

Civil Revision

Present :

The Hon'ble Justice Prabhat Kumar Dey

Judgment on : 23.08.2010

C.O. No. 3533 of 2008

Maya Sardar & Others

-vs-

Smt. Annapurna Ghosh

Point:

Valuation of Suit- Suit for recovery of possession-Defendant alleged that the suit was not properly valued- Whether the Court has to hold an enquiry under section 11 of the West Bengal Court Fees Act- West Bengal Court Fees Act, 1970 S 11

Fact:

Opposite party filed suit for recovery of possession and injunction. The defendants / petitioners had trespassed into the suit property by breaking open the lock of the door and also threatened to dispossess the plaintiff. The defendants filed an application under Section 11 of the West Bengal Court Fees Act praying for holding an enquiry as to the valuation of the suit property as the suit property was valued at Rs.150/- to avoid payment of stamp duty, but actually the valuation of the suit property would be Rs.30,000/-. The learned Court was pleased to reject the said application. Being aggrieved by and/or dissatisfied with the said order, the petitioner preferred this revisional application before this Court.

Held:

When it was brought to the notice of the court below by the defendants that the suit was not properly valued, then it was the duty of the court to hold an enquiry as per Section 11, whether the suit was properly valued or not.

Para 13

Cases cited:

Miss Ila Choudhury Vs Smt. Maya Bose & Others, 2009 (1) CLJ (Cal) 386;
(2009) 1 WBLR (Cal) 227

For the Petitioners : Mr. Suprabhat Bhattacharjee,

Mr. Sujit Chatterjee,

For the Opposite Party : Mr. Haradhan Banerjee,

Mr. Amitava Pain,

Mr. P. P. Mukherjee,

PRABHAT KUMAR DEY, J.:

This revisional application is directed against the order no. 51 dated 26.08.2008 passed by the learned Civil Judge (Junior Division), 4th Court, Howrah, in Title Suit no. 198 of 2003, by which the learned Court was pleased to reject the petition under Section 11 of the West Bengal Court Fees Act and also observed that the valuation of the suit is improper.

2. The facts of the case, as enumerated in this revisional application, are as follows :

Title Suit No. 198 of 2003 was filed by the plaintiff / opposite party for recovery of possession and injunction before the concerned court stated above.

The case of the plaintiff as made out in the plaint is that she purchased the property from its erstwhile owner by a registered deed and thereby she became the owner of the lands and her name has duly been recorded.

It is the further case of the plaintiff that the defendants / petitioners had trespassed into the suit property by breaking open the lock of the door and also threatened to dispossess the plaintiff.

The defendants contested the said suit by filing written statement denying the material allegations made in the plaint contending, inter alia, that the suit is not maintainable.

It was the further case of the defendants that they filed an application under Section 11 of the West Bengal Court Fees Act praying for holding an enquiry as to the valuation of the suit property as the suit property was valued at Rs.150/- to avoid payment of stamp duty, but actually the valuation of the suit property would be Rs.30,000/-.

However, the learned Court was pleased to reject the said application. Being aggrieved by and/or dissatisfied with the said order, the petitioner preferred this revisional application before this Court.

3. The learned Advocates, appearing on behalf of the petitioners, submitted that due to failure of filing the written statement before the concerned court in time, the written statement was not accepted by the said court and as a result, the petitioners preferred revisional application before this court being C.O. No. 2194 of 2007. He also submitted that the Hon'ble Justice, Biswanath Somadder, of this Hon'ble Court, after hearing the parties, was pleased to allow the revisional application and observed that the written statement filed before the court below be accepted subject to certain conditions.

4. He further submitted that the market value of the suit property would be at least Rs.30,000/-, but to avoid payment of proper stamp duty, the suit was filed showing valuation at Rs.150/-. He also submitted that the defendants by filing the application under Section 11 of the West Bengal Court Fees Act before the concerned court prayed for holding of an enquiry as to the valuation of the suit property. But without ascertaining the proper valuation of the suit property, the learned court was pleased to reject the application.

