

(2019) 07 RAJ CK 0059

Rajasthan High Court

Case No: Civil Writ Petition No. 10509 Of 2019

Lichhmi Devi And Ors

APPELLANT

Vs

Tilak Raj And Ors

RESPONDENT

Date of Decision: July 18, 2019

Acts Referred:

- Rajasthan Court fees & Suits Valuation Act, 1961 - Section 11
- Code Of Civil Procedure, 1908 - Order 7 Rule 11
- Constitution Of India, 1950 - Article 227

Hon'ble Judges: Dinesh Mehta, J

Bench: Single Bench

Advocate: Trilok Joshi

Final Decision: Dismissed

Judgement

By way of the present writ petition filed under Article 227 of the Constitution of India, the petitioners have challenged the impugned order dated

01.07.2019, passed by the learned Senior Civil Judge, Annopgarh, District Sriganganagar (hereinafter referred to as "the Trial Court"), whereby

petitioners' application dated 23.05.2019 came to be rejected.

Brief facts relevant for the present purposes are that in a suit for declaration filed by the plaintiffs (respondents No.1 to 3 herein), the petitioners

objected to the valuation of the suit as declared by the plaintiff. In this regard an application dated 23.05.2019 was filed, inter alia, stating that the

valuation of the land given in para No.9 of the plaint is not correct.

Petitioners' aforesaid application was objected to by the plaintiff and the same came to be rejected by the Trial Court vide its order dated

01.07.2019, while holding that earlier application of similar nature (though filed under Order VII Rule 11 of the Code of Civil Procedure) has already been rejected by it on 20.04.2017; an issue in the form of issue No.6 in this regard has been specifically framed; and whether the proper court fee has been paid or not, can be determined only after decision of issue No.6.

Learned counsel for the petitioners, assailing the order impugned passed by the learned Trial Court, contended that as per Section 11 of the Rajasthan

Court fees & Suits Valuation Act, 1961, the issue regarding court fees is to be determined first and thereafter the other issues are required to be adjudicated and suit proceeded.

He further argued that the learned Court below has erred in rejecting petitioners' application, simply being influenced by the fact that his earlier application under Order VII Rule 11 of the Code of Civil Procedure has been rejected.

I have heard learned counsel for the petitioners and perused the material available on record.

Concededly, the petitioners have filed an application under Order VII Rule 11 of the Code of Civil Procedure and requested the Court to return the

plaint, alleging that the plaintiff has failed to pay appropriate court fee. The said application filed by the petitioners came to be rejected by the Trial

Court by the order dated 20.04.2017, interalia, observing that the suit in question was a suit for cancellation of sale-deed, in which the plaintiff was not

a party and the valuation of the suit being Rs.3,60,000/-, based on the consideration given in the sale-deed, is triable by the concerned Court.

It is to be noted that while filing the earlier application under Order VII Rule 11 of the Code of Civil Procedure, the petitioners themselves have

contended that the plaintiff has paid court fee of Rs.1250/- only; whereas the same ought to have been Rs.24,275/-, calculated on the consideration

shown in the sale-deed (Rs.3,60,000/-).

Hence, the petitioners themselves having taken a stand that the valuation of the suit ought to have been Rs.3,60,000/-, cannot turn around and say that

the market value of the property in question is higher, by producing other evidence, including conversion order dated 27.01.2014, as mentioned in the

operative portion of the impugned order.

It is clear that the Trial Court has already framed issue No.6 with respect to the valuation of the suit. The market value as well as the court fee can be determined after adjudication of such suit, of course after leading of relevant evidence.

The petitioners' application under Section 11 of the Rajasthan Court Fees & Suits Valuation Act, 1961 was misconceived and, therefore, the same was rightly rejected by the Court below.

No interference in the order impugned is warranted. The writ petition is thus dismissed.

The Stay Petition No.10436/2019 also stands dismissed.