

**Bhaiya Ram Vs. Ram Chandra**

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**Court :** Rajasthan

**Decided On :** Sep-17-1987

**Reported in :** 1988(1)WLN508

**Judge :** J.R. Chopra, J.

**Appeal No. :** S.B. Civil Revision No. 340 of 1987

**Appellant :** Bhaiya Ram

**Respondent :** Ram Chandra

**Disposition :** Petition dismissed

**Judgement :**

**J.R. Chopra, J.**

1. The revision petition was argued on merits at the admission stage.
2. The contention of Mr. Parihar is that he is free to value his relief in what ever manner he likes and that was not the stage at which it should be decided whether the suit is triable by that Court or not. He tried to argue that even if the reliefs are separately valued, one relief may be the main relief and the other may only be an ancillary relief. This contention of Mr. Parihar is beside the point, because this Court or for that matter, the learned lower court was not called upon to decide whether on valuing the reliefs separately, the suit will remain triable by that Court

or not. In deciding an application filed under Order 6, Rule 17, CPC the Court has only to consider whether the application is entertainable if accepted whether and it will cause any prejudice to the opposite party, which may not be capable of being compensated by awarding costs. That is only the scope of the decision of an application under Order 6, Rule 17, CPC. So far as the first contention of Mr. Parihar is concerned, that cannot be sustained. In a suit for specific performance Section 40(a) of the Rajasthan Court Fees and Suits Valuation Act clearly provides that in suit for specific performance whether with or without possession, the court fee shall be payable in case of a contract of sale, computed on the amount of consideration.

3. The plaintiff has come with a case that the defendant agreed to sell the first floor of the disputed property to him for a sum of Rs. 10,000/- out of which Rs. 8,000/- have been paid to the defendant and possession has been handed over to him. In view of this case, set up by the plaintiff, he has no liberty now to value the relief at Rs. 9,600/-. He has to value the suit so far as the relief of specific performance of contract of sale is concerned at Rs. 10,000/- instead of Rs. 9,600/-. I have already observed earlier that even after this valuation whether the suit still remains triable by that court or not, is beside the power so far as decision of an application under Order 6, Rule 17 CPC is concerned. The learned lower court vide its order dated 29-5-1986 has ordered that the two reliefs i.e. one for specific performance and the other for permanent injunction should be valued separately. When the Court allowed the plaintiff to amend his pleadings and if an application for such an amendment is made in pursuance of that order then it does not lie in the mouth of the Court to say that the application is belated. That fact ought to have been considered when it allowed the plaintiff to value the two reliefs separately by amendment of his pleadings. Once the court allowed him to amend his pleadings then that order of the court has to be carried out. Court should maintain consistency in its orders. As the plaintiff has valued his relief of specific performance at Rs. 9,600/- the Court was perfectly justified in dismissing his application under Order 6, Rule 17, CPC.

4. However, Mr. Parihar now submits that he will file a fresh application valuing the relief for specific performance accordingly. He is permitted to file a fresh

application before the learned lower court within 30 days of this order valuing the relief of specific performance at Rs. 10,000/-. He has submitted that he has already valued his relief for permanent injunction at Rs. 400/. The composite application is allowed to be filed before the learned lower court and if such an application is filed within the aforesaid period of 30 days from today, it will be entertained and decided on merits.

5. With these observations, this revision petition is dismissed at the admission stage. The record of the case may be returned to the learned lower court forthwith.

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