

(2012) 07 MP CK 0058
In the Madhya Pradesh High Court
Case No : Writ Petition No. 3964 of 2011

Shakuntla Butani (Smt.)

APPELLANT

Vs

Smt. Poonam Butani

RESPONDENT

Date of Decision : 03-07-2012

Acts Referred:

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

Citation : (2012) ILR (MP) 2113

Hon'ble Judges : Sujoy Paul, J

Bench : Single Bench

Advocate : V.K. Bharadwaj with Anand V. Bhardwaj, for the Appellant; Santosh Agrawal, for the Respondent

Final Decision : Allowed

Judgement

Sujoy Paul, J.

In this petition filed under Article 227 of the Constitution of India, the petitioner has called in question the order passed by the trial Court dated 29.11.2010 (Annexure P-5). The said order was called in question by preferring cross appeals by both the parties. The said appeals were registered as Case No. 2/11 and 8/11. The Appellate Court decided the appeals by order dated 2.5.2011 (Annexure P-1).

The brief facts necessary for adjudication of this matter are as under:-

1. The plaintiff/respondent filed a suit for partition, permanent injunction, possession and declaration and quantified the valuation of the suit as Rs. 15,200/- and accordingly paid the court fees to the tune of Rs. 790/-. The petitioner/defendant entered appearance and raised objection on the valuation of the suit. An additional objection was taken in the written statement that petitioner has not paid proper court fees and proper valuation was not disclosed to the Court below. The petitioner filed an application by taking that objection

regarding valuation under Order 7 Rule 11 of C.P.C. The trial Court rejected the said objection by order dated 5.3.2008. However, the trial Court framed various issues for determination. Those issues are as under:-

The final order was passed on 29.11.2010 and the Court below answered the issue No. 5 against plaintiff. However, the Court below dealt with the merits of the matter by deciding the other issues on merits. The plaintiff was aggrieved by the finding of the Court below that the Court below has no pecuniary jurisdiction to deal with the matter, whereas the defendant/petitioner filed appeal regarding remaining portion/finding of the trial Court.

2. The learned senior counsel Shri Bharadwaj submits that the trial Court has committed an error in dealing with the merits of the matter. The learned counsel submits that once the Court below came to hold that it has no pecuniary jurisdiction to deal with the matter, it had no occasion to deal with the merits of the matter. The learned counsel submits that on merits the findings are given against the petitioner by the trial Court and, therefore, it causes grave prejudice to the petitioner.

3. The learned counsel by placing reliance on section 7(vi-a) and 7(vi)(b) of the Court Fees Act, submits that the valuation of the property is to be seen on the date of presentation of the suit. The learned counsel by placing reliance on a catena of judgments of various Courts submits that the sale deed was executed on 8.4.1987 and 10.7.1998, whereas the suit was filed on 19.5.2007. The learned counsel submits that it is the date of presentation of the suit on which the valuation of the property is to be seen and not the valuation of the property at the time of execution of the aforesaid sale deeds. The learned counsel further submits that after rejecting the application under Order 7 Rule 11 C.P.C., the plaintiff/respondent entered the witness box before the Court below and categorically admitted that the valuation of the property at the time of presentation of the suit was about 10-11 lakhs. On two places in paras 32 and 38 of her statement (cross examination) she made the said statement. On the strength of this statement, the learned counsel submits that the Court below had rightly decided issue No. 3 and 5 and held that the Court below had no pecuniary jurisdiction to deal with the matter. To elaborate, it is submitted that the valuation of the property is to be seen on the date of presentation of the suit and on account of the statement of plaintiff herself, there is no iota of doubt that the valuation of the property was much above the pecuniary jurisdiction of the Court below. It is admitted before this Court by learned counsel of both the parties that pecuniary jurisdiction of trial Court was upto 50,000/-.

