

(2015) 05 CHH CK 0001
In the Chhattisgarh High Court
Case No : M.A. No. 42 of 2014

Urvashi Bai Sharma and Others

APPELLANT

Vs

Indumati Sharma and Others

RESPONDENT

Date of Decision : 15-05-2015

Acts Referred:

Court Fees Act, 1870 — Section 7, 7(iv), 7(iv)(c), 7(iv)(d), 7(v)(a)
Suits Valuation Act, 1887 — Section 8

Citation : AIR 2015 Chh 94 : (2015) 3 CGLJ 75

Hon'ble Judges : Goutam Bhaduri, J

Bench : Single Bench

Advocate : Parag Kotecha, for the Appellant; Pallav Mishra and S.C. Khakharia,
Dy. A.G., Advocates for the Respondent

Final Decision : Allowed

Judgement

Goutam Bhaduri, J.—Challenge in this appeal is to the order dated 11-2-2014 passed in Civil Suit No. 21-A/2012 by the learned Additional District Judge, Mungeli, wherein, the Court of Additional District Judge has ordered for return of the plaint on the ground that the valuation of jurisdiction of Rs. 12 Lacs has not been properly explained and held that on calculating the land revenue of the disputed property i.e. 20 times of the land revenue, it comes to Rs. 96/- which is less than paid Court fees of Rs. 500/- each for declaration and injunction. Consequently, the Court has held that the Court of Additional District Judge does not have jurisdiction to entertain the suit and has ordered for return the suit to file in the proper Court of Civil Judge. The relevant facts and averments in the plaint are that a suit is filed by one Smt. Urvashi Bai Sharma, widow of Ishwar Prasad and Ashok Sharma against Smt. Indumati Sharma, Ramadhar Sharma, Ramsahay Sharma and Parmeshwar Sharma. The plaintiffs and defendants have shown to be relative and the property is claimed through one Ishwar Prasad, who died on 20-5-1994. The suit property is described in Schedule "A" of the plaint. It is stated that in respect of the suit property, the plaintiffs are in possession and since after death of Ishwar Prasad, the name of the plaintiff along with her

daughters were recorded in revenue records by an order passed in Revenue case No. 104 A-6/1994-95. It is pleaded that subsequently, the defendants also got their name recorded in respect of such land and along with it the names of the daughters of the plaintiff were deleted. Therefore, the suit for declaration and permanent injunction was sought for.

2. The cause of action stated to arose on 28-5-1994 when the defendants filed an application before the Tahsildar and got their name recorded and subsequently it is pleaded that when the name of four daughters of the plaintiff were deleted on 20-9-2009 and lastly on 28-11-2011 when an application was filed before the Tahsildar, Mungeli, for partition of the said land. In the said plaint on the basis of aforesaid pleading, declaration was sought for that the property described in Schedule "A" be declared as joint property and the plaintiffs are in possession thereof. Perusal of plaint averments shows that declaration was sought for under Article 17 of the Court-fees Act and fixed Court fees of Rs. 500/- was affixed. Further for permanent injunction fixed Court fees of Rs. 500/- was affixed.

3. After the notice of the suit an application was preferred under Order 7, Rule 10 of CPC by the defendants. It is stated therein that the suit which is filed is covered within the jurisdiction of First Civil Judge Class-II and therefore, the suit cannot proceed before the First Additional District Judge and it was prayed that since the suit is not properly valued, the suit be returned to be filed to the proper Court.

4. On the basis of the said application, the learned Court below has passed the order, which is a subject of appeal.

5. The learned counsel for the appellant would submit that the suit was valued according to Schedule-II, Article 17(iii) of the Court-fees Act. The suit is predominantly for the declaration, which is governed by Article 17(iii) of Schedule-II of the Court-fees Act and fixed Court fees is paid. He further submits that the expression "consequential relief in Section 7(iv)(c) of the Court-fees Act means some relief which would flow directly from the declaration given, the valuation of which is not capable of being definitely ascertained and which cannot be claimed independently of the declaration as a "substantial relief. He therefore placed his reliance in Balwant Singh and another Vs. Nand Lal others, (1987) 1 LJ 560 : (1988) MPLJ 246 and Subhash Chand Jain Vs. The Chairman, M.P. Electricity Board and Others, AIR 2001 MP 88 : (2000) ILR (MP) 903 : (2001) 1 LJ 81 : (2000) 4 MPHT 318 : (2000) 3 MPLJ 522 and submits that the Court cannot interfere simply because some objection has been raised without any supporting material and prays to set aside the order.

