

(2011) 12 RAJ CK 0082

In the Rajasthan High Court

Case No : Civil Writ Petition No. 9843 of 2011 and Civil Miscellaneous Stay Application No. 9118 of 2011

Imortal Infrastructure Pvt. Ltd.

APPELLANT

Vs

Lookwell Life Space Pvt. Ltd. and Others

RESPONDENT

Date of Decision : 08-12-2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 7 Rule 11, Order 7 Rule 11(b)
Rajasthan Court Fees and Suits Valuation Act, 1961 — Section 38, 38(1), 38(1)(a)

Citation : (2012) 1 RLW 919

Hon'ble Judges : Mahesh Bhagwati, J

Bench : Single Bench

Advocate : S.R. Surana with S.R. Chaudhary, for the Appellant; R.K. Agarwal with Alok Chaturvedi, for the Respondent

Judgement

Mahesh Bhagwati, J.—By way of the instant writ petition, the petitioner has beseeched to quash and set-aside the order dated 8th July, 2011, whereby the learned Additional District Judge No. 1, Sikar directed the petitioner-plaintiff to pay the deficient court fee on the amount holding the value of the property to be Rs. 3 crores 25 lakhs. Having considered the submissions made at the bar and carefully perused the relevant material on record, it is noticed that the petitioner-plaintiff Imortal Infrastructure Private Limited filed a suit for cancellation of sale deed against the Look well Life Space Pvt. Ltd. and others in the court of Additional District Judge No. 1, Sikar. During the pendency of the suit, the respondent-defendant filed an application under Order 7 Rule 11(b) CPC stating that the petitioner-plaintiff himself had admitted in para no. 8(b) of the plaint Rs. 3 crores 25 lakhs to be the market value of the property in dispute, whereas the plaintiff is found to have filed the court fees only of Rs. 2,77,135/- on valuation of Rs. 80.00 lakhs.

2. Learned counsel for the petitioner canvassed that the sale deed, which has been prayed to be cancelled was executed for a consideration of Rs. 80.00 lakhs. Hence, the value for the purpose of the suit shall be the subject matter of the

instrument and not the market value in view of Section 38 of the Rajasthan Court Fees and Suit Valuation Act. Learned counsel further took me through the provisions of Section 38(1)(a) of the Rajasthan Court Fees and Suit Valuation Act and contended that Section 38(1) provided that in a suit for cancellation of a decree for money or other property having a money value or other document which purports or operates to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest in money, movable or immovable property, fee shall be computed on the value of the subject-matter of the suit and such value shall be deemed to be - (a) if the whole decree or other document is sought to be cancelled, the amount or value of the property for which the decree was passed or other document was executed, and not the market value of the property. Learned counsel placed reliance on the one judgment of the Hon''ble Apex Court delivered in the case of Satheedevi Vs. Prasanna and Another, .

3. E Converso, the learned counsel for the respondent-defendant vehemently opposed the submissions made by the learned counsel for the petitioner and defended the impugned order stating the same to be just and proper, which did not warrant any intervention.

4. At the very out-set, I find it relevant to reproduce the relevant extracts of the judgment of Sathee Devi (supra), wherein the Hon''ble Apex Court has held thus:-

The deeming clause contained in the substantive part of S. 40(1) makes it clear that in a suit filed for cancellation of a document which creates any right, title or interest in immovable property, the Court fees is required to be computed on the value of the property for which the document was executed. To put it differently, the value of the property for which the document was executed and not its market value is relevant for the purpose of Court fee. If the expression value of the subject matter of suit was not followed by the deeming clause, it could possibly be argued that the word "value" means the market value, but by employing the deeming clause; the legislature has made it clear that if the document is sought to be cancelled, the amount of Court fee shall be computed on the value of the property for which the document was executed and not the market value of the property.

5. The Hon''ble Apex Court while citing many important pronouncements of the same court further observed that:

This would mean that in the case of suits for cancellation of other documents, the value of the subject matter of the suit shall be deemed to be the amount for which the document was executed. It was submitted on behalf of the defendants that even in the case of a suit for cancellation of other documents, the value shall be deemed to be the value of the property. But this contention would ignore the effect of the words "value of the property for which the decree was passed". Even conceding that the value of the property should be taken into account in

suits for cancellation of other documents, there are two modes provided for to compute the value of the subject matter of the suit, (1) the value of the property and (2) the amount for which the document was executed.

