights or inducting their party into or entering into any agreement or agreement in respect of the Suit Premises with any person or persons, and/or from entering upon and/or remaining upon the said Suit Premise as described in Schedule B hereto or any part thereof and/or; or by taking any steps either by way of any act of omission or commission whatsoever as to adversely affect the possession of and rights and interests of the Plaintiff in the Suit Premises or any part thereof."

19. A perusal of the aforesaid extracted portions of the plaintiff show that the suit is not merely for cancellation of the Agreement for Sale dated 01.08. 2019 between Defendant Nos. 1 and 2. The same is for a declaration of the ownership right, title and interest in the suit premises which the Plaintiff claims solely unto itself. The plaintiff has narrated several instances of how Defendant Nos. 1 and / or 2 have attempted to claim title to the suit premises adverse to that of the Plaintiff, as well as instances of Defendant Nos. 1 and / or 2 attempting to take over forcible possession of the suit premises from Defendant Nos. 4 and 5. The Plaintiff has stated that the proceedings is a suit for land in respect of the suit premises situated in Andheri.

The Plaintiff has valued the suit premises as per the ready reckoner issued by the Government of Maharashtra at Rs.2,25,91,000.00 and has paid the maximum court fee of Rs.3,00,000.00 thereon. Perusal of the prayers reveal that the Plaintiff has sought declaration, both positive and negative that the Plaintiff is the absolute owner of the suit premises and Defendant Nos.1 and 2 have no right, title or interest in the suit premises. The Plaintiff has also prayed for declaration that the registered agreement for sale dated 01.08.2019 executed between Defendant Nos.1 and 2 in respect of the suit premises is null and void and has sought cancellation of the said agreement. Plaintiff has also prayed for permanent injunction against the Defendant Nos.1 and 2 from in any manner relying upon the agreement for sale dated 01.08.2019 and disturbing the possession, right and interest of the Plaintiff in the suit premises.

20. We may now refer to the provisions of Section 6(iv)(d) of the said Act as alluded to hereinabove. It states that in suits for declaration *inter alia* in respect of ownership, or nature of title or right to immovable property, one fourth of *ad valorem* fee shall be leviable for a suit for possession on the basis of title of the subject matter, subject to a minimum fee of Rs.1,000.00. The present suit being principally for declaration of title which the Plaintiff claims in respect of the suit premises, the same squarely falls within section 6(iv)(d) of the said Act.

21. The proviso to clause sub section (d) states that in any of the cases falling under this clause except its first proviso, when in addition any consequential reliefs other than possession is sought the amount of fee shall be one half of *ad valorem* fee. Thus applying the aforesaid provisions of Section 6(iv)(d) of the said Act, the principal relief prayed for by the Plaintiff being for declaration and in addition

thereto, consequential reliefs prayed for by the Plaintiff for cancellation of the agreement for sale dated 01.08.2019 and permanent injunction from disturbing the possession of the Plaintiff, the Plaintiff's case is covered by the provisions of Section 6(iv)(d) of the said Act for the purposes of computation of court fee payable by the Plaintiff.

22. In view of our findings above, we hold that the present suit falls under section 6(iv)(d) of the said Act, and not under section 6(iv)(ha) as contended by the Appellant.

23. The next argument of the Appellant is based on the interpretation of the term "market value" for the purposes of the valuation of the suit premises. The Appellant has asserted that the value of the suit premises as disclosed in the agreement for sale dated 01.08.2019 in the suit is Rs.26,50,000.00 and therefore the same ought to be considered as the market value of the suit premises and thus the suit is not within the pecuniary jurisdiction of this Court but within the pecuniary jurisdiction of the Bombay City Civil Court. This assertion of the Appellant is based on the provisions of Section 6(iv)(ha) of the said Act which states that in suits for declaration that any sale or contract for sale a termination of contract for sale of any movable or immovable property is void one half *ad valorem* fee shall be leviable on the value of the property. The Learned Counsel for the Appellant has asserted that the words "value of the property" as appearing in clause 6(iv)(ha) if the said Act mean the value agreed upon between the Defendant Nos.1 and 2 in the impugned agreement for sale dated 01.08.2019 at Rs.26,50,000.00 and not the market value of the said premises.

24. The impugned order passed by the learned Single Judge

has rejected the above submission by accepting the submissions advanced on behalf of the Plaintiff. The Plaintiff has asserted that the market value of the property according to the ready reckoner published by the State Government of Maharashtra is Rs.2,52,91,000.00. The market value is also adjudicated and stated in the document of registration of the impugned agreement for sale dated 01.08.2019. Based on this market value the stamp duty of Rs.15,17,430.00 is paid proportionately by the parties to the agreement.

