

(2010) 07 MP CK 0100

In the Madhya Pradesh High Court

Case No : Writ Petition No. 4600 of 2009

Purshottam Das Agarwal

APPELLANT

Vs

Smt. Shyamlati Bindal

RESPONDENT

Date of Decision : 06-07-2010

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 7 Rule 11
Constitution of India, 1950 — Article 227
Court Fees Act, 1870 — Section 7

Citation : (2010) 3 MPJR 154

Hon'ble Judges : Shyam Sunder Dwevedi, J;S.K. Gangele, J

Bench : Division Bench

Judgement

The Petitioner has filed this petition under Article 227 of the constitution of India, aggrieved by the order dated 25/08/2009, passed by the second Additional Civil judge, class-II, Gwalior in civil suit No. 89-A/09, whereby allowed the application filed on behalf of the defendant under Order 7 Rule 11 CPC and directed the plaintiff to value the suit at the market value of pledged ornament, one gold "Kardhoni" weighing 15 tolas, and pay the necessary Court fees on it.

Brief facts of the case are, the plaintiff has filed the present suit for return of the pledged gold ornament, alleged to be one gold "Kardhoni" having weight 15 tolas, which has been pledged by the plaintiff to the defendant in lieu of the amount of Rs. 15,000/-. The plaintiff was ready to pay the aforesaid amount of Rs. 15,000/- and asked the defendant to return the concerning gold ornament, but, as the defendant refused to return the concerning pledged gold ornament, the petitioner-plaintiff has filed the suit for return of the pledged ornament and valued the suit at Rs.15.000/-, the amount for which the ornament had been pledged to the defendant and also paid the court fees on Rs. 15,000/-. After service, the respondent-defendant has filed an application under Order 7 Rule 11 CPC and taken an objection that the plaintiff ought to have valued the suit at the market value of the concerning gold ornament "Kardhoni" having weight 15 tolas which is Rs. 2,40,000/-. The learned trial court after hearing the parties by the

impugned order, directed the plaintiff to value his suit at the market value of concerning gold ornament and pay court fee accordingly. Aggrieved by which, the petitioner- plaintiff came up before this Court by this petition.

Having heard the learned counsel for the parties and perused the impugned order.

It is submitted on behalf of the petitioner-plaintiff that an agreement has been entered into in between the parties, having value of Rs.15,000/-, the amount which has been received by the plaintiff from the defendant and for which gold ornament has been pledged as security to the defendant and therefore, for redemption for the concerning gold ornament, he need not value the suit at the market value of the concerning ornament and the learned trial Court has committed error by directing the petitioner to value the suit as per the market value of the concerning ornament and hence, prayed for setting aside the impugned order.

Learned counsel for the respondent supported the impugned order and prayed for dismissal of the petition.

The provision of section 7(ix) of the Court Fees Act, 1870 [hereinafter referred to as "the Act"] lays down about the court fees in the suit for redemption of the property mortgaged, which reads here as under:-

to redeem- (ix) In suits against a mortgage for the recovery of the property mortgaged;

to foreclose.- and in suits by mortgagee to foreclose the mortgage, or, where the mortgage is made by conditional sale, to have the sale declared absolute-

according to the principal money expressed to be secured by the instrument of mortgage;

On perusal of the aforesaid provision which is applicable to the present case also, it is apparent that in the present case one gold ornament has been mortgaged by the plaintiff for the amount of Rs. 15,000/-. Therefore, as per the aforesaid provision, the plaintiff ought to have paid the Court fees on the amount for which the gold ornament has been mortgaged as security by the plaintiff. As per the documentary evidence, it is also apparent that the concerning gold ornament has been mortgaged by the plaintiff as security of Rs. 15,000/- and paid necessary Court fees according to the aforesaid provision.

In such circumstances, looking to the provisions of section 7(ix) of the said Act, the learned trial court has committed error by directing the plaintiff to value the suit as per the market value of the concerning gold ornament. Therefore, the aforesaid order is liable to be set aside.

Consequently, this petition succeeds and is hereby allowed. The impugned orders dated 25/08/2009 (Annexure P/1) and dated 25/09/2009 (Annexure P/2) are set aside and it is held that the petitioner-plaintiff has rightly valued the suit for the amount of Rs.15,000/- for which the concerning gold ornament has been

pledged/mortgaged as security and rightly paid sufficient Court fees on the aforesaid amount.

Petition stands disposed of with no order as to costs.