

THE HIGH COURT OF MADHYA PRADESH
M.P. No. 5417/2018

1 *Badrilal (Deceased) through L.Rs. Nirmala & others.*
V/s. Akash & another.

Indore, dated : 25.02.2019

Shri Nilesh Sharma, learned counsel for the petitioners/plaintiffs.

Shri Manoj Manav, learned counsel for respondent No.1/defendant No.1.

Shri Pawan Sharma, learned Govt. Advocate for respondent No.2/State.

Heard.

ORDER

The petitioners have filed the present petition being aggrieved by order dated 9.10.2018 passed by learned first appellate Court whereby application filed under Order 7 Rule 11 read with Section 107 of C.P.C. has been allowed by directing the petitioner/plaintiff to pay the *ad valorem* Court fees.

2. Facts of the case, in short, are as under :

(i) The present petitioners being the plaintiffs filed the suit for declaration and permanent injunction in respect of land bearing Survey No.805/3 area 0.55 Hect. and Survey No.806/3 ara 0.38 Hect. of Village Dablahurd, Tehsil Tarana, District Ujjain (hereinafter, for short, "the suit land"). The suit land was initially owned by father of the plaintiffs viz. Late Shri Badrilal, who in his life time sold it vide registered sale-deed dated 22.7.2009. After the death of Badrilal, plaintiffs filed the suit challenging the aforesaid sale-deed executed in favour of

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respondent No.1/defendant No.1 and also sought the relief of permanent injunction.

(ii) On the basis of pleadings, learned trial Court initially framed five issues for adjudication.

(iii) Respondent No.1/defendant No.1 filed an application under Order 7 rule 11 of C.P.C. seeking rejection of the plaint on the ground that the plaintiffs did not properly value the suit and did not pay the *ad valorem* Court-fees on the basis of value of suit land in the sale-deed. Said application was allowed by the trial Court vide order dated 27.9.2014, against which, plaintiff filed W.P. No.8104/2014 before this Court. This Court vide order dated 1.3.2016 allowed the said writ petition and the matter was remitted back to the trial Court to decide the issue of Court-fees along with other issues at the time of final hearing of the suit on merit.

(iv) On the basis of aforesaid order of this Court, learned trial Court has framed additional issue No.6 in respect of valuation of suit and payment of Court-fees, which is reproduced as below :

क्रमांक	वाद प्रश्न	निष्कर्ष
6	'क्या वादी द्वारा वाद का उचित मूल्यांकन कर पर्याप्त न्याय शुल्क अदा किया गया है।	कंडिका 28 के अनुसार निष्कर्ष दिया गया।

(v) Vide judgment and decree dated 5.10.2016, learned trial Court has dismissed the suit on merit and also held that the plaintiff is liable to value the suit at Rs.6,44,520/- and to pay the

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Court-fees @ 12%. The decree drawn by the learned trial Court is reproduced below :

“1. वादीगण को वादग्रस्त भूमि के संबंध में एक लाख रुपये अवशेष विक्रय मूल्य प्राप्त नहीं हुआ है, यह प्रमाणित करने में वादीगण असफल रहे हैं। ऐसी स्थिति में विक्रय लेख [1अ/422](#) दिनांकित 22.07.2009 वादीगण पर बंधनकारी है। प्रतिवादी क्रमांक 1 वादग्रस्त भूमि से वादीगण को बेदखल करने के लिये प्रयासरत नहीं है। वादीगण के द्वारा वाद का मूल्यांकन तो उचित किया गया है परन्तु न्याय शुल्क उचित रूप से अदा नहीं किया गया है। वादीगण वाद मूल्यांकन अनुसार अर्थात् 6,45,520/- रुपये पर 12.00 प्रतिशत की दर से न्याय शुल्क देने के लिये दायी है। अतः उक्त राशि वादीगण तत्काल अदा करें अन्यथा उक्त राशि वादीगण से विविध दीवानी प्रकरण कायम कर वसूल की जावें। तदनुसार वादीगण अपने दावे को प्रमाणित करने में असफल रहे हैं। अतः वादीगण के द्वारा प्रस्तुत वाद निरस्त किया जाता है।”

2. प्रकरण का संपूर्ण व्यय वादी के द्वारा वहन किया जावेगा। अभिभाषक शुल्क की राशि प्रत्येक दशा में भुगतान के प्रमाणीकरण के अधीन नियम 523 सिविल कोर्ट नियम व आदेशानुसार संगणित या जो वास्तविक रूप से भुगतान की गई हो तथा जो न्यून हो व्यय में जोड़ी जावें।”

(vi) Being aggrieved by the aforesaid judgment and decree, plaintiffs have filed first appeal u/s. 96 of the C.P.C. In the pending appeal, defendant No.1 filed an application under Order 7 Rule 11 read with Section 107 of C.P.C. alleging that the plaintiff/appellant has neither paid the court-fees in the suit nor in the first appeal despite judgment and decree of the learned trial Court, hence the appeal is liable to be dismissed.