6. Reading the order would reflect that the Additional District Judge has observed that since the declaration in respect of agricultural land has been sought for, the Court fees therein would be 20 times of the land revenue and since the Court fees is paid of Rs. 500/-, which is much higher to 20 times of the land revenue of

the suit land and therefore, observed that the suit is over-valued. In a result thereof it was directed to be returned to be presented to the Court having jurisdiction.

7. In the matter of Court fees, the Supreme Court in case of S.Rm.Ar.S.Sp. Sathappa Chettiar Vs. S.Rm.Ar.Rm. Ramanathan Chettiar, AIR 1958 SC 245 : (1958) 1 SCR 1021 has held that the question of court-fees must be considered in the light of the allegations made in the plaint and its decision cannot be influenced either by the pleas in the written statement or by the final decision of the suit on the merits. Subsequently, the same view was followed in case of Shamsher Singh Vs. Rajinder Prashad and Others, AIR 1973 SC 2384 : (1973) 2 SCC 524 : (1974) 1 SCR 322 : (1973) 5 UJ 784 wherein again the Supreme Court reiterated that the court-fee payable on a plaint is certainly to be decided on the basis of allegations and the prayer in the plaint and the question whether the plaintiff's suit will have to fail for failure to ask for consequential relief is of no concern to the Court at that stage and the Court while deciding the question of court-fee should look into the allegations in the plaint to see what is the substantive relief that is asked for.

8. The Supreme Court further in case of Suhrid Singh @ Sardool Singh Vs. Randhir Singh and Others, AIR 2010 SC 2807 : (2010) 3 JT 472 : (2010) 158 PLR 707 : (2010) 3 SCALE 389 : (2010) 4 SCR 1121 : (2010) AIRSCW 3308 : (2010) 2 Supreme 670 has laid down that in suits for declaratory decree with consequential relief, the Court fee shall be computed according to the amount at which the relief sought is valued in the plaint. The Court has further held the proviso thereto makes it clear that where the suit for declaratory decree with consequential relief is with reference to any property, such valuation shall not be less than the value of the property calculated in the manner provided for by clause (v) of Section 7.

9. In the case in hand, the plaint allegation would reveal that the relief is sought for declaration that the property is a joint property and further prayer is made for injunction that the defendant be restrained to interfere in the Schedule property. Reading of the plaint allegation therefore would reflect that the injunction which is being prayed for, flows from the declaratory relief as would be evident from the plaint allegation that independently the consequential relief could not have survived without relief of declaration.

10. The relevant section governing the case would be Section 7(iv)(c) of Court-fees Act and Schedule-II of Article 17 of the Court-fees Act, 1870 as prevailing in State of Chhattisgarh.

11. For the purpose of discussion, Section 7 of the Court-fees Act is reproduced herein-below.

(A). "7. Computation of fees payable in certain suits.-- The amount of fee payable under this Act in the suits next hereinafter mentioned shall be computed as follows:

* * *

(iv) In suits--

* * *

(c) for a declaratory decree and consequential relief.-- to obtain a declaratory decree or order, where consequential relief is prayed.

(d) for an injunction.-- to obtain an injunction,

* * *

according to the amount at which the relief sought is valued in the plaint or memorandum of appeal. In all such suits the plaintiff shall state the amount at which he values the relief sought;

(B). Article 17 of SCHEDULE-II reads as under:--

12. The Supreme Court way back in 1958 has held the value for the purpose of jurisdiction to be decided by reading of Section 7(iv) of the Court-fees Act along with Section 8 of the Suits Valuation Act. Section 8 of the Suits Valuation Act provides that where in any suits other than those referred to in Court-fees Act, Section 7, paras 5, 6 and 9 and para 10, Clause (d), court-fees are payable and ad valorem under the Act, the value determinable for the computation of court-fees and the value for the purposes of jurisdiction shall be the same. In other words, so far as suits falling under Section 7, sub-section (iv) of the Court-fees Act are concerned, Section 8 of the Suits Valuation Act provides that the value as determinable for the computation of court-fees and the value for the purposes of jurisdiction shall be the same. There can be little doubt that the effect of the provisions of Section 8 is to make the value for the purpose of jurisdiction dependent upon the value as determinable for computation of Court-fees and that is natural enough. The computation of court-fees in suits falling under Section 7(iv) of the Court-fees Act depends upon the valuation that the plaintiff makes in respect of his claim.

