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**Vasudava Bhatta Vs. Srimad Ananheswar Temple, Manjeshwar and ors.**

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**SooperKanoon Citation** : sooperkanoon.com/377513

**Court** : Karnataka

**Decided On :** May-30-1960

**Reported in** : AIR1962Kant155; AIR1962Mys155

**Judge** : N. Sreenivasa Rau, J.

**Acts** : Court Fees Act, 1870 - Sections 7

**Appeal No.** : Civil Revn. Petn. No. 164 of 1957

**Appellant** : Vasudava Bhatta

**Respondent** : Srimad Ananheswar Temple, Manjeshwar and ors.

**Advocate for Def.** : H. Bhaskar Rao, Adv.

**Advocate for Pet/Ap.** : K.R. Karanth, Adv.

**Judgement** :
ORDER

(1) This revision petition raises a question of Court- fee in the following circumstances :

(2) The Respondent which is a temple represented by its executive officer filed a suit for the recovery of possession of the plaint schedule land and for memo profits against the defendant who was its tenant . The suit was decreed. But on appeal the decision was recreated and the suit was dismissed on the ground that the

executive officer was not competent to file the suit. In second appeal the High Court of Judicature at Madras , set aside the appellate judgment and remanded the case. When the matter came up again before the first appellant Court the questions of Court -fee was raised since pen plaintiff the ground, urged by the appellant -tenant was that he was entitled to compensation for improvements. The learned appellate Judge purporting to follow the principles laid down in Pachayakkar v. Shanmughavelayuthasami, AIR 1943 Mad 146, held that advalorem Court-fee was payable on the amount claimed by the appellant for the value of the improvement. The present revision petition is directed against this order.

(3) It is urged by the learned Advocate for the petitioner that the decision relied upon by the learned appellate Judge is not applicable to the circumstances of this case. That case arose from a such for redemption and the learned Judge laid down the following principles:

'It an appeal against a decree in a suit brought for redemption relates only to the amount payable and not to the right of redemption, Court -fee must be paid adverse Velcro on the amount claimed to be payable. If the appeal purports to dispute both the right of redemption and the amount payable but in substance it relates only to the amount payable, again cu-fee must be paid adverse valorem on the amount claimed. But if the right or redemption and the amount payable are disputed in appeal and both grounds are grounds in substance and not merely in form the Court -fee payable will be as far a suit under S. 7(ix)'. The learned appellate Judge in this case was of the view that thought the above principles related to an appeal in a suit for possession also. He thought that the other grounds raised in the case such as that relating to the notice to quit did not take the matter out of category it mentioned in the Madras case and bring it within category.

(4) There are, however, decisions directly bearing on the question arising in this case. In Reference under Court -fee Act S. 5 11 R 23 Mad 84 the question arise in the following way: In a suit for dejectment, in which the plant land was valued at Rs.. 50/- and Court -fee paid on that valuation, the tenants claimed Rs.. 500/- as

compensation for improvements which claim was disallowed. The tenants appealed on the ground that their claim for improvements should have been allowed, but only paid Court -fee on the plaintiff 's valuation. On a Reference as to whether the value of the improvement's ought not to be taken into account for the purpose of levying the Court -fee, it was held by the High Court that such a claim for improvements was not the subject matter of the suit, but was merely incidental to the decree for possession and that fee payable by an appellant in such a case should be that payable in a suit for possession f language.

(5) In refuse Paidal Nayar : AIR1926 Mad225 , the question arose in the following circumstances : In a suit for redemption of a kanom the plaintiff obtained a decree for recovery of possession of the property, subject to payment of the atom amount and the value of improvements. Plaintiff appealed only against the value allowed for improvements. It was held that the property Court -fee payable on the memorandum or appeal must be determined in accordance with the value of improvements which the party seeks to avoid. The learned Judges said that the principle of the Court -fee Act in that the plaintiff should pay the Court -fee in proportion to the value of the relief he seeks and that the value of the appeal is not in all case the value of the suit as originally filed, but the value of the relief granted by the decree which the party wishes to get rid of. It will be noticed that the plaintiff was granted a decree for redemption but that at the same time he was also made liable to pay the value of the improvements. It was the liability that he wanted to get rid of he referring an appeal.

In Pathamma v. Mohideen, : AIR1928 Mad929 , the learned Judges had to consider the question of Court -feein c a case like the present one: The defendants against whose a decree for ejectedments. The appellant paid the same Court -fee is the second appeal as was paid in respect of the plaint by the plaintiff . In this memorandum of appeal to the High Court there were also grounds takes as regards the title of the plaintiff . The High Court held that the memorandum could not he held as one merely confined to the amount of compensation and that even if it was so.. makes in dispute would still he only the claim for possession. The same view was taken in Mahadevi v. In t F it was sought to be enforced merely as a condition precedent to a right to possession, the

subject Thavazhi Karanavan, AIR 1939 Mad 49, In Mt. Jani v. Mandir Sri Bajrangdevi, . It was held that where in a suit for ejectments the defendant contests the plaintiff 's right to eject and claims compensation for improvements the event of a of a decree ejectment being passed and the Court passes a decree for ejectment subject to the plaintiff paying a lesser amount of compensation claimed by the defendant and the defendant appeals reiterating his claim , the claim to compensation is merely incidential to the main relief sought against the decree for ejectment and the same Court- fee is payable in appeal as in the Original Suit.

(6) Whatever might be the position in a suit for redemption, it appear to be clear that if in a suit for possession the defendant claims composition for improvement as a condition precedent to his being asked to vacate the property in question and the Court either disallows the compensation or grants an amount less than that claimed by the defendant, the latter in preferring an appeal in respect of the amount of compensation is really asking the appellate Court to decide that the plaintiff is not entitled to possession without the payment of the compensation claimed by the defendant. In other words the appeal essentially relates to possession. The view taken by the learned appellate Judge cannot, therefore, be sustained.

(7) It has also been urged for the petitioner that, the first appellate Court previously having accepted the memorandum of appeal and proceeded with the appeal, the question of Court-fee could not be raised again after the remand of the case by the High Court. In the view I have taken above, it is not necessary to go into this question.

(8) The Court-fee by the appellate on the basis of the relief for possession is adequate. This revision petition is accordingly allowed and the order of the Court below is set aside. The appeal should be proceeded with according to law. In the circumstances of the case, there will be no order as to the costs of this Revision Petition.

(9) Revision allowed.

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