(vii) Learned first appellate Court vide order dated 9.10.2018 has allowed the application directing the plaintiff to pay the Court-fees as directed by the learned trial Court and also to value the first appeal and to pay the ad valorem Court-fees.

3. Being aggrieved by the aforesaid order, the plaintiff has preferred the present petition before this Court.

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4. Vide order dated 25.01.2019, this Court has issued the notice to the respondents on the following question of law :

“Whether the first appellate Court on an application of defendants under Order 7 Rule 11 CPC call upon, the plaintiff to deposit *ad valorem* Court fees in compliance of the decree under challenge for deciding the issue of valuation and Court fees against the plaintiff in the appeal questioning the decree is pending consideration?”

5. Shri Nilesh Sharma, learned counsel for the petitioners submits that though the trial Court has decided the issue in respect of valuation of payment of *ad valorem* against the plaintiffs, but they have challenged the said finding in first appeal, therefore, it is obligatory on the part of first appellate Court to decide the said issue on merit and before that, the Court cannot insist for payment of *ad valorem* Court-fees.

6. On the other hand, Shri Manoj Manav, learned counsel for respondent No.1/defendant No.1, submits that u/s.12 of Court Fees Act, it is the duty of Civil Court as well as first appellate Court to decide the amount of Court-fees payable in the suit or in memorandum of appeal, as the case may be. Section 12 of the Court Fees Act is reproduced below :

“12. Decision of questions as to valuation.-(i) Every question relating to valuation for the purpose of determining the amount of any fee chargeable under this Chapter on a plaint or memorandum of appeal, shall be decided by the Court in which such plaint or memorandum, as the case may be, is filed, and such decision shall be final as between the parties to the suit.

(ii) But whenever any such suit comes before a Court of appeal, reference or revision, if such Court considers that the said question has been wrongly decided, to the detriment of the revenue, it shall require the party by whom such fee has been paid to pay so much additional

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fee as would have been payable had the question been rightly decided, and the provisions of section 10, paragraph (ii), shall apply.

The plaintiffs cannot avoid to pay the Court-fees which is payable in advance at the time of filing of the suit as well as at the time of filing appeal, therefore, learned first appellate Court has not committed any error of law by directing the plaintiff to pay the *ad valorem* Court-fees, therefore, prayed that this petition is liable to be dismissed.

7. The plaintiffs filed the suit claiming the relief of declaration and permanent injunction against the defendant No.1. The plaintiffs are seeking the relief of declaration that the sale-deed executed by their father Late Shri Badrilal be declared as illegal and not binding on them. In the said suit, defendant No.1 raised an issue of valuation as well as Court-fees. Learned trial Court decided the application under Order 7 Rule 11 directing the plaintiffs to pay the *ad valorem* Court-fees. Thereafter, plaintiffs preferred the writ petition before this Court and this Court vide order dated 1.3.2016 directed the trial Court to decide the issue of Court-fees after hearing the parties and after taking into account the evidence on record.

8. In view of the order of this Court, learned trial Court framed additional issue in respect of valuation of Court and decided the same after taking the evidence and recorded the finding that the father of plaintiffs had a right to execute the sale-deed and the same is binding on them. Trial Court also

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recorded the finding in respect of possession that the plaintiffs are not in possession of the suit land and they did not seek the relief of possession in the suit.

9. So far as issue of valuation of suit is concerned, learned trial Court has rightly held that the plaintiffs have valued the suit at Rs.6,44,520/- but paid Rs.1,000/- towards the Court-fees, hence, directed them to pay the Court-fees @ 12% on Rs.6,44,520/-. This Court granted exemption to the plaintiffs in respect of payment of Court-fees till adjudication of issue of valuation and final disposal of the suit, otherwise, they were required to pay the Court-fees at the time of filing of the suit. Now, by the detailed and reasoned judgment and decree, learned trial Court has held that the plaintiffs are liable to pay the *ad valorem* Court-fees.