4. Per contra, Shri Santosh Agrawal, Advocate for the respondent/ plaintiff, submits that a bare perusal of para 13 of the judgment of Appellate Court shows that as per the legal procedure, the trial Court obtained the order from the competent authority i.e., the District Judge, Gwalior regarding the jurisdiction of the said Court. In other words, the contention is that after having received the direction under the rules from the District Judge, the Court below had committed

no error of law in exercising the jurisdiction, and therefore, the Appellate Court has rightly set aside the findings given by the trial Court with regard to issue No. 3 and 5 and rightly held that the Court below had jurisdiction to deal with the matter. The order of the Appellate Court was supported on yet another reason that the application under Order 7 Rule 11 C.P.C. on the same subject of valuation was rejected by the Court below and in absence of any further challenge to the said order, the order had attained a finality. Thus, the finding on the application under Order 7 Rule 11 C.P.C. is binding on the Court below while passing the final order.

5. The learned counsel relied on Brihaspati Bai Swarnkar Vs. Mohanlal Chintaram Swarnkar and Others, Gendabai Vs. Kundanlal Jain, and Jagannath Ganpatram Agarwal Vs. Jamnalal Sidheshwar and others, . On the basis of aforesaid judgments, Shri Santosh Agrawal, learned counsel for respondent/plaintiff submits that on technical grounds the plaintiff could not be non-suited unless it is shown that the judgment has caused any prejudice to him. The learned counsel further submits that even the existing suit is within the pecuniary jurisdiction of the Court below for the purpose of declaration, whereas for other purposes he may be required to file a different suit. He also cited Satyadhan Ghosal and Others Vs. Sm. Deorajin Debi and Another, and Jagjeet Singh Vs. Bhopal Vikas Pradhikaran and Another,

6. I have bestowed my anxious consideration on the rival contentions of the parties and perused the record.

7. The first question is as to which is the crucial date on which the valuation is to be seen? A bare reading of Section 7(vi-a)(b) of the Court Fees Act makes it crystal clear that it is the date of the presentation of the suit on which the valuation is to be ascertained. Provision reads as under: -

Section 7(vi-a)(a) of Court Fees Act, 1870: According to one half of the value of the plaintiffs share of the property; and" Section 7(vi-a)(b) of Court Fees Act, 1870: According to the full value of such share if on the date of presenting the plaint the plaintiff is out of possession of the property of which he claims to be a co-parcener or co-owner, and his claim to be a co-parcener or co-owner on such date is denied.

This point is consistently decided by various Courts. In 39 Ind. Cas. 911 Kannappa Chetty and others), it is held as under:-

Under S.110 of the CPC the value of the subject-matter of the suit is the real market value of the property involved; the fact that for the purpose of stamp duty the plaintiff in exercise of the option given to him by the Court fees Act, S. 7, valued it as less than its market value cannot deprive him of his right to appeal to the Privy Council;

8. In Raj Kumar Jain Vs. Savitri Devi and Others, it is held that there is distinction between the market price of a property and sale price of property. In

para 5 of the judgment, it is held as under:-

5. True it is, for the purposes of registration, the market value should be determined so that the loss of revenue is not suffered by the State, Assuming in a case, a person who is in immediate need of sum of Rs. 2 crores may sell his property worth Rs. 5 crores for the said amount of Rs. 2 crores. Sale price would be two crores but for the purpose of registration, the value of the document would be 5 cores being the market value. Determination of the market value would depend upon the market condition and guideline but the sale price would be determined on the basis of the mutual consent and the agreement of the parties.

9. In Narayanprasad Vs. Jagdish and Others, , this Court held that the suit has to be valued according to one-half of the value of the plaintiffs share of the property and on the basis of its market value. The same view was taken in 1975 LJL (SN) 25 (page 19), (Ram Narayan Vs. Harinarayan).

