(2010) 08 DEL CK 0299

In the Delhi High Court

Case No : Regular Second Appeal No. 358 of 2006 and C.M. Application 15420 of 2006

Ram Avtar Singh APPELLANT

Vs

Thakur Rattan Singh RESPONDENT

Date of Decision : 06-08-2010

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100, 21, 99
Court Fees Act, 1860 — Section 7
Court Fees Act, 1870 — Section 7
Evidence Act, 1872 — Section 91, 92
Suits Valuation Act, 1887 — Section 11, 4(3), 9

Citation : (2010) 08 DEL CK 0299

Hon'ble Judges : Indermeet Kaur, J

Bench : Single Bench

Advocate : Inderjeet Saroop and Anuradha, for the Appellant; Kamal Mehta and Rohit Sharma, for the Respondent

Final Decision : Dismissed

Judgement

Indermeet Kaur, J.—This is an unfortunate dispute between a father and son. The father Thakur Rattan Singh was the plaintiff before the trial court. He had filed a suit against his son Ram Avtar Singh, the defendant for possession and mandatory injunction. Contention of the plaintiff/respondent was that he is the owner of the premises i.e. B-94, Devli Road, Jawahar Park, Khan Pur, New Delhi. The defendant was permitted to live on the ground floor as a lessee; no license fee was being paid by the defendant. The conduct of the defendant and his wife was not cordial; they created nuisance and hindrance in the life of the plaintiff. By public advertisement dated 26.4.2003, the plaintiff had dis-inherited his son. On 29.5.2003, he terminated his lease asking him to vacate the suit premises. Defendant had not complied with the said request. The plaintiff was forced to file the present suit.

2. In the written statement, the defendant had denied that he was living in his

capacity as a lessee. His contention was that he had made a substantial financial contribution of Rs. 5 lakhs for the purchase of this property although admittedly this property was registered in the name of his father. He denied any harassment by himself or his wife to his father.

3. The trial judge had framed seven issues. All the issues were decided in favour of the plaintiff and against the defendant. A decree of possession and damages at the rate of Rs. 2000/- was passed against the defendant.

4. The appellate court vide its judgment dated 11.9.2006 had endorsed the finding of the trial judge.

5. Aggrieved by the judgment of the two fact finding courts below, the defendant/ son has filed this second appeal.

6. On 20.8.2008, the following substantial questions of law had been formatted by this court:

(1) Whether in view of the fact that the market value of the property in suit was Rs. 10 lacs as also admitted by the respondent in the cross-examination, can the valuation of the suit for purpose of court fee and jurisdiction at Rs. 58,000/- be accepted?

(2) Whether in view of the gross under-valuation of the suit made by the respondent and the serious prejudice having been caused to the appellant on merits due to the same the decree could still be passed against the appellant?

(3) Whether in view of the under-valuation the provisions of Section 11 of the Suits Valuation Act do not come into play so as to nullify the whole proceedings culminating into the decree?

(4) Whether the approach made by the courts below in ignoring the actual valuation of the suit property is mis-directed when the decree stands vitiated?

(5) Whether the courts below were wrong in excluding the statement of the appellant regarding passing of the actual consideration when the provisions of Section 91, 92 of Evidence Act did not come in the way of admissibility of evidence on that point?

(6) Whether the transaction between the father and the son as in the present case, can be said to be hit by Benami Transactions (Prohibition) Act?

7. Before this Court it has been urged that

(i) The courts below had erred in holding that the suit has been property valued for the purpose of court fee and jurisdiction. PW-1 had himself in his cross-examination admitted that the suit property was valued more than Rs. 10 lakhs. Provisions of Section 91 and 92 of the Indian Evidence Act had been misconstrued. In these circumstances, the finding of the two courts below that valuation of the suit for the purpose of court fee and jurisdiction which had been valued at Rs. 20000/- on which requisite fee had been affixed was clearly an illegality.

(ii) The courts below had also failed to appreciate that the contribution of the defendant for the purchase of the aforenoted property was substantial. The conflicting stand of the plaintiff had not been appreciated by the courts in its correct perspective. The provisions of the Benami Transactions (Prohibition) Act would not apply inter se a father-son.

8. Arguments have been countered by the learned Counsel for the respondent.

9. This Court shall first deal with the second submission of the learned Counsel for the plaintiff. The trial judge had appreciated the oral testimony of three witnesses who had been examined on behalf of the plaintiff and two witnesses who had been examined on behalf of the defendant. Besides this, the documents of the purchase of this property i.e. agreement to sell and power of attorney clearly evidenced that the purchaser of this property was the plaintiff; correspondingly, the defendant had failed to adduce any documentary evidence. The court had appreciated the fact that the defendant/son was an auto rickshaw driver earning Rs. 3000/- per month of which Rs. 2000/- was being paid by him as a rental. His family consisted of himself, his wife and three daughters; his submission that he had borrowed money from his brother-in-law to contribute for the purchase of this property was not relied upon in view of the conflicting versions given by the two witnesses of the defendant of whom DW-2 was the said brother-in-law. It was never the defence of the defendant/appellant in his written statement that the Benami Transactions (Prohibition) Act was not attracted or that his plaintiff/father was holding the property as a trustee. Section 4(3)(b) of the said Act does not come to his aid.

