



IN THE HIGH COURT OF HIMACHAL PRADESH,
SHIMLA

CMPMO No. 412/2024
Decided on: 16.07.2024

Shakuntala Devi & Ors.Petitioners

Versus

Kewal Singh & Ors. Respondents.

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Coram

Ms. Justice Jyotsna Rewal Dua, Judge.

Whether approved for reporting?¹

For the petitioners: Mr. Rohit, Advocate vice Mr. Sumit Sood, Advocate.

For the respondents: Nemo.

Jyotsna Rewal Dua, J

Challenge in this petition is to the order 03.06.2024 whereby petitioners' (defendants') application under Order 7 Rule 11 of Civil Procedure Code (CPC) was dismissed.

2. From the case file, it appears that the civil suit instituted by respondent No.1 in the year 2014, was at the stage of recording of evidence.

2(i) Plaintiff (respondent No.1) adduced his evidence; Statement of plaintiff's witness No.10 (PW-10) was recorded. He

¹ Whether reporters of the local papers may be allowed to see the judgment? yes

exhibited a spot map (Ext. PW-10/A) reflecting reproduction cost of Rs. 41,06,286/-. Plaintiff closed his evidence.

2(ii) At that stage, the defendants moved an application under order 7 Rule 11 read with Section 151 CPC for rejection of the plaint on the ground that the same was insufficiently stamped; proper court fee had not been affixed.

Defendants' application for rejection of plaint was dismissed by the learned Trial Court on 03.06.2024. Feeling aggrieved, the defendants have invoked supervisory jurisdiction of this Court under Article 227 of the Constitution of India.

3. Heard learned counsel for the petitioners (defendants) & considered the case file.

4. The application under Order 7 Rule 11 CPC was moved by the petitioners (defendants) only on the basis of statement of PW-10, wherein he had been exhibited a spot map (Ext. PW-10/A) with reproduction cost of Rs. 41,06,286/-. It was the case of the petitioners (defendants) that respondent No.1 (plaintiff) had challenged the sale deeds executed in favour of the defendants; The plaint was not adequately stamped, proper court fee had not been affixed on it in accordance with the H.P. Court Fees Act.

To the above application, objection of respondent No.1 (plaintiff) was that question of affixing the court fee on the basis of

valuation of the Architect does not arise; That possession of the house in question was with respondent No.1 (plaintiff).

In view of the respective stands of the parties and considering the fact that application under Order 7 Rule 11 CPC was moved by the petitioners (defendants) only on the basis of statement of PW-10, learned Trial Court dismissed the same on 03.06.2024.

5. In my considered view, learned Trial Court was justified in dismissing the application moved by the petitioners (defendants) under Order 7 Rule 11 CPC. Statement of PW-10 and the spot map (Ext. PW-10/A) proved by this witness was the sole basis for moving the application seeking rejection of plaint on the ground of plaint having been insufficiently stamped. Ext.PW-10/A was a relevant piece of evidence but its evidentiary value had to be considered & deliberated upon at the time of arguments/hearing. Merely on the basis of spot map or the statement of PW-10, the plaint cannot be rejected on the ground of it having been insufficiently stamped or for want of affixing proper court fee. Here it will be appropriate to take note of Order 7 Rule 11 of the Code of Civil Procedure, invoking which, the defendants had prayed for rejection of the plaint.

Order 7 Rule 11 CPC, in this regard, reads as under:-

"Rejection of plaint

The plaint shall be rejected in the following cases:-

(a) where it does not disclose a cause of action;

(b) where the relief claimed is undervalued, and the plaintiff, on being required by the court to correct the valuation within a time to be fixed by the court, fails to do so;

(c) where the relief claimed is properly valued, but the plaint is written upon paper insufficiently stamped, and the plaintiff, on being required by the court to supply the requisite stamp-paper within a time to be fixed by the Court, fails to do so;

(d) where the suit appears from the statement in the plaint to be barred by any law;

(e) where it is not filed in duplicate;]

(f) where the plaintiff fails to comply with the provisions of rule 9;

Provided that the time fixed by the court for the correction of the valuation or supplying of the requisite stamp-papers shall not be extended unless the court, for reasons to be recorded, is satisfied that the plaintiff was prevented by any cause of an exceptional nature from correcting the valuation or supplying the requisite stamp papers, as the case may be, within the time fixed by the court and that refusal to extend such time would cause grave injustice to the plaintiff.”

A bare reading of the above provision makes it amply clear that even if the plaint is not sufficiently stamped, then also the plaintiff can be required by the Court to supply the requisite stamp papers within a timeline. There would be no occasion for rejection of the plaint straightway on the ground that the same is insufficiently stamped.

Hence, no interference is called for in the impugned order passed by the learned Court below. Accordingly, the instant

petition is dismissed. Pending miscellaneous application, if any, also stand disposed of.

Jyotsna Rewal Dua
Judge

July 16, 2024
(Rohit)

High Court of HP