
(2012) 116 RD 275

Allahabad High Court

Case No: C.R. No. 110 (D) of 2009

Suresh Kumar Yadav
and another

APPELLANT

Vs

Prashant Arora and
others

RESPONDENT

Date of Decision: Jan. 30, 2012

Acts Referred:

Civil Procedure Code, 1908 (CPC) – Order 7 Rule 11, 115

Citation: (2012) 116 RD 275

Hon'ble Judges: Prakash Krishna, J

Bench: Single Bench

Advocate: Amit Saxena, for the Appellant; Udayan Nandan, for the Respondent

Judgement

Prakash Krishna, J.

Challenging the order dated 16th of September, 2009 passed by the Trial Court in civil suit No. 749 of 2008

whereby the application filed by the plaintiff to amend the plaint has been rejected, the present revision u/s 115, CPC has been preferred by the

plaintiff. There is a shopping complex known as Butler Plaza Shopping Complex, 95, Civil Lines, Bareilly. The plaintiff/applicant is one of tenants

at the ground floor in the aforesaid shopping complex which consists of about 400 shops.

2. The case of the plaintiff is that there is a registered society registered under the Societies Registration Act, 1860 and the same is also public trust

which is registered under the Bombay Public Trust Act by the name of Methodist Church in India. The said society owns considerable property

including the aforesaid shopping complex. The said shopping complex has been sold unauthorisedly without permission as required under law. The

purchasers who are defendants tried to interfere in possession of the plaintiff. Hence the aforesaid suit has been instituted for the following reliefs:

(a) that by passing decree of prohibitory injunction, defendant No. 1 be restrained from causing any interference in the peaceful use and enjoyment

of the plttfs. Over shop No. E-19, situated at ground floor of Butler Plaza shopping complex at 95, Civil Lines Bareilly in any manner, either by

pressurising them to make payment of rent or their forcible dispossession or alienation of the property on the strength of impugned sale-deed dated

8.2.2007., either by himself or through his agents, servants etc.

- Valued at Rs. 5700/-

(being one years" rental)

(b) that it be adjudged and declared that the sale-deed dated 8.2.2007 executed by defendant Nos. 3 and 4, after flouting the Special POA

executed by defendant No. 2 in their favour, in favour of defendant No. 1 (Prashant Arora) in respect of property situated at 95, Civil Lines,

Bareilly popularly known as BUTLER PLAZA SHOPPING COMPLEX, registered in the office of S.R. Bareilly in book No. 1, vol. 1779 on

pages 205-1812 at sl. No. 877 order be sent to S.R. Bareilly for appropriate notings in their records.

-Valued at Rs. 19,85,95,710/-

Court Fee-paid -Rs. 200/-

3. The defendants in reply raised pleas relating to valuation of the suit property and payment of Court fees. Preliminary issues in this regard were

framed and were decided by the Trial Court by the judgment and order dated 21st of August, 2009 holding that the Court fees paid by the plaintiff

is insufficient. The plaintiff is liable to pay ad-valorem Court fees. The entire shopping complex was valued at Rs. 19,85,95,710/-.

4. The Trial Court ordered the plaintiff to amend the plaint and pay the proper Court fees. Thereafter, an application for amendment of plaint giving

rise to the present revision was preferred. Through the amendment, the plaintiff sought to reduce the valuation and confined it to his tenanted shop

alone instead of the entire complex. The contents of the amendment application are reproduced below:

(1) That new paras at Sl. Nos. 6-A & 6-B) be added as follows :

(6-A) That fully knowing that the alleged sale-deed in favour of defendant No. 1 is void ab initio but with intent to delay and defeat the claim of the

plaintiffs, the defendant No. 1, under a deed rooted conspiracy collusively executed several sale-deed (s) of part of impugned sale-deed in favour

of several vendees, rendering the relief claimed infructuous to the extent of sale-deed (s) executed by defendant No. 1 pendente lite collusively,

which, however, do not affect the rights of the plaintiffs so far as it relates to the shop" in question;

(6-B) That although according to circle rate the value of the property covered under impugned sale-deed in favour of defendant No. 1 is Rs.

1,75,00,000/- only as such, for purposes of payment of Court Fee, the value of the proportionate share of the impugned sale-deed is to be valued

on the value for which the property is purchased (actual sale consideration);

(2) In 3rd line of para 10 the figure 19,85,95,710/- be substituted by figure ""Rs. 50,000/-"" and words ""property--only"" be substituted by words

shop in question.

(3) In relief (b) after sl. No. 877 the words ""to the extent of shop in question"" be added and at the end figures ""19,85,95,710/- and 200/-"" be

substituted by figures ""50,000/- & 4157/50"" respectively.

5. The Trial Court by the order under revision has rejected the amendment application mainly on the ground that the amendment has been sought

for with a view to overcome the earlier order dated 19th of August, 2009. In other words, it was of the view that the amendment has been sought

for to wriggle out from the said order.

6. Heard the learned Counsel for the parties and perused the record. It is not in dispute that by the amendment, the plaintiff is reducing the subject-

matter of the suit that is to the extent of shop leased out to him in place of the valuation of the entire shopping complex.

7. The suit is now confined to that portion of the sale-deed in question which relates to the valuation of the shop leased out to the plaintiff. The

plaintiff says that it has no concern with the sale-deed in respect of other portion of the property not leased out to him. The Court below was not

right in not allowing the amendment sought for in the plaint.

8. The Order VII, Rule 11 C.P.C. deals with rejection of the plaint. One of the grounds provided therein is where 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, fails to do so. By Act No. 104 of

1976 w.e.f. 1st of February, 1977, a Proviso to Order VII, Rule 11 has been added which provides that the Court may extend the time fixed for

the correction of valuation or supplying of requisite stamp paper. Here is a case where the plaintiff is restricting the subject matter of the suit. The

view taken by the Court below that the amendment has been sought for just to get rid of the earlier order dated 19th of August, 2009 is not

justified. It was held therein that the plaintiff is liable to pay advalorem Court fees on the market value of the entire shopping complex. By

amendment the plaintiff has confined the subject matter of the suit to the tenanted shop only. He has offered to pay advalorem Court fees on the

valuation of the said shop. Therefore, the view taken by the Court below is not justified in law. It has acted illegally and with material irregularity in

exercise of its jurisdiction while passing the order under revision. The order dated 16th of September, 2009, therefore, cannot be allowed to stand.

The revision succeeds and is allowed and the application for amendment Paper 46 Ka stands allowed.

9. Before parting with the case, it may be noted that the suit is still at its primary stage and it has come twice before this Court. The Trial Court will

do good by deciding the suit expeditiously without any further delay. The revision succeeds and is allowed with cost. Revision Allowed.