5. Relying upon a decision reported in **2009 (1) CLJ (Cal) 386** in the case of **Miss Ila Choudhury Vs Smt. Maya Bose & Others** of the learned Single Judge of this court, the learned Advocates, appearing for the petitioners, submitted that the enquiry should be held for the purpose of ascertainment of the court fees for proper valuation of the suit property. He lastly submitted that the learned court below should have determined the correct valuation after holding a proper enquiry.

6. The learned Advocates appearing on behalf of the opposite party vehemently opposed the contentions of the learned Advocate appearing on behalf of the petitioners. He submitted that there was nothing wrong in the impugned order. He also submitted that under Section 7(vi) of the West Bengal Court Fees Act in a suit for recovery of possession from a trespasser, the amount at which the relief sought for was correctly valued in the plaint and no enquiry is to be made in this regard. He further submitted that the decision as referred to above is not applicable in the facts and circumstances of the present case and the revisional application should be rejected.

7. He referred to a decision reported in **(2009) 1 WBLR (Cal) 227** in support of his contention.

8. Considered the submissions of the learned Advocates of the parties. In order to take a decision in this revision, relevant Section 7(vi) of the West Bengal Court Fees Act requires to be looked into at first. Section 7(vi) of the said Act reads as follows :

“For Recovery of possession of immovable property : In a suit for recovery of possession of immovable property from –

(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 ; ***”**

9. It is, thus, clear that in a suit for eviction and/or recovery of possession from a trespasser, duty casts upon a court to hold enquiry if the valuation given by the plaintiff is found to be erroneous as per provision of Section 11 of the Act.

10. Here, in this case, the plaintiff filed the suit for recovery of possession from a trespasser and injunction showing valuation of the suit at Rs.150/-, which according to the defendants / petitioners is not correct. It is their specific case that the valuation of the suit property should be at least Rs.30,000/- and the plaintiff should have paid the correct court fees thereon.

11. I like to reiterate that although the plaintiff is at liberty to put his own valuation, but it is subject to provision in Section 11, which indicates that valuation cannot be put arbitrarily, which is far below the market price of the subject matter / immovable property. In the instant case, the plaintiff filed the suit for recovery of possession from a trespasser and in such a case, the court fees, payable according to the amount at which the relief sought, is valued in the plaint and in such a case, it was open to the court for enquiry under Section 11 of the said Act.

12. The learned court below while rejecting the defendants' petition observed the following:

“I am of the view that the court fees as calculated by the plaintiff should be presumed to be correct. Court should not try to revise the same or inquire regarding the actual market value of the suit property. If on plain reading of the plaint, it appears that there is reputedly the lack of jurisdiction regarding pecuniary limit, then only the court can look into the matter. The court should look, not through its own eyes, but through the eyes of plaintiff. So looking, this court finds nothing from which it can be manifestly clear that the valuation of the suit is improper.”

13. In the case of **Miss Ila Choudhury Vs Smt. Maya Bose & Others**, which was cited on behalf of the petitioners, the learned Single Judge of this court observed that the question of valuation of a suit goes to the very root to the court's jurisdiction to decide a suit and although it is primarily the court's discretion to do so, the same ought to be exercised as part of the court's statutory obligation. Therefore, I am of the considered view that when it was brought to the notice of the court below by the defendants that the suit was not properly valued, then it was the duty of the court to hold an enquiry as per Section 11, whether the suit was properly valued or not.

14. In this context, I like to mention that the decision cited by the learned Advocates, appearing on behalf of the opposite party, cannot render much assistance in the facts and circumstances of the instant case. The case reported in **(2009) 1 WBLR (Cal) 227** was based upon the provisions of the Specific Relief Act where the concerned court after holding enquiry came to the conclusion that the suit was not wrongly valued.

15. Having regard to the nature and character of the suit and the relief sought for and also in the light of my forgoing discussions, I am of the opinion that the impugned order passed by the learned court below warrants interference of this court and it stands set aside.

16. The learned court below is directed to dispose of the defendants' petition under Section 11 of the West Bengal Court Fees Act afresh as expeditiously as possible in the light of the observations made in the body of the judgment and also after hearing both the parties.

17. There will be, however, no order as to costs.

18. This revisional application is thus disposed of.

19. Urgent Xerox certified copy of this order may be supplied to the learned Advocates of the respective parties, if the same is applied for.

(Prabhat Kumar Dey, J.)

