

(2005) 11 SHI CK 0012

In the High Court Of Himachal Pradesh

Case No : Regular Second Appeal No. 406 of 2004

Sheela Nehru

APPELLANT

Vs

Nirmala Sharma and Others

RESPONDENT

Date of Decision : 29-11-2005

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 7 Rule 11

Citation : (2006) 1 ShimLC 208

Hon'ble Judges : V.M. Jain, J

Bench : Single Bench

Advocate : G.C. Gupta and Mohinder Gautam, for the Appellant; B.K. Sood and K.S. Verma for Respondent Nos. 1 and 3, for the Respondent

Judgement

V.M. Jain, J.—This Regular Second Appeal has been filed against the judgment and decrees of the Courts below whereby the suit filed by the plaintiff was dismissed by the trial Court and the appeal filed by her was also dismissed by the learned District Judge.

2. The plaintiff had filed a suit for declaration and injunction. One of the issues i.e. Issue No. 6 framed in the case was as to whether the suit has not been properly valued for the purposes of Court fee and jurisdiction. The learned trial Court while deciding this suit had decided Issue No. 6 against the plaintiff and it was held that the suit had not been properly valued for the purposes of Court fees and that the plaintiff was required to pay additional Court fee of Rs. 4080.70P. It was further directed that the plaintiff shall affix the requisite Court fee within one month from the date of the judgment failing which the same shall be recovered from the plaintiff as per law. The learned trial Court also decided the other issues on merits against the plaintiff and on the basis thereof, vide judgment and decree dated 29.6.2002 the suit was dismissed.

3. Aggrieved by the same, the plaintiff filed an appeal and the defendants ? filed cross-objections. After hearing both the sides, the learned District Judge accepted the cross-objections of the defendants but dismissed the appeal filed by

the plaintiff. While dismissing the appeal of the plaintiff, the learned District Judge upheld the finding of the trial Court holding that the suit was not correctly valued for the purpose of Court fee and that the plaint filed by the plaintiff was liable to be rejected because the plaintiff admittedly had not paid the requisite Court fee despite the orders passed by the trial Court within the specified period. On merits as well, the learned District Judge upheld the findings of the trial Court against the plaintiff. Resultantly, the appeal filed by the plaintiff was dismissed. Aggrieved by the same, the plaintiff filed the present Regular Second Appeal in this Court.

4. On 27.10.2005 when the appeal came up for hearing, the learned Counsel appearing for the appellant submitted before me that under Issue No. 6 when the trial Court found that the plaintiff had not paid the requisite Court fees and was required to pay further Court fee of Rs. 4080.70 p. the trial Court should have ordered the return of the plaint instead of dismissing the suit.

5. After hearing the learned Counsel and perusing the record, I called upon the plaintiff/appellant, through her counsel, to intimate as to whether the plaintiff/appellant is prepared to make good the deficiency in the payment of Court fees on the plaint and the case was adjourned to for 29.11.2005 i.e. today. It was made clear that in case the requisite Court fees was not paid by the said, date, necessary consequences shall follow.

6. Today when the case came up for hearing before me, the learned Counsel appearing for the plaintiff/appellant submitted before me that the plaintiff/appellant is not prepared to pay the requisite Court fees on the plaint. As referred to above, the trial Court had found that there was deficiency of Rs. 4080.70P in the payment of Court fees on the plaint and the plaintiff was called upon to pay the same within one month from the date of judgment. Admittedly, the said Court fee was not paid within the specified period. Furthermore, the learned District Judge had also upheld the finding of the trial Court regarding the payment of Court fees and it was also found that the plaint was liable to be rejected. However, no order was passed by the learned District Judge in this regard and the appeal was otherwise dismissed on merits.

7. As referred to above, the plaintiff is not prepared to pay the requisite Court fees on the plaint. This is inspite of the fact that time to pay the requisite fees was granted to the plaintiff not only by the trial Court in the judgment dated 29.6.2002 but time was also granted by me vide order dated 27.10.2005.

8. Considering that the plaintiff is not ready to pay the requisite Court fees on the plaint, in my opinion, the plaint filed by the plaintiff is liable to be rejected for want of requisite Court fees, as provided under Order 7 Rule 11(b) C.P.C.

In view of the above, the present appeal is disposed of with the direction that the plaint filed by the plaintiff shall stand rejected under Order 7 Rule 11(b) C.P.C.