

iqramuddIn and ors. Vs. Nizamuddin

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Court : Rajasthan

Decided On : Nov-09-1989

Reported in : AIR1991Raj42; 1990(1)WLN509

Judge : D.L. Mehta, J.

Acts : Rajasthan Court-fees and Suits Valuation Act, 1961 - Sections 11 and 11(2); Code of Civil Procedure (CPC) - Order 14, Rule 2, 2(1) and 2(2)

Appeal No. : Civil Revision Petition No. 143 of 1989

Appellant : iqramuddIn and ors.

Respondent : Nizamuddin

Advocate for Def. : M.M. Ranjan, Adv.

Advocate for Pet/Ap. : R.M. Lodha, Adv.

Disposition : Revision dismissed

Judgement :

ORDER

D.L. Mehta, J.

1. This revision petition is directed against the judgment dated 18-1-89 passed by the learned Additional District Judge No. 6, Jaipur City, Jaipur.

2. Plaintiff instituted a suit in the court of learned District Judge, Jaipur City, which was transferred in the court of Additional district Judge No. 6, Jaipur City, Jaipur. Plaintiff valued the suit at Rs. 10,001/-. Defendant submitted the written statement and raised the objection that the property is worth more than Rs. 1 lac and plaintiff should be asked to make payment of the court-fees valuing the suit at Rs. 1 lac.

3. Application was also moved subsequently under Section 11 of the Rajasthan Court-fees Act and prayer was made that the Court should inquire about the valuation of the property in dispute and decide this point first before hearing of the suit as contemplated by Order 14, C.P.C. Application moved by the defendant was rejected by the trial court. Being aggrieved with the order of rejecting this revision petition has been filed.

4. Mr. Lodha appearing on behalf of the petitioner has cited before me the case of Moti Lal v. Jagdish Prasad, 1969 RLW 184, in which it has been held as under (at page 186 RLW 1969) :--

'Section 11(1) lays down that the Court shall apply its mind to the question as to whether the Court-fee paid is sufficient before the plaint is registered. This decision is subject to review, further review and correction but only in the manner specified in the succeeding Sub-section. These sub-sections are -subsections (2) and (3). Sub-section (2) is applicable to the present defence. It is open to a defendant before filing a written statement in reply to all the allegations in the plaint to take a plea that the suit has been undervalued and the court-fees is insufficiently paid. In that case the Court would be bound to decide the question as to whether the suit has been properly valued. But once the written statement has been filed the only manner in which the plea can be taken is by amending the written statement.'

Mr. Lodha has also cited before me the case of Gangaram v. Phulia, 1966 RLW 135. This Court has held that the Judge has to give decision whether the court-fees paid is sufficient or insufficient, though in latter case time may be allowed to make up deficiency.

6. Section 11 of the Rajasthan Court-fees Act was considered by this Court and directions were given to determine the court-fees.

7. Mr. Lodha has also cited before me the case of Jagdish Rai v. Smt. Sant Kaur, AIR 1976 Delhi 147, and submitted that the question of court-fees is a preliminary point which ought to be decided by the Court before proceeding to decide the merits of the case.

8. On the other hand, Mr. Ranjan appearing on behalf of the non-petitioner, submitted before the court that Section 11 of the Rajasthan Court-fees and Suits Valuation Act is not mandatory, but, it is directory in nature. He submits that the word 'shall' should be read as 'may'.

9. Mr. Ranjan further submits that the Code of Civil Procedure as modified vide Amending Act of 1976, provides under 0.14, Rule 2(1) that notwithstanding that a case may be disposed of on a preliminary issue, court shall, subject to the provisions of Sub-rule (2) pronounce the judgment on all issues. He submits that the issue relating to the payment of court-fees has nothing to do with the question of jurisdiction of the Court. Whether a suit is valued for Rs. 11,000/- or Rs. 1 lac, it is immaterial for the purpose of the jurisdiction of the Court. Mr. Ranjan further submits that only in exceptional cases, provided under Order 14, Rule 2 Sub-rule (2), the Court should dispose of an issue as a preliminary issue if it relates to the jurisdiction of the Court or there is a bar created by law in entertaining the suit for hearing. Mr. Ranjan has cited before me the case of Cheni Ram v. Shanti Devi, AIR 1980 Raj 192, in which this Court has held as under (at page Raj 193; AIR 1980),:--

'Whether the cause of action for a suit arose at place A or Place B is a mixed question of law and fact.