10. In Balu Deochand Kulmi and Another Vs. Fundibai Amichand Kulmi, , this Court opined that Court fees is to be paid on the basis of market value. The Full Bench opined as under in para 28:-

28. For the above said reasons, it is clear that where a suit is filed for a part of an estate or a share of an estate, but where such part or share of the estate is not separately assessed to land revenue, the court-fee is payable on the basis of the market value. In those cases where the suit is for an entire estate, or a defined share of an estate, or a part of an estate assessed to land revenue as a unit, and the suit is for possession of the whole unit, the court-fee is to be charged on the value to be worked out on the basis of the multiple prescribed.

(emphasis supplied)

11. In Digambar Kumar Jain Vs. Smt. Maya Bai and Others , it was held that the Court fees is to be paid on the full market value of the property on the date of presentation of the suit. The same view was taken in Indrajit Behera and Another Vs. Bhaja Meher and Another, by the Orissa High Court. It is held that if the suit is within the pecuniary jurisdiction, suit must be tried without calling for further Court fees. Thus, there cannot be any doubt that the valuation of suit is to be seen on the basis of market value on the date of presentation of the suit. To determine this question, it is profitable to record the relevant portion from the statement of the plaintiff before the Court below. The same is reproduced as under: -

12. Shri Santosh Agrawal placed heavy reliance on (Brihaspati Bai Vs. Mohanlal Chintaram and others) (supra). A bare reading of para 10 of the said judgment would show that this Court relied on Kiran Singh and Others Vs. Chaman Paswan and Others, and opined that the decree passed in a suit could not be technically and mechanically set aside on technical grounds. What is material is to examine whether the decision has really resulted into any prejudice on merits to the other

side. Thus, the test is whether such decision despite lack of jurisdiction has caused any prejudice to the other side.

13. On the basis of aforesaid factual back drop, it is clear that when application under Order 7 Rule 11 C.P.C. was decided, the plaintiffs own statement was not recorded. Thus, on the basis of material available before the Court below, at the relevant point of time, the Court below was not in a position to hold that the suit is not tenable, therefore, Order 7 Rule 11 application was rejected. However, the Court below framed issues including the objection of valuation, which has an impact on the pecuniary jurisdiction of the Court below. The trial Court was equipped with the statement of plaintiff at the time of passing judgment and found that the valuation is improper and accordingly, answered issue No. 3 and 5. Accordingly, it is held that it did not have any pecuniary jurisdiction.

14. In my considered opinion, the findings given at the time of decision of application under Order 7 Rule 11 C.P.C. have no binding impact on the merits of the case at the time of judgment. Order 7 Rule 11 C.P.C. reads as under:-

O. VII Rule 11. Rejection of plaint- The plaint shall be rejected in the following cases:-

- (a) where it does not disclose a cause of action;
- (b) where the relief claimed is undervalued, and the plaintiff, on being required by the Court to correct the valuation within a time to be fixed by the Court, fails to do so;
- (c) where the relief claimed is properly valued but the plaint is written upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp-paper within a time to be fixed by the Court, fails to do so;
- (d) where the suit appears from the statement in the plaint to be barred by any law;
- (e) where it is not filed in duplicate;
- (f) where the plaintiff fails to comply with the provisions of rule 9:

Provided that the time fixed by the Court for the correction of the valuation or supplying of the requisite stamp-paper shall not be extended unless the Court, for reasons to be recorded, is satisfied that the plaintiff was prevented by any cause of an exceptional nature for correcting the valuation or supplying the requisite stamp-paper, as the case may be, within the time fixed by the Court and that refusal to extend such time would cause grave injustice to the plaintiff.

