

(2011) 02 CAL CK 0005

Calcutta High Court

Case No: C.O. 293 of 2011

Shyamal Kumar Deb

APPELLANT

Vs

Smt. Sushila Bala Sardar

RESPONDENT

Date of Decision: Feb. 22, 2011**Acts Referred:**

- Civil Procedure Code, 1908 (CPC) - Order 7 Rule 10

Citation: (2012) 1 CALLT 458**Hon'ble Judges:** Soumen Sen, J**Bench:** Single Bench

Advocate: Pushpendu Bikash Sahu and Mr. Sudhakar Biswas, for the Appellant; A.K. Konar, Nilendu Bhattacharya, Asit Kumar Hazra and Mr. Mrinal Kanti Maity for the Opposite Parties, for the Respondent

Final Decision: Dismissed

Judgement

Soumen Sen, J.

The Judgment of the Court was as follows:

1. This application is an attempt of a defendant to forestall the eviction proceeding which is pending since 2001. The present re-visional application was admitted by an order dated 21st February, 2011 and the proceeding in Title Suit No. 43 of 2001 pending before the learned Civil Judge (Senior Division), 8th Court at Adipose was stayed till the end of May, 2011 or until further order whichever is earlier. The said interim order was extended from time to time.

2. The subject-matter of challenge in this re-visional application are the orders dated 13th September, 2010, 23rd September, 2010 and 29th September, 2010 passed by the learned Civil Judge (Senior Division), 8th Court at Adipose in Title Suit No. 43 of 2001. The said order was passed in connection with a petition filed on 16th June, 2010 on the basis of an order earlier passed by this Hon"ble Court in connection

with Co. No. 751 of 2007 on 13th December, 2007.

3. It appears from the order dated 13th December, 2007 that an application was filed under Order 7 Rule 10 of the CPC read with section 151 of the said Code praying return of the plaint on the ground that the suit was under-valued and it was claimed that the trial Court does not have the pecuniary jurisdiction.

4. While disposing of the said application and upholding the said order under challenge this Hon"ble Court held that since the dispute regarding the valuation of the suit property relates to the jurisdictional issue of the Court regarding the entertainment of the suit and in the event such a dispute with regard to the valuation of the suit property is raised in the suit, the learned Judge would frame such an issue and would consider the same as a preliminary issue in the light of the decision of the Hon"ble Supreme Court in the case of Sujir Keshave Nayak v. Sujir Ganesh Nayak, reported in AIR 1992 SC 1520.

5. Following the same the defendant filed application for framing an additional issue regarding the pecuniary jurisdiction of the Court and for fixing a date for hearing the said issue as a preliminary issue in terms of the direction passed by this Hon"ble Court in its order dated 13th December, 2007.

6. It is submitted on behalf of the petitioner that the valuation has to be made in terms of section 7(vi)(a) of the West Bengal Court-fees Act, 1970 which is reproduced herein below:

(a) a trespasser, where no declaration of title to property is either prayed for or necessary for disposal of the suit - according to the amount at which the relief sought is valued in the plaint subject to the provisions of section 11.

7. Mr. Sahu, learned Senior Counsel appearing for the petitioner draws my attention to the fact that such valuation is subject to provision of section 11 and the right to question such valuation was given to the petitioner by the order dated 13th December, 2007. He relied upon section 11 of the West Bengal Court-fees Act, 1970 which reads as follows:

11. Inquiry as to valuation of suits. - If the Court is of opinion that the subject-matter of any suit has been wrongly valued, it may revise the valuation and determine the correct valuation and may hold such inquiry as it thinks fit for such purpose.

8. He submitted that the whole purpose of the section 11 is to determine the correct valuation and for that purpose to make such inquiry as the Court would think fit and proper in a given situation since it goes to the root of the matter namely the jurisdiction of the Court. In order to correct the valuation, the Court may hold such inquiry. In this regard he relied upon the judgment reported in [Amritalal Chatterjee Vs. Hiralal Chatterjee and Another](#), : ILR (1966) 1 Cal 421 and 70 CWN 1137 (Mustafa Shah v. Dhanu Shah)

9. He argued that if on perusal of the plaint this Court is, prima facie, satisfied that the plaintiff has valued the suit arbitrarily and not fairly, it would not preclude the Court from directing the plaintiff to value the suit properly and pay court fee on it.

