

Mallappa Sidrammappa Vs. Sidramappa Basappa

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Court : Karnataka

Decided On : Sep-15-1961

Reported in : AIR1962Kant212; AIR1962Mys212; ILR1962KAR129

Judge : K.S. Hedge and ;Iqbal Husain, JJ.

Acts : Court-fees Act, 1870 - Sections 7

Appeal No. : Civil Revenue Petition No. 1026 of 1959

Appellant : Mallappa Sidrammappa

Respondent : Sidramappa Basappa

Advocate for Def. : H.B. Datar, Adv.

Advocate for Pet/Ap. : M.S. Sardar, Adv.;B. Venkataswami, Adv. for ;Adv. General

Judgement :

K.S. Hegde, J.

(1) This Civil Revision Petition was referred to a Bench by the Officiating chief Justice as per his order dated 14.4.1961. In this proceeding we have to determine the true scope of section 7(4)(f) of the Court fees Act (as amended in Bombay by Act XII of 1954) which provision reads thus :

'7. The amount of fee payable under this Act in the suits next hereinafter mentioned shall be computed as follows:

* * * * * (f) for accounts--

according to the amount at which the relief sought is valued in the plaint or memorandum of appeal subject to the provisions of section 8A with a minimum fee of rupees ten in the case of suits falling under Clauses (c) to (f)'.

Section 8A of the Court Fees Act does not apply to the facts of this case.

(2) In order to determine the question of law that arises for consideration, it is necessary to briefly set out the facts of the case: The petitioner in this case was the plaintiff in the trial Court. He issued the defendant for accounts. He valued reliefs claimed in the suit at Rs. 105/- and paid a Court fee of Rs. 10/-. But later he paid an additional Court fee of Rs. 151-3-0. In due course a preliminary decree was passed and subsequently a final decree was passed. In the final decree the plaintiff was granted a decree in a sum of Rs. 2048-6-3. Not being satisfied with that decree, he went up in appeal to the learned District Judge, Dharwar. In the appeal he valued the reliefs claimed at Rs. 105/- and paid a Court fee of Rs. 10/-. The learned District Judge, after hearing the parties, passed the following order:

'The plaintiff is called upon to state what are the items which he claims and he should pay Court fee thereon. Secondly it is clear that the Court fee paid on the memorandum of appeal is not the Court fee which was paid in the trial Court. In the trial Court, as I stated above, Court fee of Rs. 161-8-0 has been paid as per order in the L. C.'s judgment. Call on 14/8'.

So far as the relief for accounts is concerned, in both the Courts the plaintiff has valued the same at Rs. 105/- and paid a Court fee of r 10/-. At this stage, we are not concerned with the other reliefs claimed by the plaintiff. Aggrieved by the decision of the Court below as regards the relief in respect of accounts, the plaintiff has come up in revision to this Court.

(3) The question for our decision is whether the plaintiff can place his own valuation on the relief for accounts claimed by him in the appeal. It may be

mentioned that in the appeal the plaintiff has not claimed any specific sum though in his grounds of appeal he has pointed out that the trial Court referred in rejecting certain items found in the accounts. In other words, in the appeal he claimed a fresh accounting. Whether such a relief is governed by Section 7(iv)(f) of the Court fees Act is the point for our decision.

(4) Before proceeding to consider the decisions cited at the Bar, we may make reference to Section 11 of the Court fees Act which says :

'11(1) : in a suit for the recovery of possession of immovable property and mesne profits or for mesne profits or for an account, the difference if any, between the fee actually paid and the fee which would have been payable had the suit comprised the whole of the profits or amount found due shall, on delivery of judgment be taxed by the Court and shall be leviable from the plaintiff and if not paid by him within thirty days from the date of the judgment be recoverable according to the law and under the rules for the time being in for the recovery of land revenue'. From this it follows that the Legislature has made adequate provision for the collection of the deficit Court fee due from the plaintiff, no doubt depending on the decree ultimately granted by the Court.