13. The result is that the amount at which the plaintiff has valued the relief sought for, for the purpose of Court-fees can determine the value for the jurisdiction in the suit and not vice versa. The M.P. High Court in case of Dharmraj Singh Vs. Vaidya Nath Prasad Khare and Others, (2002) 1 MPHT 301 : (2002) 1 MPLJ 458 the Court at para 5 of its judgment observed as under:

"5. For claiming the relief of permanent injunction the Court fee payable is as per Section 7(iv)(d) of the Act. The plaintiff is at liberty to put his own valuation on such a relief, of course, it should not be wholly unreasonable or arbitrary. This has been clarified in Raj Kaur Randhawa (Smt.) Vs. Kinetic Gallery and Another, (2000) 1 JLJ 67 : (2000) 1 MPJR 497 : (2000) 2 MPLJ 72 that in cases falling within paragraph (iv) of Section 7, the plaintiff is entitled to put his own valuation.; The Court normally accepts the valuation put by the plaintiff if it is not too low or high.

14. The plaint averment would" show that the plaintiff has stated that they are in possession of the land and declaration "has been sought, in such situation he is required to pay fixed Court fees as per Article 17 Schedule-II of the Court-fees Act on the said declaration claimed by him. As would be evident a fixed court fee of Rs. 500/- is prescribed under Schedule-II, Article 17 of the Court-fees Act in Chhattisgarh and in such case on payment of fixed Court fees, the jurisdiction that would be of Additional District Judge or District Judge. The plaint averment also shows that the plaintiff has valued the suit for the purpose of injunction u/s. 7(iv)(d) of the Act and pay the Court-fees of Rs. 500/-. The market value of the property is not the criterion for valuation under any of the clauses of Section 7(iv) of the Act. It is the value of the relief sought that is the basis. The plaintiff has valued the suit for relief for declaration and a fixed court fee of Rs. 500/- is paid according to Schedule-II of Article 17. In a case where fixed court fee is payable as per Schedule-II of the Article 17 of the Court-fees Act for relief of declaration, the question is what should be the value for the purpose of pecuniary jurisdiction. Section 8 of the Suits Valuation Act is inapplicable in this respect of the Court fee is not payable ad valorem but it is fixed Court fee which is payable. In a suit in which fixed Court fee is payable as per Article 17 Schedule-II of the Court-fees Act, the market value of the immovable property, is normally the criterion for purposes of the pecuniary jurisdiction.

15. In the present case, the copy of the plaint reveals that market value has been shown to Rs. 12,00,000/- so far as relief for declaration is concerned, it cannot be said to be improper. The plaintiff is not required to pay the Court fees on the valuation for the purpose of pecuniary jurisdiction. In the present case, the plaintiff has paid the fixed Court fees of Rs. 500/-, it would reveal from the plaint that after for relief declaration, the plaintiff has paid the fixed Court fees of Rs. 500/- as per Schedule-II Article 17 of the Court-fees Act.

16. On an application filed under Order 7, Rule 10 by the defendants, it was averred that the proper valuation has not been made and consequently on the submission made the learned Trial Court has directed for return of the plaint and to present before the Court of Civil Judge calculating the jurisdiction to 20 times of the land revenue. The learned Court below further misdirected itself by resorting Section 7, Clause (v)(a) of the Court-fees Act, 1870 which prescribed the method of computing the Court fees in respect of the land assessed to the land revenue. The Court failed to take into notice that Claus-(v) of Section 7 of the Court-fees Act, will be applicable, wherein possession of the land is claimed and said land is assessed to the land revenue.

17. Here the plaint averment would show that the possession of the land has not been claimed. Therefore, such method of calculating the Court fees on the basis of the land revenue is completely misreading of Section 7(v)(a) of the Court-fees Act.

18. In view of the forgoing discussion, it is observed that the plaintiff is free to value his suit for the purpose of pecuniary jurisdiction and so far the claim of

declaration is concerned. When fixed Court fees is paid according to the Schedule-II, Article 17 of the Court-fees Act, on payment of fixed Court fee as subject matter was triable by the Court of Additional District Judge, the plaint could not have been returned in the matter adopted by the learned trial Court. Consequently, the order dated 11-2-2014 is set-aside.

19. The parties are directed to appear before the Court of Additional District Judge, Mungeli for further hearing of the suit on 26th June, 2015. In a result, the appeal is allowed. No order as to costs.