25. The learned Single Judge after considering the submissions has recorded his findings in paragraph No.15 of the impugned order while rejecting the submissions of the Appellant. Paragraph No.15 of the impugned order reads thus:

"15. I am of the view that the valuation of the property is far higher than what the 1st and 2nd defendants make it out to be. Although Dr. Chandrachud submitted that valuation will have to be decided on the basis of the disclosure of value in the agreement itself, it is evident that upon the document being lodged for registration, the same was required to be adjudicated and the defendants 1 and 2 have not challenged the adjudication and the valuation but have paid the stamp-duty of Rs.15,17,430/-. It is evident that they have acknowledged that the value of the property is far higher than what is shown in the agreement. Had it not been so, the stamp-duty of Rs.15,17,430/- would not have been paid by the defendants and the same would have been contested. Inherent in the acceptance of the adjudicated value is the admission that the property is valued at least Rs.2,52,91,000/-."

26. We are in agreement with the findings returned by the learned Single Judge in respect of valuation of the suit premises and consequentially the issue of jurisdiction. On perusal of the agreement for sale dated 01.08.2019, it is seen that the same certificate of adjudication by the Collector of Stamps, Andheri dated 30.07.2019 issued as per the provisions of Bombay Stamp Act, 1958 states that the

market value of the property is Rs.2,52,91,000.00 and based upon which the stamp duty has been computed at Rs.15,17,460.00 and also paid.

27. The provisions of Section 6(iv)(ha) of the said Act do not state that the value of the property is to be accepted as the value appearing in the instrument / document. The assertion and submission made on behalf of the Appellant that the consideration of Rs.26,50,000.00 appearing in clause 2 of the registered agreement for sale dated 01.08.2019 is to be considered for valuation of the suit premises for the purpose of the suit is therefore manifestly incorrect. The question as to what is the market value of the suit premises, which is the subject matter of the suit, must be determined having regard to the averments in the plaint and the facts placed by the parties relevant to the valuation made in the plaint, such as the legal interest which may be existing in the suit premises, whether the interests are interdependent or independent or joint or contractual or statutory. Such interests will have to be taken into consideration with due regard to the laws regarding the transfer of the said interest in the property.

28. In the present case, by no stretch of imagination can the consideration of Rs.26,50,000.00 be construed to be the market value of the suit premises when the ready reckoner prepared by the State Government of Maharashtra determines the market value of the suit premises at Rs.2,52,91,000.00. The averments in the plaint in paragraph Nos.13 and 14 read with the certificate of adjudication appearing on page No.68 of the paper book and the market value considered by the registration authority for the purpose of payment of statutory stamp duty in respect of the impugned agreement for sale dated 01.08.2019 do not leave any doubt in mind that the market value of the suit premises for the purposes of valuation has to be

considered to be the market value of the suit premises computed by the ready reckoner issued by the State of Maharashtra in the absence of any other material available on record. The consideration of Rs. 26,50,000/- mentioned in the agreement for sale dated 01.08.2019 between Defendant Nos.1 and 2 is therefore clearly an under valuation and cannot be acceptable for the purposes of determination of market value of the suit premises.

29. The question of valuation and payment of court fee is directly linked to the issue of jurisdiction of the Court and as such directly connected with the valuation of court fee. Section 8 of the Suits Valuation Act, 1887 reads as under:

"8. Court-fee value and jurisdictional value to be the same in certain suits.—

Where in suits other than those referred to in the Court-fees Act, 1870 (7 of 1870), section 7, paragraphs V, VI and IX, and paragraph X, clause (d), court-fees are payable *ad valorem* under the Court-fees Act, 1870 (7 of 1870), the value as determinable for the computation of court-fees and the value for purposes of jurisdiction shall be the same."

30. This provision provides that the value as determinable for computation of court fee and value for the purposes of jurisdiction shall be the same. No party to the litigation is given any absolute right to put any valuation whatsoever on such relief even though the estimation of relief and valuation submitted by the party is required to be ordinarily accepted. However, if any party manifestly and deliberately under values and under estimates the valuation on the estimation of relief, the court is not supposed to be a silent spectator thereto and has clear jurisdiction to interfere as held in the case of *Md. Alam Vs. Gopal Singh*,⁶. Paragraph Nos.9 and 10 of the said judgment are relevant and read thus:

6 AIR 1987 Patna 156

"9.It is manifest from the well-matched divergent stands aforesaid that two competing principles vie for acceptance here. The first one stems from the fact that Clause (iv) of Section 7 does give liberty to the plaintiff to evaluate his relief and the rationale for this has been authoritatively elaborated in AIR 1958 SC 245 and thus needs no repetition or recapitulation. Yet another aspect which has been highlighted is that procedurally the petty and contentious disputes raised on the issue of valuation by the defendants tend to defeat the substance of the litigation by preliminary wrangles on the fiscal issue of valuation. One cannot be unmindful of the fact that unscrupulous defendants may pointlessly raise issues of valuation in order to delay the matter at the very threshold and thereby obstruct the pace of the suit, by resorting thereafter to the revisional jurisdiction. There is no gainsaying the fact that procedural misuse in this context is somewhat rampant and this aspect should not be entirely out of ken. Equally hallowed, however, is the rule that a provision of law is not to be construed on the assumption that the same may be misused or abused. One cannot, in the thin guise of interpretation, amend or override a provision to prevent the alleged misuse and prolongation of litigation by a recalcitrant defendant.

