

Bal Kishan and ors. Vs. Vith Additional District Judge and ors.

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Court : Allahabad

Decided On : Mar-24-2003

Reported in : 2003(3)AWC2170

Judge : Rakesh Tiwari, J.

Acts : [Code of Civil Procedure \(CPC\) , 1908](#) - Order 4, Rules 1 and 2 - Order 7, Rule 10

Appeal No. : C.M.W.P. No. 38393 of 1999

Appellant : Bal Kishan and ors.

Respondent : Vith Additional District Judge and ors.

Advocate for Def. : S.K. Mehrotra, S.C.

Advocate for Pet/Ap. : M.B. Mal, Adv.

Disposition : Writ petition dismissed

Judgement :

ORDER

Rakesh Tiwari, J.

1. Heard the learned counsel for the parties and perused the records.

2. This writ petition has been filed by the petitioners challenging the orders dated 25.7.1996 and 3.7.1999, Annexures-4 and 5 to the writ petition.

3. The brief facts of the case are that respondent No. 4 had filed Suit No. 1666 of 1983 in the Court of Munsif City, Kanpur Nagar against the petitioners for permanent injunction for restraining them from interfering and from taking possession in any portion of premises No. 50/88 Hatia, Kanpur Nagar without partition and without clarifying the shares in the house in dispute. The application for temporary injunction filed along with the suit was rejected by the Munsif City, Kanpur Nagar, against which misc. appeal was filed before the District Judge, Kanpur Nagar. The appeal was allowed and the proceedings of the suit restarted in the Court of Munsif City.

4. It is stated that the suit was transferred by the District Judge, Kanpur Nagar from the Court of Munsif City, to the Court of IVth A.C.M.M., in the year 1991.

5. The contention of the petitioner is that when the suit was filed before the Munsif City, the valuation of the suit was shown only Rs. 1,000. On an objection being raised after making enquiry, the valuation of the suit was increased to Rs. 80,000 by the IVth A.C.M.M., Kanpur Nagar. The counsel for the petitioner submits that as the Munsif City had lost jurisdiction to hear and decide the suit because of increase in valuation, the plaint ought to have been returned to the plaintiff for filing afresh under Order IV, C.P.C. read with Order VII Rule 10, C.P.C. Order IV and Order VII Rule 10, C.P.C. are reproduced below :

Order IV of Civil Procedure Code :

Suit to be commenced by plaint--Rule 1.--Every suit shall be instituted by presenting a plaint to the Court or such officer as it appoints in this behalf.

(2) Every plaint shall comply with the rule contained in Orders VI and VII, so far as they are applicable.

Rule 2--Register of suit--The Court shall cause the particulars of every suit to be entered in a book to be kept for the purpose and called the register of civil suits. Such entries shall be numbered in every year according to the order in which the

plaints are admitted.

Order VII Rule 10, C.P.C. Return of Plaint :

(1) Subject to the provisions of Rule 10A the plaint shall at any stage of the suit be returned to be presented to the Court in which the suit should have been instituted.

Explanation.--For the removal of doubts, it is hereby declared that a Court of appeal or revision may direct, after setting aside the decree passed in a suit the return of the plaint under this sub-rule.

Procedure on returning plaint :

(2) On returning a plaint the Judge shall endorse thereon the dates of its presentation and return, the name of the party presenting it and a brief statement of the reasons for returning it.

6. The counsel for the petitioner has relied upon the aforesaid provisions and submitted that the Munsif City, Kanpur Nagar was bound in law to return the suit to the plaintiff, instead by order dated 30.8.1991 sent the suit to the Court of Civil Judge, Kanpur Nagar for registration and numbering of the year according to Order IV Rule 2, C.P.C., as original suit in the Court of Civil Judge, which was illegal and without jurisdiction.

7. Admittedly, the suit was instituted before the Munsif City, Kanpur Nagar, as valuation of the suit was Rs. 1,000 and as such there was no question of returning of the plaint, as the provisions quoted above, did not apply. He does not dispute that the suit was transferred to the competent court and the Court-fee on the increased valuation has been paid. The only grievance of the petitioner is that the suit should have been registered again in the Court of Civil Judge, Kanpur Nagar afresh after it was transferred, as according to him, if the Court is allowed, it would create problem in execution of decree. The petitioners are the respondents in the suit. It is for the plaintiff to get the decree executed. If there is any difficulty, it is the plaintiff, who will face the difficulty and the defendants, who are petitioners should have no grievance about its execution, if suit is allowed.

8. By order dated 13.9.1999 this Court had directed that the suit may proceed but the final decree shall not be passed till 31.12.1999. As is apparent the order was operative only upto 31.2.1999. In any case it would not be proper in the facts and circumstances of this case, to finalise the decree pending. Whenever, there is transfer of suits of higher valuation to a court of competent jurisdiction. On transfer the present suit also must have been registered in the Court of A.C.M.M., Kanpur Nagar.

9. For the reasons stated above, it is not a fit case for interference under Article 226 of the Constitution of India. The writ petition is dismissed. The interim order dated 13.9.1999 is hereby vacated.

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