
(2011) 05 AHC CK 0238

In the Allahabad High Court

Case No : Civil Revision No. 86 of 2001-(Old No. 254 of 1993)

Rani Sumitra Raje (Smt.) and another

APPELLANT

Vs

Shri Kewal Sanon (since deceased) substituted through his
L.Rs.

RESPONDENT

Date of Decision : 18-05-2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 8 Rule 6A

Citation : (2011) 05 AHC CK 0238

Hon'ble Judges : B.S.Verma, J

Final Decision : Allowed

Judgement

B.S.Verma, J.—By means of this revision, the revisionistsdefendants have assailed the order dated 2421993 passed by the Additional District Judge, Dehradun in Original Suit No. 959 of 1990, Sri Kewal Senon (now deceased) Vs. Rani Sumitra Raje and others on the application moved by the plaintiffrespondent Kewal Senon (paper no. 60C).

2. Briefly stated, the facts giving rise to the present revision are that initially the plaintiffrespondent Shri Kewal Senon (since deceased) filed a suit for declaration of his title over the property detailed in Schedule "B" of the plaint and for perpetual injunction against the defendantrevisionists herein from dispossession or interfering in the possession of the plaintiff in respect of the property in question.

3. In reply to the suit, the revisionistsdefendants have filed their counter claim and sought relief to declare the sale deed in favour of the plaintiff as illegal, null and void and also for a decree of permanent injunction against the plaintiffs from interfering in the possession of the defendants or from dispossessing them in respect of the property known as part of the Leopard Estate described in relief "A" of the counterclaim. For cancellation of the sale deed 2 the defendantrevisionists paid courtfee as per provisions of Article 17(iii) of ScheduleII of the Court Fees Act 1870 and for relief "B", they paid court fee

under the provisions of Section 7(iv)(b) of the CourtFees Act.

4. Against the counterclaim preferred by the defendant revisionists, the plaintiff respondents filed objection (paper no. 61C) alleging therein that the court fee paid by the defendants is insufficient.

5. I have heard learned counsel for the parties and perused the order impugned.

6. By a bare perusal of the impugned order, it shows that the learned Additional District Judge noted the arguments of the learned counsel for both the parties and thereafter relying upon the judgment of the Allahabad High Court in the case of Smt. Bibi and another Vs. Sagun Chandra and others [1967, A.L.J, Page 612 (Full Bench)] has passed the impugned order thereby ordering that the written statement/counter claim of the defendants is returned.

7. It is pertinent to mention here that the issue before the learned Additional District Judge for adjudication was as to the valuation of the counterclaim and the payment of courtfees thereon by the defendants. The learned trial court, instead of framing a preliminary issue on the point of valuation of the counterclaim and whether the court fee paid by the defendants is insufficient on the counter claim, by relying upon the Full Bench judgment of the Allahabad High Court in the case of Smt. Bibi and another (supra) has passed the impugned order. No preliminary issue was framed by the trial court on the point of valuation of the counterclaim and sufficiency or otherwise of the court fee paid by the defendants thereon. On the other hand, the learned trial court has passed the order for return of the written statement/counter claim. Thus, the learned trial court has committed an error of law 3 in not framing a preliminary issue on the aforesaid point and in not determining the court fee payable on the counterclaim/written statement. The order impugned passed by the learned Additional District Judge is, therefore, bad in law and untenable.

8. In the above facts and circumstances, without entering into the merits of the case, I am of the view that the order impugned is liable to be set aside and the revision deserves to be allowed on this ground alone.

9. The revision is allowed. Costs easy. The impugned order dated 24/2/1993 is set aside. The learned trial court is directed to decide the matter of the valuation of the counterclaim/written statement and sufficiency of court fee afresh by framing a preliminary issue and then to decide the same, after hearing both the parties and thereafter to decide the suit (O.S. No. 959 of 1990) on merits in accordance with law expeditiously as far as possible, since the suit is pending since the year 1990. Interim order dated 21/5/1993 passed by the Allahabad High Court as well as subsequent interim order dated 26/11/2010 passed by this Court is vacated.