

# RAJASTHAN HIGH COURT

Mohkam Chand Dasot

Vs.

Addl. Distt. & Sessions

Civil Writ Petition No. 1093 of 2005

(K. S. Rathore, J.)

17.01.2006

## ORDER

### **K. S. Rathore, J**

1. This writ petition is directed against the order dated 22-9-2004 by which, the learned Additional District and Sessions Judge No. 3, Jaipur City, Jaipur in *Suit titled as Vilam Chand v. Mohkam Chand* <sup>1</sup> allowed the application dated 15-3-2004 moved under Sections 11, 18, 24, 29 and 38 of the Rajasthan Court Fees and Suits Valuation Act, 1961 (for short 'the Act') read with Order 7 Rule 11 of the Civil Procedure Code and the plaintiff was directed to deposit Rs. 7,00,000/- lakhs and the issue for determination of the actual suit value was left open with the observation that it shall be decided after considering the evidence adduced on behalf of the parties and in case additional court-fees required to be deposited, same shall be requisitioned from the plaintiffs-respondents.

2. The impugned order dated 22-9-2004 was challenged by the petitioners on the ground that the plaintiff-respondent No. 2 before the learned Additional Civil Judge (Sr. Divn.) No. 3, Jaipur City, Jaipur in the year 1997 for cancellation of sale deed and possession of the property alleging that the sale deed was executed by fraud and he has executed mortgage deed and, therefore, the sale deed be declared as null and void and the defendants be directed to hand over the possession. The suit was valued for Rs. 48,449/- and the respondent No. 2 paid court-fee of Rs. 2490/-. The application under Order 7 Rule 11 of the Civil Procedure Code read with Sections 11, 24 and 29 of the Act was filed by the defendants-petitioners before the Civil Court and the Court vide its order dated 16-8-2002 observed that Issue No. 7 with regard to the court-fee would be decided as preliminary issue before going into the merits of the case.

3. The learned Court after hearing the arguments on the preliminary issue held that the valuation of the suit premises is not less than Rs. 65 lakhs and, therefore, it is not within the court's jurisdiction to hear the suit and, therefore, the plaintiff was directed

to file suit before the proper Court after filing proper court-fee on the suit value as assessed by the learned court i.e. Rs. 65 lakhs.

4. The appeal was filed by the respondent No. 2 against the order dated 22-1- 2003 passed by the learned Additional Civil Judge No. 3, Jaipur City, Jaipur before the learned District Judge. The appellate Court has held that the trial Court should not have decided the valuation, but should have returned the suit because the valuation of the suit was admittedly more than Rs. 50,000/-. Therefore, the appeal was partly allowed and the learned Additional District and Sessions Judge No. 3, Jaipur City, Jaipur has held that the valuation of the suit was more than Rs. 50,000/- but set aside the valuation of the suit determined by the trial Court and the plaintiff was allowed to submit the plaint before the competent Court i.e. District Judge and the same was filed before the learned District Judge. The learned District Judge transferred the suit to the Court of the learned Additional District and Sessions Judge, Jaipur City, Jaipur.

5. The impugned order dated 22-9-2004 passed by the learned Additional District and Sessions Judge No. 3, Jaipur City, Jaipur is challenged by the petitioner by way of filing of this writ petition on the ground that the trial Court has failed to consider that as per the provisions of the Act, it was mandatory duty of the Court to have decided the proper Court-fee before going into the merits of the case and thus, the trial Court has failed to exercise its jurisdiction thereafter in accordance with law as the trial Court ought to have decided the issue of the valuation on the basis of the valuation report and D. L. C. rates meant for registration of the property and directed the plaintiff to deposit proper court-fee.

6. Learned counsel for the petitioner referred Section 11 of the Act which reads as under:

"11. Decision as to proper fee - (1) In every suit instituted in any Court, the Court shall, before ordering the plaint to be registered, decide on the materials and allegations contained in plaint and on the materials contained in the statement, if any, filed under Section 10, the proper fee payable thereon, the decision being however subject to review, further review and correction in the manner specified in the succeeding sub-sections.

(2) Any defendant may plead that the subject-matter of the suit has not been properly valued or that the fee paid is not sufficient. All questions arising on such pleas shall be heard and decided before the hearing of the suit as contemplated by Order 18 in the First Schedule of the Civil Procedure Code, 1908 (Central Act 5 of 1908). If the Court decides that the subject-matter of the suit has not been properly valued or that the fee paid is not sufficient, the Court shall fix a date before which the plaint shall be amended in accordance with the

Court's decision and the deficit fee shall be paid. If the plaint be not so amended or if the deficit fee be not paid within the time allowed, the plaint shall be rejected and the Court shall pass such order as it deems just regarding costs of the suit."

