

(2013) 02 MP CK 0073
In the Madhya Pradesh High Court
Case No : First Appeal No. 22 of 2010

Smt. Meenakshi Gavli Baghel

APPELLANT

Vs

Sujeet Baghel

RESPONDENT

Date of Decision : 11-02-2013

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 7 Rule 11
Hindu Marriage Act, 1955 — Section 13, 13(1), 2(2), 24

Citation : (2013) 02 MP CK 0073

Hon'ble Judges : Shantanu Kemkar, J; M.C. Garg, J

Bench : Division Bench

Advocate : A.K. Sethi, with Mr. Kamal Airen, for the Appellant; Rohit Mangal, Learned Counsel, for the Respondent

Judgement

M.C. Garg, J.—This first appeal arises out of the order dated 12.11.2009 of the learned Family Court, Indore in H.M.A. Case No. 829/08 by disposing of the application under Order 7 Rule 11 CPC thereby rejecting the plaint. Today, the appeal is taken up for final hearing with the consent of the parties. Record has also been received. Briefly stating the facts giving rise to the filing of this appeal are that a divorce petition u/s 13 of the Hindu Marriage Act, 1955 was filed by the appellant before the family Court, wherein pleadings were made that the parties to the petition were Hindu and that the liss was governed under the provisions of Hindu Marriage Act, 1955. Allegations have been made against respondent of treating the appellant with cruelty and therefore a decree of dissolution of marriage was sought u/s 13 of the Hindu Marriage Act. The appellant also filed an application u/s 24 of the Hindu Marriage Act claiming maintenance from the respondent.

2. The respondent did file a written statement. In the written statement, the respondent denied that the parties were governed by the provisions of Hindu Marriage Act. Before awaiting filing of any reapplication by the appellant to the aforesaid written statement, the respondent filed an application under Order 7

Rule 11 CPC praying for rejection of the plaint on the ground that in the light of the Section 2(2) of the Hindu Marriage Act, the respondent being a member of Scheduled Tribe, the provisions of Hindu Marriage Act were not applicable in his case and therefore the petition filed by the appellant u/s 13(1) of the Hindu Marriage Act being not maintainable was liable to be rejected. Para 3 of the averments made in the said application is reproduced hereunder:-

3. A reply to the aforesaid application was filed on behalf of the appellant which reads as under:-

4. The trial Court instead of framing issues on the basis of pleadings of the parties, and stand taken by the respondent about the applicability of Hindu Marriage Act, rejected the plaint under Order 7 Rule 11 CPC, taking note of the provisions contained u/s 2(2) of the Hindu Marriage Act. The relevant observations made by the trial Court are reproduced hereunder:-

5. Despite denial of this averments by the appellant, the family Court virtually rejected the plaint and passed the following order:-

6. The reading of this order shows that the trial Court has accepted the plea taken by the respondent that the suit filed by the appellant was barred under the provisions of Section 2(2) of the Hindu Marriage Act even though the averments made in para 3 of the application under Order 7 Rule 11 CPC was denied.

7. We have heard the submissions on behalf of the parties and have also perused the provisions contained under Order 7 Rule 11 CPC which reads as under:-

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 returned 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 from 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.]

8. A bare perusal of the aforesaid provisions goes to show that the order of rejection of plaint can only be passed if there is a unanimity of the parties on the factual aspect of the matter and that the plain reading of the plaint makes out a case for rejection of the plaint in terms of Order 7 Rule 11 CPC. However, if the facts pleaded in the plaint are not such which calls for an Order under 7 Rule 11 CPC then, the suit is required to be sent for trial. In so far as non-application of the provisions of Hindu Marriage Act is concerned, the learned counsel appearing for the appellant in the plaint as well as during the course of arguments submitted that he has not accepted the plea taken by respondent in his application under Order 7 Rule 11 CPC that the parties were not governed by the provisions of Hindu Marriage Act and infact para 3 of the averments made in the application was denied by the appellant specifically. In this regard, it would be relevant to take note of the judgment delivered by Hon"ble the Supreme Court in the case of Mayar (H.K.) Ltd. and Others Vs. Owners and Parties, Vessel M.V. Fortune Express and Others, , wherein it has been held as under:-

11. From the aforesaid, it is apparent that the plaint cannot be rejected on the basis of the allegations made by the defendant in his written statement or in an application for rejection of the plaint. The Court has to read the entire plaint as a whole to find out whether it discloses a cause of action and if it does, then the plaint cannot be rejected by the Court exercising the powers under Order VII, Rule 11 of the Code. Essentially, whether the plaint discloses a cause of action, is a question of fact which has to be gathered on the basis of the averments made in the plaint in its entirety taking those averments to be correct. A cause of action is a bundle of facts which are required to be proved for obtaining relief and for the said purpose, the material facts are required to be stated but not the evidence except in certain cases where the pleadings relied on are in regard to misrepresentation, fraud, willful default, undue influence or of the same nature. So long as the plaint discloses some cause of action which requires determination by the court, mere fact that in the opinion of the Judge the plaintiff may not succeed cannot be a ground for rejection of the plaint. In the present case, the averments made in the plaint, as has been noticed by us, do disclose the cause of action and, therefore, the High Court has rightly said that the powers under Order VII, Rule 11 of the Code cannot be exercised for rejection of the suit filed by the plaintiff-appellants.

We therefore dispose of this appeal by setting aside the order dated 12.11.2009 of the learned Family Court with a direction to the Family Court to invite reapplication and then frame issues on the basis of the pleadings of the parties, and the facts of the case. The trial Court would certainly be entitled to frame a preliminary issue as to the applicability of Section 2(2) of the Hindu Marriage Act

in this case and then pass appropriate orders after hearing the parties.
C.C. as per rules.