An issue can be considered and decided as a preliminary issue if it is an issue of law only and on it the case or part of it can be disposed, of.

There is no provision that even though issues about limitation or jurisdiction are to be considered on disputed facts, evidence should be recorded on them first and

they must be decided as preliminary issues.'

10. Mr. Ranjan has also cited before me the case of AIR 1981 AP 147 and submitted that the question of Court-fee need not be tried as preliminary issue.

11. Mr. Ranjan has also raised other preliminary objection shall the revision petition does not lie against the said order.

12. I have heard the rival contention of both the parties.

13. Payment of the court-fees is a fiscal matter and does not affect the jurisdiction of the Court. It is also necessary to give harmonious construction to the provisions of the Code of Civil Procedure and Rajasthan Court-fees and Suits Valuation Act, 1961 Order 14, Rule 2, permits the Court that where the issues both of the law and the facts arise in the same suit and the court is of opinion that the case or any part thereof may be disposed of on a issue only, it may try the issue first. If that issue relates to (a) jurisdiction of the Court (b) a bar to the suit created by any law for the time being in force. Thus, the Order 14, Rule 2(2) is an enabling provision under which the Court can decide the question referred to above without deciding all issues at a time. Order 14, Rule 2(1) provides that notwithstanding the case may be disposed of on a preliminary issue, the Court shall, subject to the provisions of Sub-rule (2), pronounce judgment on all issues. Thus, there is a direction to the Court to decide all issues by one judgment unless the issue falls within the purview of Order 14, Rule 2 Sub-rule (2). Rule 2 Sub-Clause (I) of Order 14 is mandatory in character and exception to this rule has been carved out in Sub-rule (2) of Rule 2 of Order 14. In this rule the question in relation to the valuation of the suit for purpose of payment of Court-fees has not been included under the exceptions carved out under Sub-rule (2) of Rule 2 of Order 14.

For this very reason the composite decision on all issue is a must and the issue relating to the valuation for the purpose of court-fees falls within the enabling Clause of Sub-rule (2) of Rule 2 of Order 14. It is necessary to give a harmonious construction to the provision of the Code of Civil Procedure and the provisions of the Rajasthan Court-fees and the suits Valuation Act.

14. Provision of Andhra Pradesh Court-fees and Suits Valuation Act of 1956, Section 11 Clause (2), and Section 11 Clause (2) of the Rajasthan Court-fees and Suits Valuation Act, 1961 are similar. The language in subsection (2) of Section 11 of the Act of 1961 does not refer to the question of pecuniary jurisdiction at all. It refers only to the question of proper court-fees. Section 11(2) of the Act does not make any distinction between the Court-fees involving any pecuniary jurisdiction and question of court-fees involving payment of proper court-fees and valuation. It will not be out of place here to mention that Sub-section (4) (a) of Section 11 provides that where the case comes up before the court on appeal it shall be lawful for such court either in its own motion or on the application of any of the parties to consider the correctness of any order passed by the lower court effecting the fees payable on the plaint and to determine the proper fee payable. For giving a harmonious construction I am of the view that the word 'shall' as used in Sub-section (2) of Section 11 should be interpreted as 'may' and Section 11 should be considered as directory in nature and not mandatory in nature. To hold Section 11 as mandatory will not be a harmonious construction of the law as it will come in conflict with the Central law, C.P.C. It will not be out of place here to mention that the explanation to Section 11 reads as under:--

'In this section, the expression 'merits of the claim' refers to matters which arise for determination to the suit, not being matters relating to the frame of the suit, misjoinder of parties and causes of action, the jurisdiction of the Court to entertain or try the fee payable but inclusive of matters arising on pleas of res judicata, limitation and the like.'

15. So, the merits of the case can be decided before the delivery of the judgment and if the court comes to the conclusion that the court-fee paid is deficient, it may defer the pronouncement of the judgment and ask the party to pay the deficit court-fee as per valuation of the Court, Thus, the multiplicity of the proceedings delay in the disposal of the suit and calling and recalling the witnesses every time can be avoided and it will serve the cause of justice and the cause of litigants also. For this reason also I hold that Section 11 of the Act is directory in nature.

16. In the instant case, the pecuniary jurisdiction of the Court will remain the same and no question of jurisdiction is involved, as such, it is not necessary to determine the value of the property at this stage. A composite decision can be taken and before pronouncing if the court finds that the deficit court-fee has been paid then the plaintiff can be asked to make payment of the deficit Court-fee within the time granted by the Court.

17. In the result, the revision petition fails. No order as to costs.

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