7. More particularly, sub-section (3) of Section 11 of the Act provides that any defendant may plead that the subject-matter of the suit has not been properly valued or that the fee paid is not sufficient. All questions on such pleas shall be heard and decided before hearing of the suit as contemplated by Order 18 in the First Schedule of the Civil Procedure Code.

8. After referring the aforesaid provisions, learned counsel for the petitioner in support of his submissions placed reliance on the judgment rendered in the case of *Gangaram v. Phulia, reported in* <sup>2</sup> wherein this Court has held that the learned Munsif clearly erred in doing so. Section 11 of the Act provides that a decision with regard to whether the Court fee paid was sufficient should be recorded before proceeding further with the case. It further provides that in case there is any deficiency, the Court should grant time to the party concerned to make up the deficiency and if the deficiency is not made up within the time so allowed, the plaint shall be rejected.

9. Again, this Court in the case of *Kanhaiyalal v. Himmat Bahadur* <sup>3</sup>, reported in has made the same observation as aforesaid, which is reproduced as under :-

"A preliminary objection was taken that in view of the ruling in *Purohit Swarup Narain v. Gopi Nath* <sup>4</sup> this revision is not competent. In my opinion, this preliminary objection has no force. Under Section 11 of the Suits Valuation Act, even if an objection is taken in the Court of first instance at the very earliest opportunity and it is overruled by the trial Court, the appellant Court cannot set aside the trial Court's order without coming to a finding that the under-valuation has prejudicially affected the disposal of the suit on merits. This provision is somewhat similar to the provision contained in Section 21 of the Civil Procedure Code with regard to an objection about the territorial jurisdiction of the Court. The decision of a learned single Judge of this Court in *Firm Purushottam Das Samaldas v. Firm Bilasrai Mannal* <sup>5</sup> is, therefore, applicable and the order is revisable."

10. Learned counsel for the petitioners also referred the judgment rendered in the case of *Smt. Narbada v. Smt. Aashi, reported in* <sup>6</sup> wherein this Court has held that in a suit for cancellation of document relating to proper court-fee, computation of court-fee is

decided on the basis of market value of the property to which the document relates. He also referred to the Order 18 of the Civil Procedure Code to show that the procedure as stipulated under Order 18 as to how the Court ought to have proceeded with the suit in question and after referring to the aforesaid judgments and the provisions of law, he prayed that the learned counsel below has seriously erred in not deciding the suit value finally and only allowed the plaintiff-respondents to deposit the court-fee considering the value of the suit as Rs. 7 lakhs whereas, from as per the mandatory law, the learned Court below ought to have decided this question first prior to hearing the suit on merit.

11. Per contra, learned counsel for the plaintiffs-respondents has controverted the submissions advanced on behalf of the petitioners. Mr. Mathur, learned counsel appearing on behalf of the plaintiffs-respondents has read the judgment passed by the learned Additional Civil Judge (SD) No. 3, Jaipur City, Jaipur dated 22-1-2003 and submits that the learned Addl. Civil Judge has seriously erred in holding the suit value as Rs. 65 lakhs as he himself is of the view that he is not having the pecuniary jurisdiction to hear the suit having value of Rs. 65 lakhs. Admittedly, the suit in question was having the value of more than Rs. 50,000/-.

12. Mr. Mathur also placed reliance on Section 11 of the Act and after referring the said Section 11, he submits that in every suit instituted in any Court, the Court shall, before ordering the plaint to be registered, decide on the materials and allegations contained in plaint and on the materials contained in the statement, if any, filed under Section 10, the proper fee payable, thereon, the decision being, however, subject to review, further review and correction in the manner specified in the succeeding sub-sections. Mr. Mathur laid emphasis on the part of sub-section (1) of Section 11 that the decision however, subject to review, further review and correction in the manner specified. In view of this provision of sub-section (1) of Section 11, the impugned order under challenge in the writ petition is not contrary to the provisions of law as in the impugned order, the learned Court below has only observed that value of the suit is Rs. 7 lakhs and after considering this value, the plaintiffs-respondents were directed to file the court-fee and finally with the observation that the question of valuation of suit will be decided after considering the evidence adduced on behalf of the party concerned and the plaintiffs-respondents will be asked if in the Court arriving give the finding that the suit valued is more than Rs. 7 lakhs, the plaintiffs-respondents in such an eventuality will be asked to deposit the deficit amount. In support of his submissions, he placed reliance on the judgement rendered in the case of *Smt. Cheina v. Nirbhay Singh*<sup>7</sup>, reported in wherein this Court has observed that the Court refused to consider the application under Order 7, Rule 11 of the Civil Procedure Code observing that an issue relating to valuation of the subject-matter of the suit cannot be decided without framing any issue based on pleadings of the parties. There appears to be no foundation for such a sweeping observation. On the contrary when the written

