

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Second Appeal No. 60 of 2012**

Kausilya Bai, daughter of Late Chamru Ram, aged 30 years, Occupation-Service, Caste-Pathari, resident of Village Kumhari, Tehsil Pendra Road, District Bilaspur (C.G.), presently at child Development Extension Officer, Korba, District Korba (C.G.)
.....Plaintiff

---- Appellant**Versus**

1. Jeevanlal, son of Dujram, aged 32 years, Occupation – Service, Caste-Pradhan, resident of Village Kumhari, Tehsil Pendra Road, District Bilaspur (CG), presently at Ledri, P.O. Jhagrakhand, Tehsil Manendragarh, District Koriya (C.G.)
2. Bechan, son of Dujram, aged 25 years, Occupation -Agriculture, Caste- Pradhan, resident of Village Kumhari, Tehsil Pendra Road, District Bilaspur (C.G.)
3. Ravindra, son of Dujram, aged 20 years, Occupation-Agriculture, Caste-Pradhan, resident of Village Kumhari, Tehsil Pendra Road, District Bilaspur (C.G.)
4. Smt. Gomti, widow of Dujram, aged 55 years, Occupation-Agriculture, Caste-Pradhan, resident of Village Kumhari, Tehsil Pendra Road, District Bilaspur (C.G.)
5. State of Chhattisgarh, through the Collector, Bilaspur (C.G.)

---- Respondents

For Appellant	:	Mr. Malay Shrivastava, Advocate.
For respondents No. 1 to 4	:	None present.
For respondent No. 5	:	Ms. K. Tripti Rao, Panel Lawyer

Hon'ble Shri Justice Sanjay K. Agrawal**Order On Board****19/08/2016**

(1) The substantial question of law formulated and to be answered by this Court in the plaintiff's second appeal is as under:-

“Whether the two courts below were justified in rejecting the suit and the first appeal without giving the plaintiff sufficient time for fixing the requisite Court fee ?”

[For sake of convenience, the parties would be referred hereinafter as per their status shown in the plaint before the trial Court]

(2) The facts necessary for answering the substantial question of law are as under:-

(2.1) The plaintiff filed suit for declaratoin of title, permanent injunction and possession being Civil Suit No. 123-A/2002. The said Civil Suit was decreed by the trial Cout by its judgment & decree dated 22.02.2007.

(2.2) Feeling aggrieved & dissatisfied with the judgment & decree of the trial Court, defendants preferred first appeal before the first appellate Court on 04.04.2007.

(2.3) The First Appellate Court by its judgment & decree dated 26.02.2008, allowed the appeal in part and remanded the suit to the trial Court to decide issue No. 3 with regard to valuation of the suit and payment of court fee afresh in accordance with law.

(2.4) The trial Court, by its order dated 05.08.2010, decided the issue against the plaintiff and in favour of defendants holding that the plaintiff has not valued the suit properly and has also not paid proper court fee and thereby dismissed the suit.

(2.5) The plaintiff preferred first appeal against the order of the trial Court. The First appellate Court, by its impugned judgment and decree dated 30.04.2011, affirmed the findings of the trial Court and dismissed the appeal.

(7) A careful perusal of the above-stated provision would show that where the relief claimed is undervalued, the court would direct the plaintiff to correct the valuation within a period to be fixed by the court and if the plaintiff fails to do so, the plaint shall be rejected and, therefore, if the trial Court as well as the appellate Court record a finding that relief claimed is undervalued, then that court has to grant time to the plaintiff to correct the valuation. This Section casts a duty on the Court to reject the plaint when the relief claimed is undervalued and it is, therefore, necessary that the plaintiff should take care that valuation is adequate and reasonable taking into account the circumstances of the case.

(8) Way back in the year 1988, in the matter of **M/s Commercial Aviation and Travel Company and others Vs. Vimla Pannalal**¹, their Lordships of the Supreme Court have held pertinently as under:-

“9.....It is manifestly clear from the provision of Order VII, Rule 11(b) that a court has to come to a finding that the relief claimed has been undervalued, which necessarily means that the court is able to decide and specify proper and correct valuation of the relief and, after determination of the correct value of the relief, requires the plaintiff to correct his valuation within a time to be fixed by the court. If the plaintiff does not correct the valuation within the time allowed, the plaint is liable to be rejected.....”

(9) Keeping in view the principles laid down in the above-stated case and the provisions contained in Order 7 Rule 11(b) of the CPC, which clearly mandate that once the finding is recorded by the trial Court that relief claimed is undervalued, the court has necessarily to grant opportunity to the plaintiff to correct the valuation within stipulated time and if he fails to do so, then only stringent provision of rejecting the plaint

1 (1988) 3 SCC 423

under Order 7 Rule 11(b) of the CPC can be pressed into service to reject the plaint.

(9) Further in the matter of **Manoharan Vs. Sivarajan and others**², Their Lordships of the Supreme Court have held that Section 149 of the Civil Procedure Code is a discretionary power which empowers the Court to retrospectively validate insufficiency of stamp duties and held as under:-

“7. Section 149 of the Civil Procedure Code prescribes a discretionary power which empowers the court to allow a party to make up the deficiency of court fee payable on plaint, appeals, application, review of judgment, etc.. This section also empowers the court to retrospectively validate insufficiency of stamp duties, etc. It is also a usual practice that the court provides an opportunity to the party to pay court fee within a stipulated time on failure of which the court dismisses the appeal. In the present case, the appellant filed an application for extension of time for remitting the balance court fee which was rejected by the learned Sub-Judge. It is the claim of the appellant that he was unable to pay the requisite amount of court fee due to financial difficulties. It is the usual practice of the court to use this discretion in favour of the litigating parties unless there are manifest grounds of mala fides. The court, while extending the time for or exempting from the payment of court fee, must ensure bona fides of such discretionary power. Concealment of material fact while filing application for extension of date for payment of court fee can be a ground for dismissal. However, in the present case, no opportunity was given by the learned Sub-Judge for payment of

2 (2014) 4 SCC 163

court fee by the appellant which he was unable to pay due to financial constraints. Hence, the decision of the learned Sub-Judge is wrong and is liable to be set aside and accordingly set aside.”

(10) In the instant case, the trial Court after having held that relief claimed is under valued did not grant any opportunity to correct valuation by granting time but straightway rejected the plaint. The trial Court neither granted time to correct the valuation nor granted time to pay court fee, which is in teeth of the provisions contained in Order 7 Rule 11(b) of the CPC and the law laid down by the Supreme Court in the matter of **Commercial Aviation & Travel Company (supra) & Manoharan (Supra)**.

(11) As a fall out and consequence of aforesaid discussion, second appeal is allowed; and the impugned order dated 30.4.2011 is set aside and substantial question is answered in favour of appellant/plaintiff and against the respondents/defendants. The plaintiff is granted 60 days' time from today to correct the valuation & pay the requisite court fee and thereafter trial Court shall proceed in accordance with law.

(12) Parties are directed to appear before the trial Court on 19th September, 2016.

(13) A decree be drawn accordingly.

Sd/-

(Sanjay K. Agrawal)
Judge

D/-