10. The learned Counsel relying upon the judgment reported in [Sujir Keshav Nayak Vs. Sujir Ganesh Nayak](#), submitted that this power of the Court has been judicially recognized by the Hon"ble Supreme Court in paragraph 3 of the said decision where the law on this aspect has been summarized in the manner following:

(i) Where the question of Court fee is linked with jurisdiction a defendant has a right to raise objection and the Court should decide it as a preliminary issue.

(2) But in those cases where the suit is filed in Court of unlimited jurisdiction the valuation disclosed by the plaintiff or payment of amount of Court fee on relief claimed in plaint or memorandum of appeal should be taken as correct.

(3) This does not preclude the Court even in suits filed in Courts of unlimited jurisdiction from examining if the valuation, on averments in plaint, is arbitrary.

11. He has also relied upon a recent decision of this High Court reported in 2011 (2) CLJ (Cal) 458 (Maya Sardar & Ors. v. Smt. Annapama Ghosh) in which the learned Single Judge of this Court echoed the same principle. The law is well settled on this point in the decision of the Hon"ble Supreme Court in Chettiar's case reported in [S.Rm.Ar.S.Sp. Sathappa Chettiar Vs. S.Rm.Ar.Rm. Ramanathan Chettiar](#), which was also quoted in a subsequent decision of this Hon"ble Court reported in [Tara Devi Vs. Sri Thakur Radha Krishna Maharaj, through Sebaitis Chandeshwar Prasad and Meshwar Prasad and Another](#). In Tara Devi's case the Hon"ble Supreme Court at page 71 in paragraph 4 followed the principle laid in Chettiar's case in the manner following:

It is now well settled by the decisions of this Court in Sathappa Chettiar v. Ramanathan Chettiar and Meenakshisundaram Chettiar v. Venkatachalam Chettiar that in a suit for declaration with consequential relief falling u/s 7(iv)(c) of the Court Fees Act, 1870, the plaintiff is free to make his own estimation of the relief's sought in the plaint and such valuation both for the purposes of court fee and jurisdiction has to be ordinarily accepted. It is only in cases where it appears to the Court on a consideration of the facts and circumstances of the case that the valuation is arbitrary, unreasonable and the plaint has been demonstratively undervalued, the Court can examine the valuation and cart revive the same.

12. In considering the said decision in Sujir Keshav Nayak's case the Hon"ble Supreme Court held that the defendant has no right to raise such objection nor the Court should devolve into the matter after filing of written statement on evidence.

13. In the written statement the defendant did not take the point of jurisdiction and any objection with regard to incorrect valuation of the suit. In the earlier proceeding the complaint was that the suit has been valued excessively and arbitrarily at Rs.

31,000/- and it should be Rs. 1,500/- on the basis of the rent which the plaintiffs were receiving from the defendant No. 2. However, the petitioner before this Court contended that the property is at Monoharpukur Road and the valuation of the suit property could not be Rs. 31,000/- and it should be more. The stand of the petitioner suffers from inherent contradictions and only speaks of the dilatory tactics being adopted by the defendant for almost ten years to prevent the trial Court from proceeding with the matter.

14. In fact, as it appears to this Court that the suit could not have been valued at Rs. 1,500/- having regard to the fact that the plaintiffs in valuing the said suit would be required to take into consideration the damage that they had suffered by reason of wrongful occupation of the petitioner in the suit premises after surrendering of tenancy by the defendant No. 2 in favour of the plaintiffs.

15. This revisional application is clearly speculative and vexatious and the same is dismissed with costs at Rs. 5,000/- to be paid by the petitioner to the plaintiffs within one week from date. The revisional application thus fails.

There will be no order as to costs.

Xerox certified copy of the order, if applied for, be given to the parties on usual undertaking.