(5) The scope of Section 7(iv)(f) of the Court fees Act has been the subject of judicial decisions. The first case that was brought to our notice is the quoted decision of the Judicial Committee in Faizullah Khan v. Mauladad Khan, AIR 1929 PC 147. In that case also the suit was for accounts and settlement of sums due thereon in connection with a partnership of a firm of contractors. The plaintiffs valued their suit at Rs. 3000/- for the purpose of Court fee and asked for rendering of accounts and a decree for Rs. 3000/- with the statement if more than Rs. 3000/- is found due to the plaintiffs they will pay an additional Court fee. The defendant asked for a decree in his favour for Rs. 29,000/- and he challenged the shares as given by the plaintiffs and asked for dismissal of the suit. The subordinate Judge passed a final decree with costs and interest. Under the decree Rs. 19,991/- were declared to be due to the defendant by the plaintiffs. No sum was found due to the plaintiffs under the claim for Rs. 3000/-. This judgment was appealed from by both parties. The position of the plaintiffs still remained the same viz., that they

challenged the decree against them for over Rs. 19,000/- and maintained that that sum in whole or in part should be disallowed and their own claim for Rs. 3000/- less or more should be granted in their favour. The appeal was valued for purposes of Court fee at Rs. 19,991/- and the fee paid was Rs. 975/-. The Judicial Commissioner, NWEF, Peshawar set aside the decree of the Subordinate Judge and remanded the suit for taking fresh accounts, but he directed that under no circumstances a decree should be passed in favour of the plaintiffs as the plaintiff had paid no Court fee in the appeal in respect of their claim. It is against that order the matter was taken up to the Privy Council. The Privy Council decided that:

'The valuation applied to the appeal in its entirety, that is to say, both for the purpose of reversing the decree against the appellants and for granting the decree in their favour and that it was a mistake to treat the payment of Rs. 975/- as a fee made only on the amount of the decree passed against the appellant.'

In the course of the judgment Lord Shaw who delivered the judgment of the Judicial Committee observed:

'Their Lordships find no reason for treating that payment either as upon an under-value or split value. Their Lordships think with much respect to the Judicial Commissioner, that it was a mistake to treat the payment of Rs. 975/- as a fee made only on the amount of the decree passed against the appellants. That amount, as already stated, may be not only in full but largely in excess of the true sum of relief at which a sound valuation could in the present circumstances be said to reach and it covered the appeal as a whole, including that sum on the one hand and a much smaller figure of Rs. 3000/- on the other'. (The underlining (here into ' ') is ours).

The underlined portion of the observation of the Privy Council has given rise to considerable conflict of judicial opinion. From the observations above referred to, it appears to us to be clear that their Lordships of the Privy Council opined that it would have been sufficient for the appellant if he had paid Court fee only on a sum of Rs.3000/-, the valuation put by him in the Court of the first instance as well as in the appellate Court. Otherwise, there was no point in their Lordships saying 'that amount as already stated, may be not only in full but largely in excess of the true

sum of relief at which a sound valuation could in the present circumstances be said to reach and it covered the appeal as well'

(6) The next decision that was brought to our notice is the decision of a Bench of the Madras High Court in the case of Nukala Venkata Nandam In re, in AIR 1933 Mad 330. That decision laid down that in suits for taking accounts in partnership and partition suits, it is impossible to say at the outset what exact amount the plaintiff will recover. In appeals in such suit the appellant, whether defendant or plaintiff, is in the position of a plaintiff; and he can file an appeal on any valuation he likes and pay Court fee on it and the whole case can be heard on such payment. The correctness of this decision came up for consideration before a Full Bench of that Court in Re: Dhanukodi Nayakkar, AIR 1938 Mad 435. The Full Bench decided that section 7 gives great freedom to plaintiff appellants, but it does not give the same freedom to defendant appellants. When a defendant appellant appeals against a final decree, he knows exactly the value of his relief, and he should pay a Court fee on the amount of the decree passed against him except in cases where he appeals only against a portion of the decree. Similarly a defendant appealing from a preliminary decree for an account has ordinarily to stamp his memorandum according to the plaintiffs valuation. This decision overruled the decision in Nukala Venkatanandam's case, AIR 1933 Mad 330 to the extent it decided that the defendant also can put his own valuation in the appeal. The Full Bench did not differ from the earlier view of the Madras High Court that a plaintiff appellant can always put his own valuation in the appeal. We have mentioned this fact specifically as we find that the decision in the Madras Full Bench case has been to some extent misunderstood by some of the Courts in this country.

