

Sureshkumar Vs. the State of Madhya Pradesh

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Court : Madhya Pradesh

Decided On : Oct-03-1974

Reported in : AIR1975MP30; 1974MPLJ903

Judge : Shivdayal, J.

Acts : [Suits Valuation Act, 1887](#) - Sections 11; [Code of Civil Procedure \(CPC\) , 1908](#) - Sections 99 - Order 7, Rule 11; [Court Fees Act, 1870](#) - Sections 7

Appeal No. : Civil Revn. No. 118 of 1970

Appellant : Sureshkumar

Respondent : The State of Madhya Pradesh

Advocate for Def. : M.N. Pendharkar, Adv.

Advocate for Pet/Ap. : B.D. Gupta, Adv.

Disposition : Revision dismissed

Judgement :

ORDER

Shivdayal, J.

1. This revision arises from a suit which was instituted in the Court of Civil Judge Class II, Gwalior, the limit of whose pecuniary jurisdiction was Rs. 5,000/-.The trial

Court passed a decree for declaration and injunction against the defendant.

2. On appeal, the learned Additional District Judge, Gwalior, found that the suit was undervalued; that on his own showing it ought to have been Rs. 10,000/-The appellate Court, therefore, set aside the judgment and decree of the trial Court and the suit was remanded to the Civil Judge Class I, Gwalior, with directions to frame all necessary issues and to try the suit afresh according to law,

3. The plaintiff has now come up in revision. The first contention is that by virtue of Section IX of the Suits Valuation Act, the decree of the trial Court could not be set aside. This contention cannot be accepted. It has been held in *Kiransingh v. Chaman Paswan*, AIR 1954 SC 340 that a defect of jurisdiction, whether it is pecuniary or territorial, or whether it is in respect of the subject-matter of the action strikes at the very authority of the Court to pass any decree, and such a defect cannot be cured even by consent of parties. This is subject to the provisions of Section 11 of the Suits Valuation Act. That section lays down two Exceptions, one of them is: unless specific objection was taken in the trial Court. In the present case a specific objection was taken in the trial Court in paragraph 12 of the written statement and an issue was also framed on that objection (Issue No. 4). That being so, Section 11 of the Suits Valuation Act is out of the way.

4. It is then contended by ShriGupta, learned counsel for the petitioner, that by virtue of Section 99 of the Code of Civil Procedure, the decree could not be set aside because of a procedural defect. That contention also cannot be accepted because Section 99 of the C. P. Code does not protect a decree when there is a defect of jurisdiction. In the present case that defect was one of pecuniary jurisdiction of the trial Court, therefore, Section 99, C. P. C. cannot come to the aid of the plaintiff.

5. Lastly, the counsel for the petitioner sought aid of Section 7(iv)(c) of the Court-fees Act and contended that it was in the entire discretion, of the plaintiff to put any value he liked and the Court is bound by that value. It is true that the plaintiff may put any value on the relief under Section 7(iv)(c) of the Court-fees Act, but such value is not binding on the Court and it can refuse to accept that figure. See *Motiram v. Daulat*, AIR 1939 Nag 50 (FB), where it was held that there is nothing in the

Court-fees Act which shows that in cases coming under Section 7(iv)(c), the power which the Court is given by Order 7, Rule 11, C. P. C. is taken away. If the valuation put by the plaintiff is arbitrary and unreasonable, in other words, if the disparity is so great as to show that the plaintiff has not endeavoured to fix a fair value at all but has simply set down a figure which is unreasonable and bears no relation to the value of the right litigated, the Court can interfere and exercise its powers under Order 7, Rule 11 C.P.C. This was followed in *Idol Shri 'Shriji' v. Chaturbhai*, AIR 1965 Madh Pra 4.

6. In the present case it is admittedly stated in the plaint itself that the plaintiff purchased the suit land for Rupees 10,000/-. The judgment of the appeal Court is right. In paragraph 12 of the judgment, the appellate Court has stated reason why instead of directing the return of plaint to the plaintiff he sent the case to the Civil Judge Class I to try the suit. Neither party has raised any objection about it.

7. Before leaving this case, it must be observed that nothing said in the judgment of the Additional District Judge can be read as deciding the question of nonjoinder of parties because when the Court had no jurisdiction its decision that it had no jurisdiction is effective and operative, but other observations are merely obiter.

8. The revision is dismissed with costs.

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