

**(2008) 12 AHC CK 0427****Allahabad High Court****Case No:** None

Smt. Hiramani Devi and Another

APPELLANT

Vs

Sanjay Singh

RESPONDENT

**Date of Decision:** Dec. 18, 2008**Acts Referred:**

- Civil Procedure Code, 1908 (CPC) - Order 7 Rule 11

**Citation:** (2009) 1 AWC 926 : (2010) 1 RCR(Civil) 165 : (2009) 106 RD 267**Hon'ble Judges:** Tarun Agarwala, J**Bench:** Single Bench**Final Decision:** Dismissed

### **Judgement**

Tarun Agarwala, J.

Heard the learned Counsel for the parties.

2. It transpires that the plaintiff-respondent filed a suit for permanent injunction restraining the defendants from interfering in the possession of the plaintiff in the shop in question. An application for temporary injunction was also filed which was considered and the trial court issued an ex parte injunction dated 16th April, 2004 directing the parties to maintain status quo on the disputed property. The notices were issued to defendant-petitioner No. 1, who appeared and filed an objection under Order VII, Rule 11 alleging that the suit was undervalued, and consequently, the plaint should be rejected. It was alleged that the Munsarim had given a wrong report with regard to the sufficiency of the court-fee.

3. Based on the aforesaid application, the plaintiff filed an amendment application praying that he may be permitted to amend the plaint and be allowed to pay the deficiency of the court-fee since there appeared to be an error in the calculation of the court-fee. The application was accompanied with the requisite remaining court-fee. The defendant objected to the said amendment, and the trial court, after hearing the parties, allowed the amendment application by an order dated 28th

September, 2006 permitting the petitioner to amend the plaint and pay the court-fee and also imposed a cost of Rs. 50.00. The trial court, however, held that since there was a deficiency of court-fee, the suit could not have been registered, and that, the suit was deemed to be treated as a miscellaneous case. The Court further held that since the suit was defective no injunction could have been granted and, accordingly, vacated the injunction and directed that the injunction application to be heard afresh after making good the deficiency of the court-fee. The plaintiff, being aggrieved by the second part of the order, filed a revision. The revision was allowed by an order dated 28th February, 2008, against which, the defendant has filed the present writ petition.

4. The learned Counsel for the petitioner submitted that when the suit was found to be defective and there was a deficiency of the court-fee, the trial court was justified in treating the suit as a defective suit, and consequently, no injunction could have been granted by the trial court in a defective suit. The learned Counsel, consequently, held that the revisional court committed an error in allowing the revision and in holding that the injunction could not have been vacated. The learned Counsel further submitted that till date, the balance court-fee has not been paid and the deficiency has not been made good, and therefore, the revisional court has committed an illegality in allowing the revision and allowing the injunction to continue. The learned Counsel further submitted that the cost imposed by the trial court has also not been paid and that the amendment was subject to payment of cost, and therefore, on this ground, itself, the injunction could not be allowed to continue.

5. Having heard the learned Counsel for the parties, this Court is of the opinion that the submission raised by the learned Counsel for the petitioner is bereft of merit. Order VII, Rule 11 of the CPC provides that the plaint would be rejected if the relief claimed is undervalued and the plaintiff, on being required by the Court to correct the valuation within a time to be fixed by the Court, failed to do so. It clearly provides that if an objection with regard to undervaluation is taken by the defendant and the Court finds that the suit is undervalued, it cannot reject the plaint straightway, but permit the plaintiff to rectify the defect and only upon its failure to do so that the Court would proceed to reject the plaint. Similarly, Section 6 (5) of the Court Fees Act, as applicable in the State of U.P., provides as under:

6(5) In case the deficiency in court-fee is made good within the time allowed by the Court, the date of the institution of the suit or appeal shall be deemed to be the date on which the suit was filed or the appeal presented.

6. From the aforesaid, it is clear that once deficiency of court-fee is made good within the time allowed by the Court, the date of the institution of the suit would be deemed to be the date on which the suit was filed. There is another way to look into this matter. Once an amendment is allowed, the said amendment is deemed to have been incorporated from the date of presentation of the plaint itself.

7. In the light of the aforesaid, in the present case, the plaintiff moved an amendment application at the earliest opportune moment without waiting for an order from the Court with regard to deficiency of the court-fee and prayed for making good the deficiency of the court-fee. The plaintiff while moving the application, had also annexed the deficiency of court-fee. Once the Court allowed the amendment application, the deficiency of the court-fee was made good, and the suit was deemed to have been instituted on the date on which the suit was initially filed. Consequently, the finding of the trial court that the suit remained defective and injunction could not have been granted was per se misconceived, erroneous and the Court has wrongly presumed that the suit was liable to be treated as the defective suit.

8. The contention of the learned Counsel for the petitioner that the court-fee has not been made good as yet is patently erroneous. The requisite deficiency of court-fee was duly annexed by the plaintiff in his amendment application, and consequently, when the amendment was allowed, the necessary deficiency of court-fee was already existing and was deemed to have been paid by the plaintiff. The Munsarim was required only to put a fresh note on the deficiency or otherwise of the court-fee which was a ministerial task and nothing further was required to be done at the instance of the plaintiff.

9. With regard to payment of cost, as imposed by the trial court, this Court finds that the cost was not paid by the plaintiff when the amendment was allowed, and as per the submission made by the learned Counsel for the opposite party, the cost was deposited on 6th of May, 2008, i.e., much after the revision was allowed. However, in my opinion, upon a perusal of the order of the trial court, the amendment allowed was not subject to payment of cost. The cost was imposed upon the amendment being allowed. Consequently, if the cost was not paid, it does not mean that the amendment was not allowed or the deficiency of court-fee still remained. If cost was not paid, it would be open to the petitioner to recover it in accordance with law, but non-payment of cost will not affect the amendment.

10. In Bijendra Nath Srivastava (Dead) through LRs. Vs. Mayank Srivastava and others, the Supreme Court held that the principle of estoppel which will preclude a party from assailing an order which was subject to payment of cost where the payment of cost was a condition precedent to the petition being allowed. The Supreme Court further said that the said principle would not apply to a case where the direction for payment of cost was not a condition on which the petition was allowed and cost had been awarded independently in exercise of the discretionary power of Court to award cost.

11. In the present case, I find that the amendment application was allowed which was not a condition precedent to the payment of cost and that the cost was allowed in exercise of the discretionary power of the Court. In view of the aforesaid, this Court finds that the revisional court rightly rectified the error committed by the trial

court.

12. In view of the aforesaid, this Court does not find any merit in the writ petition and the writ petition is accordingly dismissed.