

(2001) 10 SHI CK 0023

In the High Court Of Himachal Pradesh

Case No : Regular Second Appeal No. 76 of 2001

Smt. Sunita Devi

APPELLANT

Vs

Smt. Sangita Kumari and Others

RESPONDENT

Date of Decision : 29-10-2001

Acts Referred:

Himachal Pradesh Court Fees Act, 1968 — Section 5
Suits Valuation Act, 1887 — Section 8

Citation : AIR 2002 HP 39 : (2001) 3 ShimLC 385

Hon'ble Judges : K.C. Sood, J

Bench : Single Bench

Advocate : K.D. Sood, for the Appellant; Bhuvnesh Sharma, for the Respondent

Final Decision : Allowed

Judgement

Kuldip Chand Sood, J.—This appeal is directed against the judgment and decree of the learned Additional District Judge (I), Kangra at Dharamashala dated 20.1.2001.

2. It appears Plaintiff filed a suit for declaration and permanent injunction to the effect that Plaintiff is the sole owner in possession of the properties detailed in the heading (A) of the plaint with a consequent relief of permanent prohibitory injunction restraining the Defendants from interfering with the possession of the Plaintiff over the suit properties. In alternative, Plaintiff prayed for a decree of possession of the properties in question.

3. The case of the Plaintiff was that her father Mast Ram was the owner of the properties. The father of the Plaintiff expired on 25.4.1983. Her mother Ram Piari pre-deceased her father and the Plaintiff being the only daughter was entitled to succeed the properties of her father which are situate in village Ghartholi, Mauza and Tehsil Baijnath, District Kangra, Himachal Pradesh and also in the town of Baijnath. It was pleaded that Defendant No. 1 Sunita Devi was not legally wedded wife of her father and, therefore, had no right to inherit or succeed to

the properties of her father and even if such marriage took place, then such marriage was illegal, null and void as the marriage was solemnised during the life time of Ram Piari. It was further case of the Plaintiff that Defendant No. 1 being a clever woman and taking undue advantage of the minority of the Plaintiff has misrepresented facts to the Revenue Officer and got the inheritance of Mast Ram sanctioned in her favour to the extent of half share claiming herself to be widow of deceased Mast Ram.

4. Defendants resisted the suit. Allegations were controverted. The case of the Defendant Sunita Devi was that she was legally wedded wife of deceased Mast Ram and, therefore, inherited the properties of the Plaintiff to the extent of half share. It was denied that Plaintiff was the, sole legal heir of Mast Ram and entitled to succeed to entire properties to the exclusion of Defendant No, 1. It was also pleaded that Mast Ram, divorced the mother of the Plaintiff during his life time and she was getting maintenance allowance of Rs. 100 per month and the/it is only after divorce that Mast Ram married Sunita Devi. Subsequently written statement was amended and a plea was raised that the suit was not properly valued for the purposes of court fee and jurisdiction.

5. On the pleadings of the parties several issues were settled by the learned trial Court including issue No. 7-A which reads as under:

7-A. Whether the suit is properly valued for the purpose of court fee and jurisdiction? OPP.

6. Learned trial Court decreed the suit for possession of the properties subject matter of dispute. So far findings on issue No. 7-A are concerned, learned trial Judge merely observed "Since the Plaintiff has filed suit for declaration and permanent injunction and she has affixed court fee and jurisdiction properly, therefore, this issue is decided in favour of Plaintiff."

7. Aggrieved Defendant Sunita Devi carried in appeal before the learned District Judge which was dismissed by the impugned judgment and decree.

8. This appeal was admitted on the following substantial questions of law:

1. Whether the principle of factum valet applies to the present case and by application of such principle, the Defendant-Appellant is to be treated as widow of Mast Ram?

2. Whether the suit as filed by the Plaintiff-Respondent is within time?

3. Whether the first appellate Court has erred in not allowing the Defendant-Appellant to lead additional evidence after framing of the additional issues?

4. Whether the trial Court had no pecuniary jurisdiction to go into the dispute between the parties?

9. Having heard the learned Counsel for the parties, I am of the view the appeal is liable to be allowed on the ground that the suit was not properly valued for the

purposes of court fee and jurisdiction.

