

Panna Lal Vs. Mohan Lal and ors.

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Court : Rajasthan

Decided On : Aug-10-1984

Reported in : AIR1985Raj178; 1984()WLN554

Judge : Dwarka Prasad, J.

Acts : Rajasthan Court-fees and Suits Valuation Act, 1961 - Sections 11(3) and 11(5); [Code of Civil Procedure \(CPC\) , 1908](#) - Sections 21(2)

Appeal No. : Civil Revn. Petn. No. 211 of 1984

Appellant : Panna Lal

Respondent : Mohan Lal and ors.

Advocate for Def. : M.S. Singhvi, Adv.

Advocate for Pet/Ap. : D.S. Shishodia, Adv.

Disposition : Revision dismissed

Judgement :

ORDER

Dwarka Prasad, J.

1. The submission of the learned counsel for the petitioner is that the objection about under-valuation of the suit could have been raised by means of an

application and the learned trial Court was not justified in directing the defendant to take the objection about undervaluation of the suit in the written-statement. Learned counsel relied upon the decision of Jagat Narain, J., as he then was, in *Moti Lal v. Jagdish Prasad Sharma*, 1969 Raj LW 184 in support of his submission.

2. Section 11, of the Rajasthan Court-fees and Suits Valuation Act, which is relevant for the present purpose, runs as under : --

'11. Decision as to proper fee. -- (1) In every suit instituted in any Court, the Court shall, before ordering the plaint and on the materials and allegations contained in plaint and on the materials contained in the statement, if any, filed under section 10, the proper fee payable thereon, the decision being however subject to review, further review and correction in the manner specified in the succeeding subsections.

(2) Any defendant may plead that the subject-matter of the suit has not been properly valued or that the fee paid is not sufficient. All questions arising on such pleas shall be heard and decided before the hearing of the suit as contemplated by Order XVIII in the First Schedule to the Code of Civil Procedure, 1908 (Central Act 5 of 1908). If the Court decides that the subject-matter of the suit has not been properly valued or that the fee paid is not sufficient, the Court shall fix a date before which the plaint shall be amended in accordance with the Court's decision and the deficit fee shall be paid. If the plaint be not so amended or if the deficit fee be not paid within the time allowed, the plaint shall be rejected and the Court shall pass such order as it deems just regarding cost of the suit.

(3) A defendant added after issues have been framed on the merits of the claim may, in the written statement filed by him, plead that the subject-matter of the suit has not been properly valued or that the fee paid is not sufficient. All questions arising on such pleas shall be heard and decided before evidence is recorded affecting defendant on the merits of the claim, and if the Court finds that the subject-matter of the suit has not been properly valued or that the fee paid is not sufficient, the Court shall follow the procedure laid down in Sub-section (2).

Explanation.-- Nothing in this sub-section shall apply to a defendant added as a successor or a representative in interest of a defendant who was on record before issues were framed on the merits of the claim and who had an opportunity to file a written statement pleading that the subject-matter of the suit was not properly valued or that the fee paid was not sufficient.

XXX XXX XXX

(5) All questions as to value for the purpose of determining the jurisdiction of courts arising on the written statement of a defendant shall be heard and decided before the hearing of the suit as contemplated by Order XVIII in the First Schedule to the Code of Civil Procedure, 1908 (Central Act 5 of 1908).

Explanation.-- In this section, the expression 'merits of the claim' refers to matters which arise for determination in 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.'

3. In Motilal's case 1969 Raj LW 184, the learned Judge made the following observations while interpreting the provisions of Section 11 : --

'It is true that Court cannot proceed with the trial of the suit without being satisfied that the court-fee paid is sufficient. 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-sections. These sub-sections are Sub-sections (2) and (3). Sub-section (2) is applicable to the present defendant. 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-fee paid is insufficient. 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. No amendment of the written statement has been sought on behalf of the applicants yet. As such the question of

the suit being properly valued or not could not be determined by the trial Court. It is only after the applicants get their written statement amended that the question will be decided by the trial Court.'

4. It may be observed that the question which came up for consideration in Motilal's case 1969 Raj LW 184 was as to whether an objection about undervaluation or insufficiency of court-fee could be raised by a separate application without amending the written-statement. The learned Judge held that once the written-statement was filed, such a plea could not be taken without amending the written-statement. The question as to whether an objection about undervaluation or insufficiency of court fee could be raised by a separate application by the defendant before filing the written-statement did not arise for consideration in that case and the observation of the learned Judge in that respect is mere obiter.

5. It may be pointed out that in Subsection (2) of Section 11, the Legislature has employed the word 'plead' and it has further been provided therein that all questions arising on such 'pleas' shall be heard and decided before the hearing of the suit as contemplated by Order 16 C.P.C. Order 6 Rule 1 C.P.C. provides that 'pleading' shall mean plaint or written-statement. Except the plaint and written-statement, any other pleading cannot be filed by a party to the suit, except with the leave of the Court. Order 8 Rule 9 C.P.C. provides that subsequent pleadings may be filed with the leave of the Court and the Court may, at any time, require any of the parties to file written-statement or additional written-statement. There is no reason as to why the same principle should not be applicable at the earlier stage when the written-statement has not been filed. Sub-sections(3) and (5) of Section 11 also support the same conclusion that such a plea could be raised in the written-statement or by amending the written-statement.

6. Learned counsel for the petitioner also drew my attention to another decision of learned single Judge of this Court in Ghewar Chand v. Gaj Singh, AIR 1980 Raj 202. In that case the learned Judge has followed the decision in Moti Lal's case 1969 Raj LW 184. However, it was observed in Ghewar Chand's case that normally all pleas should be raised by the defendant in the written-statement. I may also refer to the provisions of Section 21(2), of the Code of Civil Procedure,

which are as under : --

'(2) No objection as to the competence of a Court with reference to the pecuniary limits of its jurisdiction shall be allowed by any Appellate or Revisional Court unless such objection was taken in the Court of first instance at the earliest possible opportunity, and, in all cases where issues are settled, at or before such settlement and unless there has been consequent failure of justice.'

7. In view of the provisions of Section 11, I am of the opinion that the learned Munsif was justified in holding that the plea regarding under-valuation and insufficiency of court-fee should be taken by the defendant in the written statement.

8. Learned Munsif, therefore, does not appear to have committed any illegality in ordering that the plea about under-valuation of the suit or insufficiency of court-fee should be taken by the defendant in the written-statement and in directing the defendant to file his written statement, in which he may take the plea of under-valuation, if he so liked.

9. The revision petition has no force and the same is dismissed.

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