6. Finally the Hon"ble Apex Court answered the question, as to what is criteria for valuation of suit filed for cancellation of a document, in the following terms:

Section 40 of the Act mandates that if a suit is filed for cancelling a document which creates, assigns or extinguishes the right, title or interest in an immovable property, if the whole document is to be cancelled, the value of the property for which the document was executed and if plaint is only to cancel part of the document, such part of the value of property for which document was executed is the basis for suit valuation. Therefore, value depends on the value of property for which document was executed and sought to be cancelled and not the value mentioned in the document.

7. Here, Section 40 refers to Section 40 of Kerala Court Fees and Suit Valuation Act (10.7.1960) which is analogous to Section 38 of the Rajasthan Court Fees and Suits Valuation Act with which we are concerned.

8. Before proceeding further, we may notice two well recognized rules of interpretation of statutes. The first and primary rule of construction is that the intention of the legislature must be found in the words used by the legislature itself. If the words used are capable of one construction, only then it would not be open to the courts to adopt any other hypothetical construction on the ground that such hypothetical construction is more consistent with the alleged object and policy of the Act. The words used in the material provisions of the statute must be interpreted in their plain grammatical meaning and it is only when such words are capable of two constructions that the question of giving effect to the policy or object of the Act can legitimately arise - Kanai Lal Sur Vs. Paramnidhi Sadhukhan, . The other important rule of interpretation is that the Court cannot rewrite, recast or reframe the legislation because it has no power to do so. The Court cannot add words to a statute or read words which are not therein. Even if there is a defect or an omission in the statute, the Court cannot correct the defect or supply the omission - Union of India and another Vs. Deoki Nandan Aggarwal, , Smt. Shyam Kishori Devi Vs. Patna Municipal Corporation and Another, .

9. Following the judgment of the Division Bench of Kerala High Court in P.K. Vasudeva Rao Vs. K.C. Hari Menon and Another, , the learned Single Judge of this High Court in the case of Smt. Narbada Vs. Smt. Aashi, held that in a suit for cancellation of decree, the court fee is required to be paid on the market value of the property but the Hon"ble Apex Court has held in the case of Sathee Devi (supra) that the judgment of Rajasthan High Court in the case of Smt. Narbada (supra) does not lay down the correct law.

10. Adverting to the facts of the case on hand, it is noticed that the sale deed was executed for a sale consideration of Rs. 80.00 lakh and the petitioner-

plaintiff is found to have filed the court fees on the value of a document, for which it was executed. So far as the admission of the petitioner-plaintiff with regard to the market value of the property is concerned, the market value cannot be taken into consideration for the purpose of reckoning the court fees as the valuation of the suit is to be made on the value of the subject matter of the suit and the subject matter of the suit is not the market value of the property, but for which the sale deed was executed as the prayer of the petitioner-plaintiff is for the cancellation of sale deed. Viewed from this angle and placing reliance on the judgment of Hon"ble Apex court, the learned trial court is found to have committed serious error in directing the petitioner-plaintiff to file deficient court fees holding the value of the property as Rs. 3 crores 25 lakhs. The impugned order is found to be perverse and contrary to law, which deserves to be set-aside.

11. The second and equally important argument put forth by the learned counsel for the petitioner is that the respondents-defendants had no power to file an application under Order 7 Rule 11 CPC as this power was conferred by the legislature on the Court and not on the defendants. The defendants cannot take this plea in application of Order 7 Rule 11 CPC. If the court fees was deficient, the respondents-defendants could take this place in his written statement of defence.

12. In Saleem Bhai and Others Vs. State of Maharashtra and Others, , the Hon"ble Apex Court has held with reference to Order VII Rule 11 of the Code that "the relevant facts which need to be looked into for deciding an application thereunder are the averments in the plaint. The trial court can exercise the power at any stage of the suit before registering the plaint or after issuing summons to the defendant at any time before the conclusion of the trial. For the purposes of deciding an application under clauses (a) and (d) of Order VII Rule 11 of the Code, the averments in the plaint are germane; the pleas taken by the defendant in the written statement would be wholly irrelevant at that stage."

13. The crux of aforesaid judgment is that the disputed questions cannot be decided at the time of considering an application filed under Order VII Rule 11 of CPC.

14. For the reasons stated above, the writ petition succeeds and the impugned order dated 8th July, 2011 rendered by learned Additional District Judge No. 1, Sikar stands set-aside. The trial court shall now proceed with the case and decide the same in accordance with law. Consequent upon the disposal of writ petition, the stay application, filed therewith, does not survive and that also stands disposed of.