10. This Court is sitting in second appeal. The courts below are the fact finding courts; whether a piece of evidence has been appreciated correctly or incorrectly; whether this Court could have taken a view different from the view taken by the two courts below would all amount to a fact finding and roving enquiry which this Court is not permitted to go into. The oral and documentary evidence had been gone into by both the courts below. It is also not the case of the appellant/defendant that this is a case of no evidence.

11. The Supreme Court in Dudh Nath Pandey (Dead) by Lrs Vs. Suresh Chandra Bhattasali (Dead) by Lrs, had in the context of powers of second Appellate Court held as follows:

6. ...Virtually, the High Court has made a fresh appraisal of the evidence and has come to a different finding contrary to the finding recorded by the First Appellate Court which the High Court could not do in the exercise of power u/s 100 of the Civil P.C. The High Court, in our opinion, has erred in making a fresh appraisal of the evidence to come to a different conclusion....

This submission of the learned Counsel for the appellant is thus without any force and is rejected. Question No. 6 is accordingly answered against the appellant.

12. The legal submission advanced before this Court is as to whether the suit has been undervalued and in view of the admission made by the plaintiff that the suit property was worth Rs. 10 lakhs was it not incumbent upon the court to have dismissed the suit?

13. This contention of the appellant was dealt with the trial judge while disposing of issue No. 1. Apart from the oral testimony of the defendant, there was no other evidence before the court; no witness had been produced by the defendant on the valuation aspect and no report of any valuer had also been relied upon. The onus to discharge this issue was upon the defendant and on which score he has failed to adduce any evidence. The documents relied upon by the plaintiff i.e. the agreement to sell and the power of attorney had valued the suit property at Rs. 58,000/-. plaintiff in his cross-examination had made an admission that the worth of the suit property may be about Rs. 10 lakh but the court had gone on to hold that this was a presumption of the plaintiff with no actual knowledge of the same and since onus to discharge this issue was upon the defendant and he having failed to do so the trial court had relied upon the averments made by the plaintiff in his plaint and had decided the issue against the defendant.

14. The first appellate court vide the impugned judgment dated 11.9.2006, on this count, inter alia held has follows:

Firstly, the first issue was "Whether the suit has not been property valued for the purposes of court fees and jurisdiction?". The ld. Civil Judge decided this issue against the defendant and it was held that suit has been properly valued for the purposes of court fees and jurisdiction. There is no infirmity in the findings of the Ld. Civil Judge on this issue as:

(a) I have seen the evidence and there is no evidence that the value has been improperly given. The onus to prove this issue was on defendant and defendant failed to lead any evidence on this point.

(b) Defendant has also not got the Valuer examined to prove this issue. The defendant has also not shown the value of the neighbourhood house.

(c) The value stated in the document is Rs. 58,000/- while defendant states that it is purchased for Rs. 10 lacs. Under Sections 91 and 92 of the Indian Evidence Act no evidence on the valuation can be given by any authority.

15. Learned Counsel for the appellant has urged that the findings of both the courts below are legally untenable. Provisions of Section 7(v) of the Court Fee Act, 1860 are applicable and as such the value of the whole property should have been taken. The courts below have erred in holding that the defendant has failed to produce any evidence. plaintiff in his cross-examination had himself valued the suit property at Rs. 10 lakh. In this view of the matter, defendant did not have to lead any evidence as there was a clear and unequivocal admission by the plaintiff himself. The decree passed is thus a nullity.

16. While countering these submissions of learned Counsel for the appellant, the

respondent has submitted that the valuation as given by the plaintiff has to be accepted by the courts unless it is shown that it has been grossly under-valued or grossly over-valued which in turn has prejudiced the case of the plaintiff which is not so in this case. Neither has any prejudice been urged and nor has any prejudice been pointed out.

17. The present case is a suit for possession and mandatory injunction. The defendant is the son of the plaintiff. As per the averment made in para 2, the plaintiff had permitted the defendant to live on the ground floor as a licensee without any license fee. The suit has been valued in para 10 for the purpose of possession at Rs. 20,000/-, for damages at Rs. 4000/- and for mandatory injunction for Rs. 130/- i.e. a total value of Rs. 24130/-. Suit accordingly been filed in the court of Senior civil judge.

18. In Chandi Charan Das Vs. Sm. Sushilabala Dasi, the bench of the Calcutta High Court had held that in a suit for possession on the averment that the defendant is a licensee and that the license has been revoked the valuation of the suit for the purpose of jurisdiction is to be determined having regard to the subject matter involved in the suit. The relevant extract in this context reads as follows:

The subject-matter of such a suit is not the property in respect of which the plaintiff claims relief but the relief itself. And the relief is that the licensee should leave the land and structures thereon. The value of this is obviously very much less ordinarily than the value of the property over which the licence is said to have been given. Hence, the valuation of Rs. 110/- placed by the plaintiff on the relief he wants to obtain by getting rid of the licensee cannot be considered inadequate.