10. Mr. K.D. Sood, learned Counsel for the Appellant submit that Defendant has raised a specific plea about the valuation of the suit for the purpose of court fee. Contention is that the learned Sub Judge, when the suit tried by him had jurisdiction to try the suit upto valuation of Rs. two lacs and as the property subject matter of dispute was more than Rs. two lacs, therefore, learned trial Court lacked the jurisdiction to try this suit. It may be noticed that the learned Sub Judge under Issue No. 7-A concluded that as the Plaintiff had filed a suit for declaration and permanent injunction and has affixed the Court fee properly thereon, therefore, the suit was properly valued fro the purposes of court fee and jurisdiction. However, learned trial Court proceeded to decree the suit for possession of the suit properties which according to the learned trial Judge was in possession of Defendant No.1 without going into the question whether the suit was properly valued for the purposes of relief of possession.

11. Learned Additional District Judge in appeal in para 10 of the judgment noticed that in the grounds of appeal the findings of the trial Court on issue No. 7-A were challenged and in para 25 of the judgment dealing with the question took a view that as part of the suit properties assessed to land revenue and the Plaintiff is also shown to be in possession as per revenue record. Therefore, it cannot be said that the suit has not been properly valued for the purpose of court fee and jurisdiction. He also concluded that the payment of court fee was a matter between the State and the Plaintiff and court need not be technical while considering this question and these objections ought to have been taken at the earliest, before the trial Court. Learned Additional District Judge proceeded to observe that there is nothing on record to show as to what is the exact value of the suit property.

12. The onus to prove that the suit was properly valued for the purposes of Court fee was on the Plaintiff and, therefore, it was for the Plaintiff to show as to what was the correct value for the purpose of court fee and jurisdiction. It was not given to the learned first appellate court to have dismissed the objection of the Defendant-Appellant on the ground that the record lacked evidence as to the exact value of the suit property.

13. Paragraph V of Section 5 of the Himachal Pradesh Court Fees Act. governs the valuation of the suit for the purpose of court fee in respect of houses and gardens, clause (e) of para-5 of Section 7 stipulates that suits for possession of the houses and gardens shall be valued for the purposes of court fee in accordance with the market value of such houses or gardens.

14. Plaintiff did not lead any evidence on this aspect of the case. Defendant Sunita Devi appearing as DW-1 stated that the building consisting of rooms and shops in Baijnath Bazar was of the value of Rs. 4 to 5 lacs in the year 1989 and house at village Ghartholi was of the value of Rs. 1.5 lacs. Sunita Devi was not cross-examined on this aspect of the case. In cross-examination, she was put a

suggestion that in her application for being appointed as guardian of the Plaintiff, she had valued the property at Rs. 35,000. This suggestion was, however, denied.

15. Shanti Sarup (DW-2) in his evidence stated that the value of the property at Baijnath was Rs. 7 to 8 lacs and the property in village Ghartholi was worth/ rupees one lac about eight years prior to his deposition which was made in the year 1989.

16. Thus, there is prima facie evidence to show that subject matter of the relief of possession which has been granted to the Plaintiff was more than Rs. two lacs, though exact value could not be determined as noticed by the learned first appellate Court for want of proper acceptable evidence.

17. Apparently if the value of the property in respect of which relief of possession has been granted to the Plaintiff was more than Rs. two lacs, learned trial Court lacked jurisdiction to try the suit.

18. In the present case Plaintiff affixed the value of the suit for the purposes of court fee both for declaration and possession at Rs. 130 and similarly for the purposes of jurisdiction has been affixed at Rs. 130 for the purposes of declaration and for the purposes of possession at Rs. 20 which apparently is not correct.

19. u/s 8 of the Suit Valuation Act; it is the market value of the property in respect of which possession is sought, which will have to be taken into consideration for determining the value of the suit for the purposes of jurisdiction and, it is not open to the Plaintiff to arbitrarily fix the value of the suit for the purposes of court fee and jurisdiction. In these circumstances, there is no alternative but to remand the case back to the learned trial Court to determine the value of the suit for the purposes of Court fee and jurisdiction.

20. In result appeal is allowed. The judgment and decree of the learned trial Court as well as the first appellate court are set aside. The case is sent back to the learned trial court for decision afresh after giving opportunity to the parties to lead evidence only on issue No. 7-A in accordance with law.

21. It is expected, in view of the fact that this civil suit is pending since 1989, the trial Court shall make all out efforts to dispose of this suit as expeditiously as possible. Parties are directed to appear before the learned trial Court on 5.12.2001. No. order as to costs.