10. Nor can one lose sight of the fact that holding that the plaintiff has an absolute right to place any valuation whatever on his relief and the court has no jurisdiction in the matter at all would equally be capable of gross abuse and even public mischief. Once it is so held, it may and is most likely to lead to a gross and deliberate undervaluing of the relief claimed. Indeed such a finding can only result in a headlong conflict of interest against duty for the plaintiffs. As their Lordships have said, it is the plaintiffs duty to fairly attempt to estimate the value of the relief claimed even where it is not easy to compute it in money terms. Once it is held that the plaintiff had an absolute right to value his relief then his financial interest would demand that he undervalues it to pay the minimal court-fee against a duty to fairly estimate the valuation in order to pay the proper one. Such a holding may also lead to frivolous litigation. As it fell from one of my learned Brothers, it would follow from such a holding that the unscrupulous plaintiffs may well sue for properties worth crores of rupees and place their, own valuation at a token of one hundred and raise a cloud over the title of the defendant. If the court is left powerless to interfere in such a situation, it would be rendered impotent to counter such frivolous litigation, even though the same may be writ large on the face of the proceeding."

31. We may further state the effect of the provisions of Section 8 of the Suits Valuation Act, 1887 is to make the value for the

purposes of jurisdiction dependent upon the value as determinable for computation of court fees. Thus Section 8 of the Suits Valuation Act, 1887 vehemently equates the issue of jurisdiction with that of valuation of the reliefs. Resultantly such valuation does not govern the payment of the amount of court fee but more so of the forum whether the suit will be tried. If the contention of the Appellant is accepted then it would amount to accepting the valuation of the relief claimed by the Appellants / Plaintiffs in respect of the suit premises worth crores of rupees at a few lakhs of rupees. Therefore the issue of valuation of court fee and the jurisdiction of the Court is strictly interlinked and cannot be left entirely to the parties. In the present case the Appellant's contention if accepted, shall lead to a gross and deliberate under valuation of the reliefs claimed by the Plaintiff and as such the suit shall be relegated to the Bombay City Civil Court when in fact the same is triable by this Court. It is stated that such a course of action would lead to frivolous litigation, multiplicity of proceedings and headlong conflict of interest. In this situation it is the duty of Court to examine the above issue to prevent abuse of the due process of law.

32. The reliance placed by the Appellant on the judgment of the Supreme Court in the case of Lakshmi Ammal (*supra*) is misplaced. The observation of the Supreme Court that when there is a reasonable doubt with respect to the quantum of court fees, the benefit must go to him who says that the lesser court fee alone be paid, is in the context of two parties who were in joint possession and seeking partition and separate possession of their respective share in the suit property as heirs of the deceased. In that context, in the *lis* between the two heirs, the question of court fee leviable had arisen and the Supreme Court had rendered the above finding. The facts of

the present case in hand are materially different. The facts in the present case call upon the court to interpret the "value of the property" in reference to the suit premises. As alluded hereinabove the value of the property is the market value of the suit premises which is the subject matter of the suit and in the absence of any other cogent material the value of the suit premises has to be determined at Rs.2,52,91,000.00.

33. In view of the above discussion, we are unable to accept the Appellant's contentions that the present suit is principally one for cancellation of the agreement for sale dated 01.08.2019 or that the other reliefs in the suit are consequential or incidental to the same, or that the suit must be valued as per section 6(iv)(ha) of the said Act. Accordingly we do not find that the judgments of learned Single Judges of this Court under section 6(iv)(ha) of the said Act, are applicable to the facts of this case.

34. In view of the above discussion and findings, the order dated 24.09.2020 passed by the learned Single Judge of this Court is upheld. Consequentially the Appeal stands dismissed with no order as to costs.

35. In view of the dismissal of the Appeal, Interim Application (L) No.3787 of 2020 does not survive and the same is also dismissed.

36. Before we part with this judgment, we note that we have not expressed any opinion on the merits of the rival claims in the suit. All of the above observations made by us are only in the context of determining as to whether or not this court has pecuniary jurisdiction to try and entertain the present suit filed by the Plaintiff.

[MILIND N. JADHAV, J.]

[S.J. KATHAWALLA, J.]