19. In Tara Devi Vs. Sri Thakur Radha Krishna Maharaj, through Sebaits Chandeshwar Prasad and Meshwar Prasad and Another, the Supreme Court in this context had made certain observations which are relevant and inter alia read as follows:

It is only in cases where it appears to the Court on a consideration of the facts and circumstances of the case that the valuation is arbitrary, unreasonable and the plaint has been demonstratively undervalued, the Court can examine the valuation and can revise the same.

20. It is, thus, clear that it only when the valuation is grossly arbitrary and unreasonable which on the face of it shows that it has been grossly and overtly overvalued or undervalued that the court will interfere in the valuation.

21. In the instant case although the suit has been titled as a suit for possession and mandatory injunction yet the body of the plaint clearly shows that the subject matter of the suit has defined the defendant as a licensee and the prayer made in the plaint seeks an ejectment of the licensee with a further direction that he be injuncted from interfering with the proposed sale which the plaintiff

seeks to effect of the suit property. The subject matter of the suit gathered from the plaint and the prayer therein reflect that this is a suit for the ejectment of a licensee with a consequential relief of injunction. Suit of the plaintiff falls u/s 7(iv)(c) of the Court Fee Act, 1870 where in all such suits the plaintiff shall state the amount at which he values the relief sought for by him.

22. The suit valued by the plaintiff for a total value of Rs. 24,130/- was a fair and adequate valuation on which the requisite court fee had been paid and on which no interference is called for. The judgment of Chandi Charan Das (supra) applies on all squares to the instant case.

23. In a full bench decision of this Court reported in Sheila Devi and Others Vs. Kishan Lal Kalra and Others, , the court has inter alia held as follows:

Section 7(iv) of the Court-Fees Act gives a right to the plaintiff in any of the suits mentioned in the clauses of that paragraph to place any valuation that he likes on the relief he seeks, subject, however, to any rules made u/s 9 of the Suits Valuation Act, and the Court has no power to interfere with the plaintiff?s valuation.

24. In view of the aforenoted finding, the argument of the learned Counsel for the appellant that first appellate court had misapplied the provisions of 91 and 92 of the Evidence Act and had illegally decided to read the documents (agreement to sell and power of attorney wherein the suit property had been valued at Rs. 58000/-) over and above the oral evidence i.e. the admission of the plaintiff wherein he had admitted that the value of the property could be about Rs. 10 lakhs is of little consequence. Question No. 5 is answered accordingly.

25. The judgment relied upon by the learned Counsel for the appellant in Ramesh Chand Bhardwaja Vs. Ram Parkash Sharma, is of no help; this was a suit for partition wherein it was held that the whole of the property sought to be partitioned should be taken into consideration for the purpose of jurisdiction and court fee. The judgment in Mahesh Gupta Vs. Ranjit Singh and Others, also does not come to the aid of the appellant. This was a suit for permanent injunction where in terms of the prayer clause, the suit had been valued at Rs. 1600/- but for the purpose of court fee and jurisdiction it had been valued at Rs. 20,10,000/- and court fee of Rs. 22,500/- was paid thereon. It was in this context that the appellate court upheld the finding of the Single Bench that a suit valued at Rs. 1600/- but for the purpose of court fee and jurisdiction was valued at Rs. 20,10,000/- clearly amounted to a forum shopping as this was a gross overvaluation. The facts of the instant case are distinct.

26. Section 11 of the Suit Valuation Act, 1887 is also of no assistance to the appellant. It states that an objection of undervaluation or overvaluation of a suit may be entertained by the first appellate court but with a rider that this overvaluation or undervaluation should have prejudicially affected the disposal of the suit or the appeal. No such prejudice has been shown; in fact, before the first appellate court this objection even did not find mention in the grounds of appeal.

In Kiran Singh and Others Vs. Chaman Paswan and Others, the Supreme Court had observed as follows:

...The policy underlying Sections 21 and 99, Civil P.C., and Section 11 of the Suits Valuation Act is the same namely, that when a case had been tried by a Court on the merits and judgment rendered, it should not be liable to be reversed purely on technical grounds unless it had resulted in failure of justice, and the policy of the legislature, has been to treat objections to jurisdiction both territorial and pecuniary as technical and not open to consideration by an appellate Court, unless there has been a prejudice on the merits. The contention of the appellants, therefore, that the decree and judgment of the District Court, Monghyr, should be treated as a nullity cannot be sustained u/s 11 of the Suits Valuation Act.

27. The jurisdiction conferred on the appellate court u/s 11 of Suit Valuation Act is an equitable one which has to be exercised only when there has been an erroneous assumption of jurisdiction by a subordinate court as result of overvaluation or undervaluation and a consequential failure of justice. There is no such gross undervaluation which could warrant a finding that the lack of pecuniary jurisdiction of the Senior Civil Judge prejudiced the case of the plaintiff on its merits; as such no interference is called for by this court. Questions No. 1 to 4 are answered in the negative and against the appellant.

28. Appeal is without any merit. Appeal as also the pending application is dismissed.

