

Dewan Singh Vs. Khazan Singh

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Court : Jammu and Kashmir

Decided On : Feb-28-1990

Reported in : AIR1992J& K4

Judge : S.S. Kang, C.J.

Acts : Jammu and Kashmir Court-Fees Act, 1977 - Section 7; ;[Jammu and Kashmir Suits Valuation Act, 1977](#) - Sections 3 and 9; ;Jammu and Kashmir Suits Valuation Rules - Rule 7; ;Jammu and Kashmir Code of Civil Procedure (CPC) , 1977 - Section 115 - Order 6, Rule 17

Appeal No. : Civil Revn. No. 177 of 1988

Appellant : Dewan Singh

Respondent : Khazan Singh

Advocate for Def. : K.S. Johal, Adv.

Advocate for Pet/Ap. : B.S. Soodan, Adv.

Disposition : Revision petition dismissed

Judgement :

ORDER

S.S. Kang, C.J.

1. This is a defendant's revision against the order dated September 11, 1988, passed by City Judge, Jammu, allowing an application filed by the plaintiff under Rule 17 of O. VI, C.P.C. seeking an amendment in the plaint by changing the value for the purposes of court-fees and jurisdiction from Rupees 1,510.00 to Rs. 5,100.00. It has been filed in the following circumstances.

2. Khazan Singh, respondent herein, filed a suit for permanent prohibitory injunction restraining the defendant (present petitioner) from interfering with the plaintiffs possession, encroaching upon or otherwise trespassing upon the land measuring 11 marlas situate at village Kalyanatahsil R. S. Pura. In the initial plaint, the plaintiff had fixed the value of the suit for the purposes of court-fees and jurisdiction at Rs. 1,510.00. The defendant appeared and contested the suit. The plaintiff filed an application seeking amendment of the plaint by pleading that value of the suit for the purposes of court-fees and jurisdiction was Rs. 5,100.00 and not Rs. 1,510.00.

3. The application was resisted by the present petitioner. However, his objections did not prevail and the learned trial Judge allowed the amendment as prayed for. Aggrieved, the petitioner has come up with this revision petition.

4. Mr. B. S. Soodan, Advocate, learned counsel for the petitioner has argued that in accordance with the provisions of the Suits Valuation Act, 1977 (1920 AD); Court-fees Act, 1977 (1920 AD) and the Rules framed by this Court in exercise of the powers conferred upon it by Sections 3 & 9 of the Suits Valuation Act, in a suit for injunction, as in the present case is, the value for the purposes of Court-fees and jurisdiction can be fixed by a plaintiff only between Rs. 300 and Rs. 1,000. The Court below acted beyond its jurisdiction by allowing an amendment in the plaint and permitting the plaintiff to plead that the value for the purposes of court-fees and jurisdiction was Rs. 5,100. In support of his contention, Mr. Soodan has referred to me to Sections 3 & 9 of the Suits Valuation Act and Section 7 of the Court-fees Act. He has also drawn my attention to Rules 7 and 9 of the aforementioned rules and the Schedule attached thereto.

5. Section 3 of the Suits Valuation Act, empowers the High Court to frame rules for determining the value of the land for the purposes of jurisdiction in the suits

mentioned in the Court-fees Act. Section 9 invests the High Court with powers to fix the value of the subject matter of the suits not covered by paragraphs (iv), (v) & (x) (d) of Section 7 of the Court-fees Act. In exercise of this power this Court with the previous sanction of the Rules of the State framed the Rules. Rule 7 which is material for our purposes is reproduced in extenso;

'7. Suits for restitution of conjugal rights.--

In suits in which the plaintiff in the plaint asks for a decree--

(1) Against the other party to the alleged marriage, either alone, or with other defendants, for restitution of conjugal rights;

(2) Marriage establishing or annulling or dissolving a marriage;

(3) Guardianship, etc. of minor.-- establishing a right to the custody or guardianship of a minor, including guardianship for the purposes of marriage;

(4) Adoption -- establishing or annulling an adoption, including under the expression 'adoption' the customary appointment of an heir; or

(5) Suits to establish or negative a right, --establishing or negating any right hereinafter mentioned with or without an injunction, and with or without damages, namely: -- a right of way; a right to open, or maintain, or close a door or window, or a drain, or a water shoot (parnala); a right to or in a water course or to the use of water; a right to build, or raise or alter or demolish a wall, or to use an alleged party-wall or joint stair-case; the value for purposes of jurisdiction shall be such sum from Rs. 300 to Rs. 1,000 as the plaintiff shall state in the plaint.'