(7) Now we may proceed to consider the decision in Kashiram Semu v. Ranglal Motilalshet, AIR 1941 Bom 242 on the basis of which the Court below purported to hold that the Petitioner is liable to pay additional Court fee. In that case the plaintiff had asked for accounts and had stamped the plaint with Court fee stamp of Rs. 5/- . The suit resulted in a decree against the plaintiff for a sum of Rs. 6464-7-0. Plaintiff appealed against that decree and valued the reliefs claimed by him in the appeal at Rs. 5/-. The Court held that it was not open to him to value his appeal at a notional amount. Be amount, C. J. one of the Judges who constituted the Bench

observed thus :

'If the plaintiffs suit had failed and he had appealed against the refusal to take an account, the appeal would have related solely to a right to an account and I agree that the appellant might have placed his own value on the memorandum of appeal. But as the suit resulted in a decree for a certain amount against the plaintiff, it seems to me that the appeal is not merely in relation to an account, but is really an appeal against a money decree, and he must at any rate stamp his memorandum of appeal with an ad valorem stamp in respect of the amount of the decree. He may add a nominal amount in respect of any further relief claimed which may accrue by reason of the account being taken on a different basis from that adopted by the lower Court; but the stamp on the memorandum of appeal must, to my mind cover the amount of the decree which is standing against the appellant, and which he seeks to have set aside.'

In support of his decision, the learned Chief Justice placed reliance on the decision given by Rankin, C. J. Reported in : AIR1929 Cal815 in the case of Kantichandra v. Radharaman which case related to an appeal filed by a defendant and not by a plaintiff. It is not necessary for us at this stage to consider whether the view expressed by Beaumont, C. J. Accords with the ratio of the decision of the Privy Council in Faizulla Khan's case, AIR 1929 PC 147. The decision in Kashiram's case, AIR 1941 Bom 242 has no application to the facts of the present case. In that case, the plaintiff sought to set aside the decree against him. In the present case, there is no decree against the plaintiff. In our judgment, the decision in Kashiram's case has absolutely no relevance for our purpose.

(8) Before leaving this branch of the case we may also refer to the decision of Shahabuddin, J. in Ramadoss v. Appallanarasayya, AIR 1943 Mad 685. In that case the Court held that in the matter of valuation of an appeal under section 7(iv)(f) the plaintiff appellant has greater freedom than the defendant appellant and the plaintiff appellant can value his relief in the manner in which he can value it in the plaint. His Lordship followed the decision of the Privy Council and also the decision of the Full Bench of the Madras High Court referred to above. From the above decision, it is clear that a plaintiff appellant which there is no decree against

him can put his own valuation on the reliefs claimed by him in the appeal. So far as the case before us is concerned, we do not see any conflict between the Bombay view and the Madras view.

(9) Shri H. B. Datar and the learned Government Pleader who opposed the petitioner in this case have invited our attention to three other decisions which, according to them, support the contention advanced by them. The first decision cited by them is the one reported in *Mt. Niamati Bai v. Daulat Ram*, AIR 1933 Lah 633. That appeal also related to a suit for accounts. In that suit two persons had been appointed as referees with the consent of parties for the purpose of going into the account, a decree was passed in accordance with their report disallowing the objections raised by the plaintiff. An appeal was preferred by the plaintiff to the District Judge on a Court fee stamp of Rs. 10/-. The Court held that the proper course for the plaintiff was to value the relief claimed by him and pay *ad valorem* Court fee thereon. It held further that the value of the relief in this case would be the amount which the plaintiff claims in excess of the amount decreed in his favour by the trial Court and that plaintiff should be given a reasonable opportunity to value the relief sought in appeal and pay Court fee thereon. Beside, J. who rendered this decision set out the reasons in support of his decision in the following words:

