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Court : Karnataka

Decided On : Aug-20-1981

Reported in : AIR1982Kant234; ILR1981KAR1619

Judge : M.P. Chandrakantaraj Urs, J.

Acts : Civil Porcedure Code, 1908 - Order 6, Rule 17; Karnataka Court-fees and Suits Valuation Act, 1958 - Sections 26

Appeal No. : Civil Revn. Petn. No. 1538 of 1981

Appellant : P. Papaiah

Respondent : Chikkabiddappa

Advocate for Def. : K.P. Ashok Kumar, Govt. Pleader and ;H. Munivenkatappa, Adv.

Advocate for Pet/Ap. : K. Ramasubbiah, Adv.

Judgement :

ORDER

1. This is a revision petition under Section 115 of the C.P.C. directed against the order of the then Principal Civil Judge, Bangalore District, Bangalore, made in O.S. No. 313/1980 on I.A. No. II.

2. The plaintiff brought the suit against respondent for a permanent injunction restraining the said defendant from interfering with his peaceful possession and enjoyment of the suit schedule property. The defendant-respondent resisted the suit setting up his own title to the property. Having regard to that, the plaintiff filed an application under O. 6, Rule 17 of the C.P.C. seeking an amendment of the plaint in respect of the valuation of the suit for purposes of Court-fee to read as follows:

'The conduct of defendant amounts to denial of plaintiff's title and the suit is therefore laid under Section 26(a) of the Karnataka Court-fees and Suits Valuation Act and the Court-fee is paid according to Section 26(a) read with Section 7(2) of the Karnataka Court-fees and Suits Valuation Act under a separate valuation.' Originally it had been pleaded that the relief of injunction is valued at Rs. 1000 under Section 26(c) of the Karnataka Court Fees and Suits Valuation Act (hereinafter referred to as the Act) and Court-fee of Rs. 1000 herewith paid on the plaint and that suit was valued for purposes of jurisdiction at Rs. 11,000.

3. The amendment application was rejected by the learned Civil Judge solely on the ground that the suit was one for mere injunction refraining the defendant respondent from interfering with his peaceful possession and enjoyment of the suit schedule property and therefore after, admittedly, valuing the suit for purposes of injunction under Section 26(c) of the Act, he could not be permitted to overcome the rigour of the higher Court-fee by bringing it under Section 26(a) of the Act.

4. It is most unfortunate that the learned Judge has referred to the case of *Jai Jai Ram Manohar Lal v. National Building Material Supply* : [1970]1SCR22 but failed to understand the ruling of the Supreme Court in the said decision. The mere mentioning of Section 26(c) of the Act in the plaint as it originally stood would not in itself affect the question of Court fee payable on the plaint. The Court fee should be levied and charged in accordance with the provisions of the Act based on the relief claimed in substance and not on the basis of what is pleaded. This principle of law is well settled. A litigant mentioning a particular provision of law under which he is seeking relief is not entitled to relief only under that provision, nor does it mean that if he is entitled under some other provision of law it should be denied to

him. It is for the Court to look to the substance of the relief claimed and then charge the Court-fee accordingly. If this approach had been made by the learned Civil Judge, after extracting an important passage from the aforementioned decision of the Supreme Court, he would not have totally lost sight of the purport of that observation.

5. The amendment should not be refused on technical errors of the litigant or on a technical ground which the Court has found.

6. I, therefore, set aside the order of the learned Civil Judge and permit the amendment to be effected in spite of the order made by the same Court on an earlier date directing the petitioner to pay Court-fee under Sec. 26(c) of the Act

7. Notice had been ordered to the learned Government Advocate by this Court probably under the impression that public revenue was going to be affected by the decision taken in this case. I am satisfied that whether the amendment is allowed or not allowed having regard to the relief claimed in the suit, the petition falls squarely under Section 26(a) of the Act for purposes of valuation and public revenue will not in that event suffer. Therefore, the submission made by the learned Government Advocate is noticed to this effect and this revision petition is allowed.

8. But in the circumstances of the case, there will be no order as to costs.

9. The learned High Court Government Advocate is permitted to file his memo of appearance within two weeks from today.

10. Petition allowed.