10. Now, the plaintiffs have preferred the first appeal against the judgment, in which, payment of Court-fees is also a part of the decree. The plaintiffs have assailed the judgment and decree of trial Court on the ground of valuation and payment of Court-fees and admittedly the issue is pending before the first appellate Court.

11. Shri Nilesh Sharma, learned counsel for the petitioner, submits that the first appellate Court is yet to decide the issue of valuation and payment of Court-fees and before that, the plaintiffs/appellants cannot be compelled to pay the Court-fees.

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12. If the aforesaid logic is accepted, then in every suit filed by the plaintiff, if issues of valuation and Court-fees are there the plaintiff may easily avoid the payment of Court-fees in the suit as well as in first appeal/second appeal on the ground that the issue is pending before the Court. As per scheme of Court Fees Act, the Court-fees is payable at the time of filing of the suit as well as first appeal/second appeal, as the case may be. Therefore, payment of Court-fees cannot be avoided on the ground that the issue in respect of valuation and Court-fees is pending before the Court. If the plaintiff succeeds in the suit as well as in appeal, the Court is having ample power to pass a decree with costs which includes Court-fees.

13. In the present case, learned trial Court after giving finding on all the issues has held that the plaintiffs are liable to pay the Court-fees, otherwise, the plaintiffs were liable to pay the Court-fees at the time of filing of the suit itself. The issue of payment of Court-fees is a part of the decree and the plaintiffs have not filed any application under Order 41 Rule 5 of the C.P.C. for stay of the judgment and decree and the said part of the decree has not been stayed by the first appellate Court, hence, the same is executable.

14. So far as applicability of Order 7 Rule 11 of C.P.C. in the appeal is concerned, learned counsel for the petitioner submits that power can be invoked only in the pending suit because the first appellate Court either decides the suit finally or remand the case.

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15. U/s. 12 of the Court Fees Act, the Court is requires determination of the amount of fee chargeable on the plaint or memorandum of appeal by the Courtin which such plaint or memorandum, as the case may be, is filed, and such decision shall be final as between the parties to the suit. Under subsection (ii), whenever any such suit comes before a Court of appeal, reference or revision and the Court finds that the issue of court-fees has wrongly been decided, which is causing loss to the revenue, it shall require the party to pay additional fee as would have been payable had the question been rightly decided. Therefore, the first appellate Court u/s. 12 is competent to adjudicate the issue in respect of amount of fee payable in appeal as well as in the suit. U/s. 107(1) of the C.P.C., the appellate Court is required to decide the appeal on merit, but the C.P.C. is a procedural law and the Court Fees Act is a substantive law in respect of payment of Court-fees, therefore, substantive law will prevail over the procedural law, hence u/s. 12 of the Court Fees Act, the first appellate Court has rightly decided the issue in respect of Court-fees.

16. The issue of Court-fees is always liable to be decided as a preliminary issue because the Court-fees is payable at the time of filing of the suit and appeal. In the Court Fees Act, there is a provision of refund of Court-fees paid on the suit as well as on memo of appeal, but there is no provision for payment of Court-fees after adjudication of the suit and the appeal. The Court-fees can be exempted to an indigent person or u/s. 35 of

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the Court Fees Act for some special categories of plaintiffs, but in all circumstances, the fee is payable in advance and thereafter, the issue of valuation of the suit and payment of Court-fees should be decided as preliminary issue.

17. As per sub-section (2) of Section 107 of C.P.C., the appellate Court shall have same powers and shall perform as nearly as may be the same duties as are conferred and imposed by the Code on Courts of original jurisdiction in respect of suits instituted therein. In the present case, the respondent/defendant filed an application under Order 7 Rule 11 read with Section 107 of C.P.C. If the suit can be dismissed or rejected under Order 7 Rule 11, then the appeal which is in continuation of the suit can also be decided or rejected under Order 7 Rule 11 of C.P.C. (specially on the issue of Court-fees and valuation of appeal) The provisions of Civil Procedure Code which are applicable to the suit, are also applicable to first appeal. Therefore, in the considered opinion of this Court, learned first appellate Court did not commit any error of law while passing the impugned order dated 9.10.2018.

18. In view of the foregoing discussion, this petition fails and is hereby dismissed.

No order as to costs.

(VIVEK RUSIA)
JUDGE

Alok/-