

(2010) 01 CHH CK 0063
In the Chhattisgarh High Court
Case No : C.R. No. 1 of 2010

Jagmohan Sahu

APPELLANT

Vs

Mantora Bai and Others

RESPONDENT

Date of Decision : 08-01-2010

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 2 Rule 2, Order 4 Rule 1(3), Order 7 Rule 11, Order 7 Rule 13

Citation : (2010) 2 MPJR 128

Hon'ble Judges : Nawal Kishore Agarwal, J

Bench : Division Bench

Judgement

N.K. Agarwal, J.

Heard on admission.

The present revision arises from the order dated 09.10.09, passed by VIIth Civil Judge, Class II Raipur, in Civil Suit No. 5A/09 whereby and whereunder the application preferred by the applicant under Order 7 Rule 11 of CPC has been rejected.

Due to procedural defect of not presenting the plaint in duplicate to the court, the earlier suit was rejected by the trial court invoking Order 7 Rule 11 of CPC with liberty to file fresh suit, although the plaintiff had submitted the other copy of the plaint with affidavit. The instant suit has been preferred by the plaintiff on the same cause of action claiming some more reliefs.

The applicant herein raised an objection by filing an application under Order 7 Rule 11 of CPC that the identical relief has not been claimed by the respondent but in the instant suit some more reliefs have been claimed which is not in accordance with the liberty granted by the trial court and the suit being not maintainable deserves to be dismissed.

The trial court vide impugned order dismissed the application on the ground that

the suit has been filed on the same cause of action and by merely adding some more reliefs, it cannot be said that the suit is barred. It is further observed by the trial court that under Order 7 Rule 13 of CPC, new suit on the same cause of action is not barred.

Shri Kesharwani, learned counsel appearing for the applicant would submit that as the suit has not been filed claiming same relief as claimed by the plaintiff in the earlier suit and therefore, the plaint deserves to be rejected.

I have heard the counsel appearing for the applicant and perused the order impinged.

I do not find any substance in the submission made by the applicant. As per Order 4 Rule 1(3) of CPC, the plaint shall not be deemed to be duly instituted unless it complies with the requirements specified in sub-rules (1) and (2).

A bare perusal of aforesaid provision would reveal that if the plaint is not filed in duplicate to the court then it cannot be said that the plaint is duly instituted. However, the trial court rejected the plaint with liberty to file fresh, meaning thereby that liberty to file the same by filing the plaint in duplicate to the court. Now at such stage the plaintiff is always at liberty to amend the relief and claim several reliefs. It is not a case where although the plaintiff is entitled to claim several reliefs but he has relinquished any portion of his claim in order to bring the suit with the jurisdiction of any court, and therefore, if the instant suit instituted claiming some more reliefs, cannot be said to be barred under Order 7 Rule 11(d) or under Order 2 Rule 2 of CPC.

For the foregoing, in the considered opinion of this court, the trial court has not committed any jurisdictional illegality warranting interference of this court under its revisional jurisdiction.

In view of the above, the revision being devoid of substance is liable to be and is hereby dismissed summarily.