

**Ramvilash Vs. Omprakash**

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**Court :** Madhya Pradesh

**Decided On :** Sep-05-2014

**Judge :** Rohit Arya

**Appeal No. :** W.P. No. 2207 of 2013(I)

**Appellant :** Ramvilash

**Respondent :** Omprakash

**Judgement :**

Rohit Arya, J:

1. Shri Shishir Saxena, Advocate for petitioners. Shri Mahesh Goyal, Advocate for respondent No.1. Shri Ravi Gupta, Advocate for respondent no.9.

2. This petition under Article 227 of the Constitution of India is directed against the order dated 14/12/2012 in Civil Suit No.3A/2012, wherein defendants' application under Order VII Rule 11 CPC has been rejected.

3. Facts necessary for disposal of this petition are to the effect that respondents/plaintiffs have filed a suit for declaration, injunction, partition and possession. During pendency of the suit an application under Order VI Rule 17 CPC was filed where-under plaintiffs sought to clarify the fact as regards actual property for seeking their specific share and, therefore, had sought amendment that instead of three houses, as stated in the plaint, in fact there is only one house

of which 1/3rd share has been sought for partition and possession. Amendment was allowed as the same was found to be not changing the nature of the suit. As a sequel thereto defendants no.1 to 3 have filed an application with the contention that by amendment since plaintiffs have sought 1/3rd share of the suit house and also that of possession, therefore, the court fees ought to be paid for partition and for possession. Trial court passed the order that the plaintiffs shall pay the court fees on the basis of valuation of share in the suit house and for the the relief of possession. It appears that plaintiffs did not pay the court fees as was indicated in the order dated 19/1/2011. Defendants no.1 to 3 under such circumstances filed an application under Order VII Rule 11 CPC inter alia contending that as the plaintiffs have failed to comply with the order dated 19/1/2011 in the matter of payment of court fees, therefore, the suit deserves to be dismissed. The application was resisted by the plaintiffs/respondents with the contention that amendment has been carried out and requisite court fees is already affixed in the suit memo. and, therefore, prayed for dismissal of the application.

4. The trial court with reference to order dated 19/1/2011 has observed that plaintiffs have sought declaration, permanent injunction as regards 1/3rd share in the suit house and have accordingly valued the suit and paid the court fees and, therefore, under such circumstances application under Order VII Rule 11 CPC is found to be misconceived and accordingly dismissed the same.

5. Learned counsel for the petitioners submitted that once the court had allowed the amendment, where-under plaintiffs have sought relief of partition and possession of 1/3rd share in the suit property, plaintiffs ought to have affixed the court fees as provided for under Section 7 (vi-a) of the Court Fees Act, which deals with the court fees payable in a suit for partition. Section 7(vi-a) reads as under:-

"7 (vi-a) in suits for partition.-

(a) according to one half of the value of the plaintiff's share of the property; and

(b) 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."

6. It is contended that admittedly the plaintiffs are not in possession of the suit house. Further defendants have denied that the property is the joint family property and plaintiffs are the co-parcener. Under such circumstances, in the light of the relief claimed, plaintiffs were liable to pay the court fees on the full value of the share they have demanded i.e. 1/3rd share of the suit house. That having not been done, the trial court ought to have dismissed the suit. It is contended that the trial court while rejecting the application under Order VII Rule 11 CPC did not consider the fact of amendment as regards relief of 1/3rd share in the suit house and for delivery of possession: the twin reliefs incorporated vide amendment. As such, the order impugned also suffers from patent perversity, which has resulted into apparent illegality.

7. Learned counsel has also referred to judgment of the Coordinate Bench at Principal Seat, Jabalpur dated 11/8/2006 in Writ Petition No.2415/2006 to bolster his submissions.

8. Per contra, the counsel for respondents/plaintiffs contended that conversion of plaintiffs undivided share in joint family property into separate share cannot be easily valued with precision and definiteness and has submitted that option is always left to the plaintiffs to value the suit with due regard to relief sought for the purpose of court fees. That determines the value for jurisdiction. Therefore, it is submitted that the valuation shown in the suit and court fees paid thereon has rightly been not interfered with by the trial court. The trial court was justified dismissing the application under Order VII Rule 11 CPC.