'After carefully considering the point at issue in the light of the above authorities, it seems to me clear 'that it was for the appellant to value the relief sought in the appeal.' She did not however do so and paid a Court fee of Rs. 10/- only under Article 17 Schedule 2 Court fees Act. As stated already the learned counsel for the appellant conceded that this was wrong. It was suggested that the plaintiff should be taken to have valued hereditary appeal at a figure for which a Court fee stamp of Rs. 10/- was not paid on this basis at all. It was for the plaintiff to claim properly the relief sought in the memorandum of appeal as required by law, but she had not done so.' In the circumstances it seems to me that the proper course would have been to ask the plaintiff to value the relief sought would, in my opinion, in the present case naturally be the amount which the plaintiff claims in excess of the amount decreed in hereditary favour by the trial Court. Although the plaintiff prayed in hereditary appeal that the case should be remanded for hereditary

objections being decided on merits, the real relief she wanted was the amount claimed in her objections. It should be noted in this connection that the appeal lay from the decree and not from the order refusing to decide the objections on merits. The case might have been different, if it were impossible for the plaintiff to say what amount she would be entitled to. But as the learned District Judge points out in his judgment the plaintiff claimed definite items amounting to about Rs. 1,450/- in excess of the sum recommended by the referees.'

(The underlining (here into' is ours)

From the above observations it is clear that the decision turned on the peculiar facts of that case. It does not bear on the principle with which we are concerned.

(10) Next, the decision in *Dharilal v. Amolak Ram*, was pressed into service. In that case, the plaintiff had obtained a decree for a certain sum in the suit for rendering of accounts. He claimed that the sum decreed should be increased by a certain specific amount set out in the grounds of appeal. The Court held that he should pay ad valorem Court fee. The reason for directing the plaintiff appellant to pay ad valorem Court fee was that he had claimed a certain specific amount. That decision is clearly distinguishable. We do not think that the decision in question in any way supports the contention of the respondents. Lastly the decision of the former Mysore High Court in *Abdul Razack v. Abdul Jaleel*, AIR 1954 Mysore 62 was brought to our notice. That related to a suit for dissolution of partnership and for accounts. The plaintiffs valued their claim in their plaint at Rs. 10,500/- under section 4(iv) (f) of the Mysore Court fees Act, corresponding to section 7(iv) of the Indian Court fees Act. They paid Court fees on the sum of Rs. 10,500/-. A preliminary decree was passed declaring that the firm should stand dissolved and directing accounts to be taken. No appeal was filed against that preliminary decree. Subsequently, after taking accounts through a Commissioner, a final decree was made. But this decree that plaintiffs watandar directed to pay Rs. 17,591/- and odd to the defendants.

In an appeal against the final decree, the plaintiff appellants valued the appeal at the same value as had been put by them in the plaint in the trial Court and paid Court fee on the basis of that valuation. The Court held that there was a money

decree against the plaintiff appellants for a definite sum of money and if they want to get rid of the same, they should pay support fee on the amount decreed. The facts of that case are similar to the facts in Kashiram,s case, (AIR 1941 Bom 242). We have already considered that decision. We do not think that any of the decisions cited by the respondents has any application to the facts of the present case.

(11) We would like to make it clear that we have not considered the question whether a plaintiff appellant against whom a decree has been passed in a suit for accounts should pay Court fee on the amount decreed against him. There is no need to go into that question in this Petition. Similarly we have not considered as to what would be the proper Court fee payable by the defendant appellant in a suit for accounts. We have confined our decision only to a case where a plaintiff appellant is not satisfied with the decree granted in his favour by the trial Court and seeks fresh accounting in the appellate Court. In our judgment, in such a case, the plaintiff appellant is at liberty to put his own valuation.

(12) In the result, this revision Petition is allowed and the order of the Court below is set aside. There will be no order as to costs.

Iqbal Husain, J.

(13) I agree.

(14) Petition allowed.

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