(2013) 02 RAJ CK 0080

In the Rajasthan High Court

Case No : Civil Writ Petition No. 12837 of 2012

Om Prakash and Others APPELLANT

Vs

Mohan Singh RESPONDENT

Date of Decision : 21-02-2013

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 7 Rule 11

Citation : (2013) 2 WLN 450

Hon'ble Judges : Gopal Krishan Vyas, J

Bench : Single Bench

Advocate : Manoj Bhandari, for the Appellant; M.S. Purohit, for the Respondent

Judgement

Gopal Krishan Vyas, J.—Heard learned counsel for the petitioners and caveator. In this writ petition, the petitioner is challenging the validity of the order dt. 05.10.2005 (Annex. 5) and order passed by the trial Court dt. 22.08.2012 (Annex. 3) to the extent it has rejected the application filed under Order 7 Rule 11 CPC.

2. Learned counsel for the petitioner submits that the respondent plaintiff was required to furnish Court fee as per market value of the property.

3. Learned counsel for the respondent submits that controversy involved in this case is squarely covered with the judgment rendered by Hon''ble Supreme Court in case of Satheedevi Vs. Prasanna and Another, which is subsequently followed by this Court in SBCWP No. 6718/2008 (Devi vs. Laxman Ram & Ors.) decided on 26.07.2012 in which it has been held that value of the property for which the document was executed is required to be seen and Court fee is to be furnished not on the basis of market value but on the value of the property for which the document was executed and not its market value. In para-11 of the judgment in case of Satheedevi (supra), the Hon''ble Supreme Court held as under:-

11. Section 7 of the Act lays down different modes for determination of the market value of the property for the purpose of payment of Court fee. Sub-

Section (1) of Section 7 begins with the expression "Save as otherwise provided" and lays down that where the fee payable under the Act depends on the market value of any property, such value shall be determined as on the date of presentation of the plaint. From the plain language of Section 7(1), it is evident that it merely specifies the methodology for determination of the market value of the property where the Court fee payable under some other provisions of the Act depends on the market value of the property which is subject matter of the suit. Sections 25, 27, 29, 30, 37, 38, 45 and 48 deal with different kinds of suit i.e., suits for declaration, suits for injunction, suits for possession under the Specific Relief Act, 1877, suits for possession not otherwise provided for, partition suits, suits for joint possession, suits under the Survey and Boundaries Act and inter pleader suits. These Sections provide for payment of Court fee computed on the market value of the property. Sub-Section (2) of Section 7 lays down that the market value of the agricultural land in suits falling under Secs. 25(a), 25(b), 27(a), 29, 30, 37(1), 37(3), 38, 45 and 48 shall be deemed to be ten times the annual gross profits of such land where it is capable of yielding annual profits minus the assessment, if any, made by the Government. In terms of sub-Section (3), the market value of a building in cases where its rental value has been entered in the registers of any local authority, shall be ten times such rental value and in other cases, the actual market value of the building as on the date of the plaint. Clause (a) of sub-Section (3) lays down that market value of any property other than agricultural land and building shall be the value it will fetch on the date of institution of the suit. Sub-Section (4) lays down that where subject matter of the suit is only a restricted or fractional interest in a property, the market value of the property shall be deemed to be the value of the restricted or fractional interest. Section 40 deals with suits for cancellation of decrees etc. which are not covered by other Sections. If this Section is interpreted in the light of the expression ''save as otherwise provided'' used in Section 7(1), it becomes clear that the rule enshrined therein is a clear departure from the one contained in Section 7 read with Sections 25, 27, 29, 30, 37, 38, 45 and 48 which provide for payment of Court fee on the market value of the property. In that sense, Section 40 contains a special rule. Section 40(1) lays down 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 further lays down that such value shall be deemed to be if the whole decree or other document sought to be cancelled, the amount or value of the property for which the decree was passed or other document was executed. If a part of the decree or other document is sought to be cancelled, such part of the amount or value of the property constitute the basis for fixation of Court fee. Sub-Section (2) lays down that if the decree or other document is such that the liability under it cannot be split up and the relief claimed relates only to a particular item of the property belonging to the plaintiff or the plaintiff''s share in such property, fee shall be computed on the value of such property, or share or on the amount of the decree, whichever is less. The deeming clause contained in the substantive part of Section 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 the 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. The words "for which" appearing between the words "property" and "other documents" clearly indicate that the Court fee is required to be paid on the value of the property-mentioned in the document, which is subject matter of challenge." As per facts of present case, controversy is identical to the aforesaid judgment, therefore, while following the above judgment, this writ petition is hereby dismissed.