9. Heard.

10. On factual matrix there is no dispute between the parties that nature of the suit is that of declaration, injunction, partition and possession. The relief claimed therein to the effect amongst others is for declaration of 1/3rd share in the suit house with further relief for delivery of possession thereof. Fixed court fees has been paid purportedly for declaration and permanent injunction, but for seeking the

relief of partition i.e. 1/3rd share with delivery of possession the plaintiffs were required to value the suit for the said relief and pay ad valorem court fees. That has not been done. The Hon'ble Supreme Court in the case of S. Ram. Ar. S. Sp. Sathappa Chettiar v. S. Ram. Ar. Rm. Ramanathan Chettiar, AIR 1958 SC 245, (paras 14 and 15) has held as under.

"14. The question which still remains to be considered is whether the Division Bench was justified in directing the appellant to pay court fees both on the plaint and on the memorandum of appeal on the basis of the valuation for 15,00,000. In our opinion, the appellant is justified in contending that this order is erroneous in law. Section 7, sub-s. (iv)(b) deals with suits to enforce the right to share in any property on the ground that it is joint family property and the amount of fees payable on plaints in such suits is "according to the amount at which the relief sought is valued in the plaint or memorandum of appeal." Section 7 further provides that in all suits falling under s. 7(iv) the plaintiff shall state the amount at which the value of the relief is sought. If the scheme laid down for the computation of fees payable in suits covered by the several sub-sections of s. 7 is considered, it would be clear that, in respect of suits falling under sub-s. (iv), a departure has been made and liberty has been given to the plaintiff to value his claim for the purposes of court fees. The theoretical basis of this provision appears to be that in cases in which the plaintiff is given the option to value his claim, it is really difficult to value the claim with any precision or definiteness. Take for instance the claim for partition where the plaintiff seeks to enforce his right to share in any property on the ground that it is joint family property. The basis of the claim is that the property in respect of which a share is claimed is joint family property. In other words, it is property in which the plaintiff has an undivided share. What the plaintiff purports to do by making a claim for partition is to ask the court to give him certain specified properties separately and absolutely on his own account for his share in lieu of his undivided share in the whole property. Now it would be clear that the conversion of the plaintiff's alleged undivided share in the joint family property into his separate share cannot be easily valued in terms of rupees with any precision or definiteness. That is why legislature has left it to the option of the plaintiff to value his claim for the payment of court fees. It really means that in suits falling under s. 7(iv)(b) the amount stated by the plaintiff as the value of his claim for

partition has ordinarily to be accepted by the court in computing the court fees payable in respect the said relief. In the circumstances of this case it is unnecessary to consider whether, under the provisions of this section, the plaintiff has been given an absolute right or option to place any valuation whatever on his relief."

11. In the context of sub section (iv) of Section 7 of the Court Fees Act the authoritative pronouncement by the Hon'ble Supreme Court provides complete guidance in the matter of valuation of the claim for the purpose of court fees and the said valuation made in respect of the claim determines the value for jurisdiction for the nature of suits and relief claimed as specified in the aforesaid provision.

12. In the instant case, suit has been filed for partition and claim for 1/3rd share coupled with delivery of possession but not valued accordingly. The trial court ought to have applied its mind to the factual matrix in hand in terms of the prayer made in the suit bearing in mind the provisions of Section 7 (vi-a) (supra). That has not been done in the instant case and, therefore, the impugned order cannot be sustained in the eyes of law. As such, the trial court is directed to call upon the plaintiffs to value the claim made in the suit and relief sought for the purpose of court fees and that shall be the valuation for the purpose of jurisdiction of the court in the light of Section 7 (vi-a) of the Court Fees Act and the law laid down by the Hon'ble Supreme Court in S. Ram. Ar. S. Sp. Sathappa Chettiar (supra). Also referred to the judgment in the case of M/s Commercial Aviation and Travel Company and others v. Vimla Pannalal, (1988) 3 SCC 423.

13. With the aforesaid observations, the writ petition is disposed of.

Petition allowed.

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