15. So far reliance on *Satyadhyan Ghosal and Others Vs. Sm. Deorajin Debi and Another*, is concerned, the Apex Court has made it clear that the interlocutory orders which have the force of a decree must be distinguished from other interlocutory orders which are a step towards the decision of the dispute between

the parties by way of a decree or a final order. In the light of aforesaid test, it can be safely concluded that by no stretch of imagination the trial Court while rejecting application under Order 7 Rule 11 C.P.C., has passed an order which has the effect of a decree. It is, at best, interlocutory order which is a step towards the final decision of the dispute. At that stage, there was no material before the trial Court to examine and evaluate the value. Thus, Court below framed an issue in this regard (issue No. 3). After recording evidence the court below answered the said issue on the basis of the material on record. In *Jagjeet Singh (supra)*, this Court considered the impact and scope of Section 11 C.P.C. The principle of *res judicata* was made applicable in that case in the same proceedings. However, a minute scrutiny of para 11 of this judgment shows that once an issue is decided between the parties in same proceedings, it is having effect of *res judicata* and cannot be reopened at later stage by any party. In the present case, issue was never decided at an early stage. Rejection of application under Order 7 Rule 11 C.P.C. does not amount to deciding of the issue. Therefore, this judgment is distinguishable and not applicable in the facts and circumstances of this case. In other words, at the time of decision of Order 7 Rule 11 application, evidence was not recorded and if as per the plaintiffs own statement, it is clear that the suit was not within the pecuniary jurisdiction, the trial Court has not erred in deciding issue No. 3 and 5 against the plaintiff. However, in my considered opinion, the Court below has committed an error of law in dealing with the merits of the matter. Once the jurisdiction is ousted, there was no question of examining the merits of the matter. Such findings are nullity in the eye of law if decided without having jurisdiction.

16. So far the second finding given by the Appellate Court regarding the decision by the District Judge by sending the matter before the trial Court is concerned, in my considered opinion, even if the District Judge is equipped with the said power and the powers are exercised by the District Judge, the said order of District Judge does not debar judicial review by this Court under Article 227 of the Constitution. This is settled in law that the existence of power and justification of exercising that power are two different things and the District Judge may have power to send the matter before the competent Civil Judge, but he had erred in exercising those powers. Thus, I am unable to uphold the order of the Appellate Court on this ground also. Merely because the District Judge sent the matter before the Civil Judge, it cannot be assumed that such Court has pecuniary jurisdiction. Thus, both the reasons assigned by the Appellate Court regarding pecuniary jurisdiction/valuation cannot be permitted to stand, and therefore, the order passed by the Appellate Court deserves to be interfered with. I find force in the argument of Shri Santosh Agrawal that as per the judgment in *Brihaspati Bai Vs. Mohanlal Chintaram and others (supra)* interference on the ground of pecuniary jurisdiction could not be made mechanically and technically and in absence of any prejudice caused, the order need not be interfered with. Thus, the question is whether any prejudice is caused to the defendant/petitioner in passing the order Annexure P-5 dated 29.11.2010? A bare perusal of the order

would show that issue No. 1 and 2 are regarding the merits of the matter. On merits, these issues are answered against the defendant/petitioner. Thus, it cannot be said that despite giving the finding on merits against the defendant/petitioner, no prejudice is caused to him. I am unable to hold that the impugned order Annexure P-5 has not actually caused any prejudice to the petitioner. Thus, Brihaspati Bai Vs. Mohanlal Chintaram and others (supra) is of no assistance to the learned counsel for the respondents.

17. On the basis of aforesaid analysis, it can be safely concluded as under:-

(1) The trial Court was justified in answering the issue No. 3 and 5 in favour of the defendant holding that the valuation was improper and as per valuation the suit was not tenable.

(2) After having given finding that the Court had no pecuniary jurisdiction, the trial Court has erred in dealing with the merits of the matter which caused prejudice to the petitioner/ defendant.

(3) The Appellate Court committed an error in disturbing the finding with regard to valuation/ pecuniary jurisdiction of the court below.

18. Consequently, the appellate order dated 2.5.2011 is set aside. The order dated 29.11.2010 is also set aside except the direction of the trial Court whereby the plaint was directed to be returned to the petitioner to file it before the Court of competent jurisdiction. Petition stands allowed to the extent indicated above. No costs.