
(1994) 08 AHC CK 0034
In the Allahabad High Court
Case No : F.A.F.O. No. 332 of 1998

Harendra Prasad	Vs	APPELLANT
Smt. Parshottama and others		RESPONDENT

Date of Decision : 18-08-1994

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 43 Rule 1, Order 47 Rule 1

Citation : AIR 1995 All 30

Hon'ble Judges : S.C. Mohapatra, J;Ch. Abdur Rahim, J

Bench : Division Bench

Advocate : D.N. Pandey, for the Appellant; A.N. Bhargava and Kamla Prasad, for the Respondent

Final Decision : Dismissed

Judgement

Mohapatra, J.—Defendant is appellant against an order allowing review.

2. A preliminary objection was raised by learned counsel for respondents that appeal is not maintainable. This has no merit in view of Order 43, Rule 1 ((W), C.P.C. added by amendment of CPC by Act 104 of 1976. Appeal is maintainable.

3. Coming to merits of the appeal, it is found that valuation of the suit is the main dispute. Suit is for partition, originally respondent No. 1 filed the suit. Subsequently, Respondent No. 2 was transposed as plaintiff No. 2 to continue the suit along with plaintiff No. 1. Both plaintiffs were called upon to pay court fee on the suit as valued by them. On objection of appellant that valuation of suit is more than ten lacs. Trial court held that suit is undervalued as the building has not been properly valued. Plaintiffs filed an application for review of the order. One of the grounds for review was that in civil revision the valuation of the suit was accepted by High Court which has become final. Trial court has accepted the same and reviewed its earlier order. This is grievance of appellant.

4. Learned counsel for appellant submitted that there being no error of law apparent on the face of the earlier order which is based on appreciation of

evidence, review of the same is beyond scope of Order 47, Rule 1, C.P.C.

5. On the facts of this case, we are satisfied that order dated 2-2-1987 has been correctly reviewed. Plaintiff can value the suit reasonably. There is no cogent evidence that valuation as given by plaintiffs is unreasonable or that undervaluation has been made to avoid a court having jurisdiction, This was not considered by trial court in its order dated 2-2-1987. Besides, appellant having opportunity to object to the valuation at the earlier stage of the suit ought not to be permitted to raise such objection piece meal. Though, civil revision was confined to question of Court fee only and trial court is not correct that the question of valuation has become final. For reasons indicated by us, we are satisfied that not having challenged valuation of the suit at earlier stage though opportunity was available, appellant should not have been permitted to raise the objection to arrest further progress of the suit to delay finality which is contrary to public policy of early disposal. On this ground, order to the trial Court could have been reviewed. Respondent-plaintiffs can support an order on other grounds than basis of which impugned order was passed is vulnerable.

6. In result, appeal has no merit, which is dismissed. There shall be no order as to costs.

7. Appeal dismissed.