statement is filed and an issue as to the pecuniary or territorial jurisdiction has been raised, the Court will be precluded from deciding such an issue as a preliminary issue if the issue is merely an issue of law; whereas in the instant case, mixed question of law is involved and the sum total of the law laid down in the aforesaid cases is that the Court can decide on the basis of allegations in the plaint and the material placed on record as to whether the valuation put on the subject-matter of the suit was not arbitrary and absurd. When the matter of the valuation is to be decided on the allegations made in the plaint and the material placed on record by the parties, it cannot be said that for deciding such an objection filing of written statement and raising of preliminary issue was necessary.

13. Para 12 of the judgment rendered in Smt. Cheina's case (supra) is reproduced as under :

"Thus, the trial Court when it deferred the question of determination on an application under Order 7, Rule 1 of the Code till after written statement was filed and framed the issue, committed material irregularity in exercise of its jurisdiction. An application under Order 7 Rule 11 of the Code has to be decided at the earliest stage on the material on record i.e. the plaint and the documents filed along with it or when the leave of the Court before deciding the application. It has to be a summary enquiry to find out whether the valuation put on the subject-matter of the suit by the plaintiff was arbitrary and absurd. If it appears to the Court to be *ex facie* arbitrary or absurd, the Court may direct the valuation to be amended or court-fees to be paid in accordance with such valuation as the Court estimates failing which the plaint could be rejected. It is not possible for the Court to determine the correctness of the valuation without taking evidence, the proper course for the Court was not to reject the plaint at that stage but keep the question open to be tried in the suit. When in the written statement, the valuation of the suit is objected to if it raises a pure question of law, the Court may treat it as a preliminary issue and decide it as such. But if the pleading raised a mixed issue of law and facts on the question of valuation of the suit, the only course open to the Court is to decide the issue after taking evidence along with all other issues."

14. Heard rival submissions of the respective parties and perused the relevant provisions of the Act and Order 18 of the Civil Procedure Code as well as judgments referred by the respective parties.

15. To decide the present controversy, I would first like to deal with the provisions of

Section 11 of the Act. It is clear that in case any party raise the objection in regard to proper court-fee as per the provisions of sub- section (1) of Section 11 of the Act, the Court shall, before ordering the plaint to be registered, decide on the materials and allegations contained in the plaint and on the materials contained in the statement, if any, filed under Section 10, the proper fee payable thereon, the decision should be passed first and both the parties do not dispute that the issue should be framed first to decide this controversy and should be decided prior to hearing the suit on merit.

16. I am fully convinced with the submissions made on behalf of the respondents that if any order passed after hearing the objections on the issue of valuation of suit is subject to review, further review and correction are given in the manner specified, the Court ought to have proceeded as specified under sub-section (2) of Section 11 wherein it is stated that any defendant may plead that the subject-matter of the suit has not been properly valued or that the fee paid is not sufficient. All questions arising on such pleas shall be heard and decided before the hearing of the suit as contemplated by Order 18 in the First Schedule of the Civil Procedure Code. The issue ought to have been decided by the Court concerned first i.e. before hearing of the suit and after hearing the issue for proper valuation or proper court-fee. If the Court decides that the subject-matter of the suit has not been properly valued or that the fee paid is not sufficient, the Court shall fix a date before which the plaint shall be amended in accordance with the Court's decision and the deficit fee shall be paid; thereby that decision should be taken first and whatever decision is taken by the Court concerned is mandatory to be complied with by the plaintiff to amend the plaint and to pay the deficit fee. If the plaintiff failed to amend the plaint and to pay the deficit fee within the time allowed by the Court, the plaint shall be rejected and the Court shall pass such order as it deems just regarding costs of the suit.

17. Although, by way of impugned order dated 22-9-2004, the trial Court has ordered to pay the court-fee considering the value of the suit as Rs. 7,00,000/- whereas still the question of deciding the value of suit and court-fee is still open. Therefore, the Court concerned is required to decide this issue prior to hearing the suit on merit and shall proceed in accordance with the provisions of sub-section (2) of Section 11 of the Act.

18. With the aforesaid observations, I consider it proper to direct the learned Court below to decide the issue of value of suit first before taking decision on other issues and on merit.

19. With these observations, the writ petition stands disposed of.  
Order accordingly.

Cases Referred.

1. No. 126/2003
2. RLW 1966 Vol. 17
3. RLW 1961 Vol. 12
4. (1953 Raj LW 629)
5. (1956 Raj LW 268)
6. AIR 1987 Raj162
7. RLW 1997 (1) Raj 688