
(2009) 05 AHC CK 0379
In the Allahabad High Court
Case No : Writ Petition No.2662 (M/S) of 2009

Firm Ram Avtar Ram Chander and Another	APPELLANT
Vs	
Jagmohan Gupta and Others	RESPONDENT

Date of Decision : 27-05-2009

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 8 Rule 6A
Court Fees Act, 1870 — Section 7(v)(ii)
Suits Valuation Act, 1887 — Section 4

Citation : (2009) 4 CivCC 728 : (2010) 6 RCR(Civil) 384

Hon'ble Judges : B.K.Narayana, J

Final Decision : Allowed

Judgement

B.K. Narayana, J.—Heard Sri S.K. Mehrotra, learned counsel for the petitioners, Sri Vinod Pandey, learned counsel for the opposite party No.1 and learned Standing Counsel for the opposite parties No.2 and 3.

2. This writ petition has been filed by the petitioners for quashing the order dated 17.3.2009 passed by Civil Judge (Junior Division), Haveli, Faizabad and the order dated 15.4.2009 passed by the District Judge, Faizabad rejecting the revision preferred by the petitioners against the order dated 17.3.2009 as not maintainable.

3. Brief facts of the case are that the petitioners filed a suit in the Court of Civil Judge (Junior Division), Haveli, Faizabad being Original Suit No.322 of 2007 alleging themselves to be the tenant of the premises in dispute for a decree of permanent injunction restraining the defendantlandlord from dispossessing the petitioners from the premises in dispute except in accordance with law. In the said suit a counter claim was filed by the opposite party No.1 alleging that the petitioners were not the tenants of the disputed property but were in unauthorized occupation thereof and hence a decree for possession be passed in favour of the defendantlandlord.

4. The petitioners filed their written statement in reply to the counter claim

denying the allegations contained in the counter claim and further alleging that the suit property in the counter claim has been undervalued, court fee paid is insufficient and the Court has no pecuniary jurisdiction to try the counter claim.

5. The trial Court framed three issues regarding the undervaluation of the suit property, sufficiency of court fee paid and the pecuniary jurisdiction of the Court to try the counter claim and the trial Court decided the said issues against the petitioners by order dated 17.3.2009 holding that the valuation of the suit was correct, court fee paid was sufficient and the Court had pecuniary jurisdiction to try the counter claim.

6. Aggrieved from the order of the trial Court, the petitioners preferred a revision which was numbered as Civil Revision No.Nil of 2009 and was dismissed by the District Judge, Faizabad by order dated 15.4.2009 as not maintainable.

7. Learned counsel for the petitioners has submitted that the Courts below have decided the issues relating to the valuation of the suit property, sufficiency of court fee and pecuniary jurisdiction of the trial Court to try the counter claim in a very cursory manner without referring to the relevant provisions of the Suits Valuation Act and the Court Fees Act. Similarly, the revision of the petitioners has been rejected illegally as not maintainable by the revisional Court without examining as to whether in case the objection of the petitioners with regard to the valuation of the suit property is upheld, the Court before whom the suit is pending will have pecuniary jurisdiction to try the suit or not.

8. According to the petitioner, since the counter claim has been filed by the opposite parties claiming themselves to be the owners of the disputed property and the petitioners as unauthorized occupants of the suit property, the opposite parties are liable to determine the value of the premises in dispute for the purposes of jurisdiction of the Court and payment of court fee on the basis of market value and to pay court fee under Section 7 Clause (v)(ii) of the Court Fees Act.

9. Learned counsel for the petitioner next submitted that the opposite party No.3 exercised its jurisdiction illegally in dismissing the revision preferred by the petitioners against the order of the trial court as not maintainable.

10. Learned counsel for the opposite party No.1 landlord has very fairly conceded that issues relating to the valuation of the suit property as put forward in the counter claim and the court fee have not been decided correctly and the matter be remitted back to the trial Court for deciding the said issues afresh in accordance with law.

11. After considering the submissions made by the learned counsel for the parties and perusing the record of the case, this Court is of the view that the issues regarding valuation of the suit property, payment of court fee and pecuniary jurisdiction of the trial Court to try the counter claim have not been properly considered and decided by the trial Court and the revisional Court

clearly erred in law in dismissing the petitioners" revision as not maintainable.

12. For the aforesaid reasons, the writ petition is allowed. The orders dated 17.3.2009 and 15.4.2009 (Annexures No.1 and 2 to the writ petition) passed by the opposite parties No.2 and 3 respectively are quashed. The trial Court is directed to decide the issue Nos.1, 2 and 3 strictly in accordance with law within a period of two months from the date of production of certified copy of this order. It is further directed that the trial Court shall endeavour to decide the suit as expeditiously as possible.

(Petition allowed)