

HIGH COURT OF JAMMU AND KASHMIR AT JAMMU

Condl(C) No.63/2010
c/w
C.Rev.No.28/2010
CMA No.34/2010

Date of Decision: 09.07.2012

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| Prabha Bakshi | Vs. | Rohni Devi & ors. |
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CORAM:

MR. JUSTICE J. P. SINGH.

Appearing Counsel:

For Appellant(s) : Ms. Surinder Kour, Sr. Advocate with
Ms. Rajiv Gorka, Advocate.
Mr. Sunil Sethi, Sr. Advocate with
Mr. Sumit Singh, Advocate.

For Respondent(s) : Mr. Ashok Mishra, Advocate.

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| i) | Whether approved for reporting in Press/Media | : | Yes. |
| ii) | Whether to be reported in Digest/Journal | : | Yes. |

JUDGMENT

Smt. Prabha Bakshi-plaintiff has filed this Civil Revision questioning Munsiff, Kathua's order dated 22.10.2008 whereby she was ordered to amend her Plaint fixing the same amount for the purposes of Court fee and jurisdiction, on the value of the subject matter of the Suit, along with Motion seeking condonation of delay in filing the Revision.

Heard learned counsel for the parties.

The facts, in brief, giving rise to the filing of the Civil Revision, may be stated thus:

The petitioner filed a Civil Original Suit for Partition of her husband's two storeyed House situated at Kali Bari (behind Shiv floor Mills) Patel Nagar, Kathua by metes and

bounds claiming 2/3rd share therein, besides Decree of Permanent Prohibitory Injunction restraining the respondents-defendants, their servants and agents from interfering into her possession of two rooms and store, in the year 2001.

The Suit was slated for final hearing when the petitioner moved Motion for permission to lead additional evidence. She was permitted by the Trial Court so to do. The trial Court's order was, however, set aside by this Court in respondents' Civil Revision No.161/2007 and directions were issued to it to ensure that the hearing in the case was concluded within four months.

Rather than concluding the hearing in the Suit, the learned Munsiff entertained respondents' Application seeking orders to the plaintiff to pay proper Court fee on the Suit. She was of the view that the Plaintiff was required to value her Suit for the purposes of Court Fee and jurisdiction according to the subject matter of the Suit. The petitioner was accordingly directed to value her Suit for the purposes of Court Fee and jurisdiction on the value of the subject matter, i.e., Rs. 30,000/-.

Before the petitioner could question the Trial Court's order, her Suit was transferred to the file of City Munsiff, Jammu vide this Court's order dated 04.12.2008. After the transfer of the Suit, the respondents did not appear before the transferee Court, and the proceedings in the Suit continued to pend without any effective proceedings, for one or the other reason. The parties, as also the Court, appear to have omitted to take note of the trial Court's order whereby the petitioner had been called upon to amend her Plaint. The respondents,

kept on seeking adjournments for addressing arguments and it was only on 12.10.2009 that a Motion was moved by the respondents to defer hearing in the case until the petitioner had complied with the Court's order dated 22.10.2008.

The petitioner thereafter approached this Court seeking setting aside of the Trial Court's Order whereby she was required to amend her plaint.

It is in these circumstances that the parties are before this Court again.

The order questioned by the petitioner in the Revision is not an order, which, if made in favour of the petitioner, would have finally disposed of the Suit. The petitioner's Revision against the trial Court's order may not, therefore, be maintainable in view of the provisions of the first proviso appended to Section 115 of the Code of Civil Procedure. The respondents' plea that the petitioner's Revision being barred by time and no sufficient reason having been projected for its condonation, may not merit consideration, does not, therefore, arise for consideration, for, the Revision itself is found non-maintainable against the order of the Trial Court.

However, looking to the plight of the plaintiff, a destitute widow, who is litigating in the Courts for over a decade; but without any decision on her Claim in the Suit, one way or the other, And finding that the process employed by the learned Munsiff in issuing the questioned order, may not be sustainable in law as also in view of the directions issued on the respondents' Civil Revision No.161/2007, the present case is found fit for exercise of jurisdiction under Section 104 of the Constitution of Jammu and Kashmir.

I would, therefore, proceed to examine as to whether or not the learned Munsiff had followed the legal process in dealing with the respondents' plea projected at the fag end of the Suit.

In terms of the directions issued by this Court while disposing of respondents' Civil Revision No.161/2007, the Trial Court was required to determine the petitioner's suit finally, and if any merit had to be found in the respondents' plea that requisite Court fee had not been paid by the petitioner, requisite orders could well be passed in this behalf at the time of final disposal of the Suit. The trial Court has, however, not followed the course which it was required so to do, in law, in the facts and circumstances of the case, and in view of the directions issued by this Court.

Be that as it may, on scrutiny of the trial Court's order, there appears an apparent error in the trial Court's order in misconstruing the provisions of the Court Fees Act and Suits Valuation Act. The learned Munsiff has omitted to note that the plaintiff's Suit being a Suit for Partition by metes and bounds, claiming her to be in possession of part thereof, was not covered by any specific provision of the Court Fees Act indicating the nature of such Suit and Fee payable therefor.

It further appears to have omitted to notice the provisions of Section 7(iv) (b) and the expression "*this does not apply to a suit for partition by metes and bounds*" appearing within the brackets in the Sub-section, while considering the respondents' plea. It has further omitted to notice the provisions of Article 17 (vi) of Schedule II of the

Court Fees Act, which are reproduced hereunder for facility of reference:-

| Number | | Proper Fee |
|--|--|------------|
| (vi) Every other suit where it is not possible to estimate at a money value the subject matter in dispute and which is not otherwise provided for by this Act; | | [Rs.25-00] |

The process employed by the trial Court in dealing with the respondents' plea and the petitioner's Response thereto that she had paid requisite Court Fee and valued the Suit in accordance with the Suits Valuation Act and the Court Fees Act, is, therefore, faulty and not countenanced by law. It has taken an erroneous view in directing the petitioner to pay Court fee on the market value of the property without taking into consideration the provisions of Court Fees Act referred to hereinabove.

The order passed by the trial Court cannot, therefore, be sustained.

Accordingly, the trial Court's order dated 22.10.2008 is quashed and it is directed to conclude final hearing in the Suit preferably within a period of four months. The respondents shall be at liberty to raise any objection that may be permissible under law, regarding valuation of the Suit, which, if so raised shall be decided at the time of the conclusion of the Suit, in accordance with law.

In the facts and circumstances of the case and to see that there was no further delay in the disposal of the long pending Civil Suit, it is considered appropriate to transfer the Suit

from the file of City Munsiff, Jammu to the file of learned First Additional Munsiff (Forest Magistrate), Jammu.

The parties through their learned counsel are directed to appear before the learned First Additional Munsiff (Forest Magistrate), Jammu on July 16, 2012.

The records of the case be sent to the learned First Additional Munsiff (Forest Magistrate), Jammu forthwith informing the learned City Munsiff, Jammu of the order.

(J. P. Singh)
Judge

JAMMU
09.07.2012
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