6. Appended to this rule is a schedule showing the value of the suits for the purposes of computing court-fees and of determining the jurisdiction of the courts respectively. The provisions thereof so far as they are relevant for our purposes, read as under--

Court-feesAct

Name ofSuit

Value for Court fee purpose

Suits Valuation Act and Rules

Value for purposes of jurisdiction

XX

XX

XX

XX

XX

Sec. 7 para-graph iv

In suits-

(a) for movable property where the subject matter has no market value;

Ad valorem according to the amount at which the relief sought is valued in the plaint or memorandum of appeal, such value must be stated.

(a) Sec. 8

(a) The value is of the relief sought as stated

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(d) to obtain an injunction

Do.

(d) Do., subject to R. 7 and S. 9 of the Suits Valuation Act.

(d) The same as in (a) subject to R. 7 and Section 89.'

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7. Mr. Soodan contends that Rule 7 clearly lays down that the value for the purposes of jurisdiction for the suits mentioned in that rule can be fixed between Rs. 300 to Rs. 1,000. This provision, according to him, as to be taken to be incorporated in Clause (d). In other words, according to the learned counsel, for a suit for injunction, the value for the purposes of court-fees and jurisdiction has invariably to be fixed between Rs. 300 to Rs. 1,000. Elaborating he submits that in the third column of entry (d) it has been particularly mentioned that the value for the purposes of jurisdiction shall be the same as in Clause (a) but it shall be subject to Rule 7 and Section 9.

I am not impressed. There is a fallacy in this argument. It is evident from the perusal of Rule 7 *ibid* that for the 5 types of the suits mentioned in this rule the value for the purposes of jurisdiction shall be Rs. 300 to Rs. 1,000. However, a suit for injunction for restraining the defendants from encroaching upon a piece of land does not fall in any of the 5 categories of the suits mentioned under Rule 7. Indeed, in Clause (v) 'Injunction' finds mention. However, it is not mentioned independently. It is mentioned in conjunction with the expression 'Suits to establish or negative a right'. So in a suit filed for establishing or negating a right, of the type specified therein, if an injunction is sought then the value for the purposes of

jurisdiction shall be between Rs. 300 to Rs. 1000. However, admittedly, in the present case, the plaintiff has not filed a suit to establish or negative rights enumerated in Rule 7. The argument of the learned counsel for the petitioner stems from a misconception and misreading of Rule 7. If this Rule is read as a whole, then it becomes crystal clear that the value of the suits specified in this Rule can be fixed by the plaintiff between Rs. 300 to Rs. 1000. The last lines of the Rule apply only to the suits specified therein and not to other suits. In schedule itself there is no restriction on the plaintiff to fix the jurisdiction between Rs. 300 to Rs. 1000. No similar restriction is available in the Court-Fees Act or the Suits Valuation Act. Consequently it cannot be held that in a suit for injunction, the value for purposes of jurisdiction must invariably range between Rs. 300 to Rs. 1000.

8. It has also been submitted by Mr. Soodan that it is a cardinal principle of law that suits must be filed and tried by the courts of the lowest grade which are competent to try such suits. The Munsiff at R.S. Pura was fully competent to try the suit if the value was fixed at Rs. 1,510 as was initially done. However, he is not competent to try the suit when the value for the purposes of jurisdiction is fixed at Rs. 5,100. So this argument also fails.

9. It was lastly argued that the amendment under Rule 17 of the Order VI, CPC has to be allowed only when it may be necessary for determining the real controversy between the parties. That the question as to whether the value has to be at Rs. 1,510 or Rs. 5,100 is not a matter which is necessary for the determination of the controversy.

10. The plaintiff made an application seeking an amendment. It was within the province of the learned trial Judge to grant or refuse this amendment, of course, in accordance with the well settled principles enunciated by judicial pronouncement. The learned Judge has exercised jurisdiction in favour of the plaintiff. It cannot be said that he has exercised the jurisdiction which was not vested to him or has committed any irregularity in the exercise of this jurisdiction. In this view of the matter I find no merit in this revision petition and the same is dismissed. The record of the case be sent to the trial Court without delay.

11. Parties through their learned counsel are directed to appear before the court below on 26th March, 1990.

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