

HIGH COURT OF UTTARAKHAND
AT NAINITAL

Appeal From Order No.496 of 2017
Connected with
Civil Revision No.113 of 2017

Vivek Agarwal and Another ... Petitioners

Vs.

Smt. Preeti Agarwal and Others ... Respondents

Advocate: Mr. Pulak Agarwal and Mr. Bharat Tewari, learned counsel for the appellants.
Mr. Tarun Lakhera, learned counsel for the private respondents.
Mr. T.S. Bisht, learned Deputy Advocate General for the State.
Mr. Himanshu Aswal, learned counsel holding brief of Mr. Navnish Negi, learned counsel for respondent no.6.

Hon'ble Sharad Kumar Sharma, J.

Appeal From Order No.496 of 2017

The appellants herein are defendants in a Civil Suit No.14 of 2015, "Smt. Preeti Agarwal and Others Vs. Vivek Agarwal and Another", as it was preferred before the Court of Civil Judge (S.D.), Pauri Garhwal.

2. After the exchange of the pleadings, an issue cropped up for consideration before the learned trial Court by way of issue no.7, as to "whether the suit has been appropriately valued or not, particularly, in the context of relief 'C'," as it was sought for in the plaint.

3. The said issue pertaining to the Court fees has been decided by the trial Court vide its impugned order of 22.06.2017, wherein the Court of Civil Judge (S.D.) has observed, that in accordance with the Court Fees and Suit Valuation Act under Section-5, the suit has been held to be appropriately valued. Accordingly, the valuation of the disputed property as it was prescribed by the Nagar Palika and no deficiency, as such, was pointed out by the learned trial Court, which was at all required to be made by the plaintiffs/respondents herein, it is this order which has been challenged by the defendants/appellants by preferring an Appeal From Order under Section 6A of the Court Fees Act to be read with Section 104 of the CPC.

4. If the provision contained under Section 6A of the Court Fees Act is taken into consideration, which is extracted hereunder, the Appeal from Order, by invoking provisions under Section 6A of the Court Fees Act, 1870, would be appellable by any person, who is called upon **to make good a deficiency in court fee.** It is only an eventuality, when a party to the proceedings of the suit when has been called by the trial Court to make good a deficiency, the order has been made appellable under Section 6A of the Court Fees Act to be read with Section 104 of the CPC. Section 6A of the Court Fees Act, 1870 is extracted hereunder:

*“6A.- (1) **Any person called upon to make good** a deficiency in court fee may appeal against such order as if it were an order appealable under Section 104 of the Code of Civil Procedure.”*

5. But, on the perusal of the impugned order, which, has been put to challenge by the defendants/ appellants herein, since the Court has observed, that the suit has been appropriately valued qua relief ‘D’, the trial Court has held, that the suit was appropriately valued, in accordance with the valuation prescribed by the Nagar Palika, and the plaintiffs in the suit were not called upon to deposit any deficiency of the Court fees. In that eventuality, when the plaintiffs have not been called upon to deposit the deficiency of the Court fees, while deciding issue no.7, the provisions of Section 6A of the Court Fees Act, will not be available to the defendants as a tool to file an Appeal from Order under Section 6A of the Court Fees Act read with Section 104 of the CPC, because no liability of deposition of fees has been imposed and fastened upon the defendants, which could have entitled them to invoke Section 6A of the Court Fees Act and to file an Appeal From Order.

6. Besides this, if the provision contained under Section 104 of the CPC is taken into consideration, the provision contained under Section 104 of the CPC, exclusively, makes an order appealable, which is otherwise exceptionally carved out as per the sub-clauses provided to Section 104 of the CPC.

7. The provisions contained under Section 104 of the CPC have been borrowed by way of reference to the provisions contained under Section 6A of the Court Fees Act and not by way of an incorporation.

8. In that eventuality, the provisions contained under Section 104 of the CPC, when in itself does not prescribes preference of any Appeal from Order, on an issue deciding the aspect of Court Fees, and since it is not contained under any of the sub-clauses contained under Section 104 of the CPC, the Appeal from Order would not be maintainable in view of the specific bar created by Sub-section 2 of Section 104 of the CPC, which reads as under:-

“(2) No appeal shall lie from any order passed in appeal under this Section”.

9. In that eventuality, the appeal thus preferred by the defendants/appellants by invoking the provisions contained under Section 6A of the Court Fees Act to be read with Section 104 of the CPC is not maintainable and the same is, accordingly, dismissed.

Civil Revision No.113 of 2017

The instant revision has been preferred by the defendants/revisionists being aggrieved against the order dated 01.03.2017, as it has been passed by the Court of Civil Judge (S.D.), Pauri Garhwal in Civil Suit No.14 of 2015, “Smt. Preeti Agarwal and

Others Vs. Vivek Agarwal and another”, whereby the learned trial Court has allowed the application under Order 6 Rule 17 of the CPC, and as a consequence, thereto, to the proposed amendment as sought for by paper no.48क and the amendment as prayed in paragraph no.26, the same has been allowed, and the suit has been permitted to be amended according to the relief prayed therein.

2. As a consequential order passed on it, the effect would be that the amendment as carried out in paragraph no.26 of the plaint, it does not prejudice the right of the defendants to prefer a revision as against the order of 01.03.2017, for the reason being, that the order itself of 01.03.2017 will not fall to be within the scope of Revision under Section 115, for the reason being, that adjudication as against the order of 01.03.2017 would not result into an adjudication of the suit itself, in view of the order already passed in connected AO No.496 of 2017, which was the consequential effect of the amendment as allowed on 01.03.2017.

3. In that eventuality, the revision itself, as against the order of 01.03.2017, will have no bearing in the light of the order passed in AO No.496 of 2017. The same too, would accordingly, stand dismissed.

(Sharad Kumar Sharma, J.)

29.11.2023