
(2013) 07 MP CK 0177
In the Madhya Pradesh High Court
Case No : CR No. 24 of 2012

Ramprasad Kumbhkar and Others	Vs	APPELLANT
Geeta Bai Kumbhkar and Another		RESPONDENT

Date of Decision : 10-07-2013

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 7 Rule 10, Order 7 Rule 11, 115
Court Fees Act, 1870 — Section 7(IV)(c)

Citation : (2013) 07 MP CK 0177

Hon'ble Judges : S.K. Seth, J

Bench : Single Bench

Advocate : R.T. Thanewala, for the Appellant; Vyas, Learned Counsel, for the Respondent

Judgement

S.K. Seth, J.—Defendants have filed this revision to assail the validity of order dated 04.01.2012 passed by the Additional District Judge, Sonkatch in MA No. 5A/2011. By the order impugned the appeal was allowed and the order passed by the Trial Court returning the plaint to the plaintiff for its presentation in the court of proper jurisdiction was set aside. It is not disputed that appellant No. 1 is the step-son of respondent No. 1. The original owner of the land was Badrilal, father of appellant No. 1 and late husband of respondent No. 1. After his death appellant No. 1 is said to have executed a sale deed in favour of other appellants, therefore, the respondent No. 1 herein filed a suit for declaration, permanent injunction and partition. The suit was as per Section 7(IV)(c) of the Court Fee Act and on different reliefs claimed in the suit fixed amount of court fee was paid. After service of summons applicants filed an application under Order 7 Rule 11 of the CPC for the rejection of the plaint on the ground that the suit was grossly under-valued and upon proper valuation of the suit, it would be within the pecuniary jurisdiction of the District Judge and Civil Judge, Class-II.

2. The application was opposed by the respondent No. 1.

3. Learned Trial Judge after hearing the arguments allowed the application and

returned the plaint in view of the provisions contained in Order 7 Rule 10 of the CPC for being presented in the proper court after payment of the requisite court fee. That order of the court was challenged in Misc. Appeal by the respondent. As mentioned above, the appellate court by the order impugned has allowed the appeal and set aside the order passed by the trial court.

4. Shri R.T. Thanewala, learned counsel appearing for appellant criticized the order passed by the appellate court and submitted that the respondent plaintiff was required to value and pay the ad-valorem court fee on the total value of the sale consideration, therefore, the respondent is liable to value the suit at Rs. 21,00,000/- and pay the requisite court fee thereon. He submitted that, that being so the suit would not lie before the Civil Judge, Class-II, as he had no pecuniary jurisdiction to try the suit.

5. On the other hand, Shri Vyas learned counsel for the respondent supported the order impugned and submitted that the respondent was not a party to the sale-deed, therefore, she is entitled to seek declaration that the sale-deed was void and she had half share in her husband's property. She, therefore, also claimed an exclusive possession after the partition. According to Shri Vyas, the suit as framed would fall u/s 7(IV)(c) of the Court Fees Act and it was properly valued and requisite amount of court fee was paid. The lower appellate court has rightly considered the whole controversy and thereafter set aside the order passed by the trial court, therefore, there is no merit and substance in this appeal and it deserves to be dismissed.

6. After hearing learned counsel for the parties and going through the material on record, I find no merit and substance in this petition. The answer to the controversy is given by their Lordships of the Supreme Court in a case *Suhrid Singh @ Sardool Singh Vs. Randhir Singh and Others*, . That was a case where the suit was filed for declaration that the sale-deed executed by plaintiff's father was null and void and for joint possession. It was held that, that was not a suit for cancellation of sale deed and, therefore, the court fee need not be paid on the sale consideration mentioned in the sale-deed. It was also held that the court fee was computable u/s 7(IV)(c) of the Court Fee Act. In this view of the legal position, I find no illegality or jurisdictional error with the order impugned so as to warrant interference in exercise of powers conferred u/s 115 of the CPC. Revision fails and is hereby dismissed. Parties are left to bear their own cost.