Thibbaiah Vs. Desigowda

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Court : Karnataka

Decided On : Aug-26-1992

Reported in : ILR1993KAR973; 1992(3)KarLJ745

Judge : K. Shivashankar Bhat and ;R. Ramakrishna, JJ.

Acts : Karnataka Court Fees and Suits Valuation Act, 1958 - Sections 35, 35(2) and 50; Karnataka Civil Courts Laws (Amendment) Act, 1989 - Sections 4

Appeal No. : R.F.A. No. 89 of 1983

Appellant : Thibbaiah

Respondent : Desigowda

Advocate for Def. : A.J. Sadashiva, Adv.

Advocate for Pet/Ap. : Chandrasekharaiah, Adv.

Judgement :

Shivashankar Bhat, J.

1. When the Appeal was taken up for hearing, learned Counsel for the Respondents pointed out that the Appeal will have to be transferred to the Court of the District Judge, Mandya, having regard to the value of the subject matter, which according to him, is below Rupees One lakh. Mr. Chandrashekaraiah, learned

Counsel for the appellant contended that this was a partition suit and the subject matter of the suit will be the entire joint family property from which the plaintiff-appellant seeks partition.

2. There can be no doubt that the value of the subject matter for the purpose of determining the pecuniary jurisdiction may be different from the value of the subject matter for the purpose of Court fee, having regard to the provisions of Section 50 of the Karnataka Court Fees and Suits Valuation Act, 1958. In the case of a partition suit, the Court fee payable is fixed under Section 35(2), when the plaintiff asserts that he is in joint possession of the property. But this fixed Court fee also in turn depends upon the value of the plaintiff's share, Necessarily the value of the share of the plaintiff will be the market value.

3. Under Section 50, normally the value of the subject matter is determined for the purpose of jurisdiction with reference to the valuation shown for the purpose of Court fee, unless there is some specific provision governing the valuation for determining the Court's jurisdiction. Mr. Chandrashekaraiah contends that when the plaintiff seeks partition, he seeks a right in every piece and parcel of the joint family property and therefore, the entire joint family property is the subject matter of the litigation and consequently for the purpose of pecuniary jurisdiction, the value of the entire joint family property will have to be considered and not the value of the plaintiff's share. For this proposition learned Counsel cited a Decision of the Orissa High Court reported in BABAJI CHARAN SAHU v. NETRANANDA SAHU AND ORS. : AIR1979 Ori71 . It was held therein that

'In a simple suit for partition, the value of the entire property to be partitioned determines the pecuniary jurisdiction of the Court.'

A distinction is made in the said Decision between a simple suit for partition and the suit for partition in which the right of the plaintiff to a particular share or any share at all is involved. In a case of simple partition, it is held that the value of the subject matter will be the value of the entire property of the joint family. However, in the case of a suit for partition where the plaintiff's right to share is in question, subject matter of the suit will be only the value of the plaintiff's share.

4. The Orissa High Court in fact has relied upon its earlier Decision for the said proposition.

5. We are concerned here with the Karnataka Court fees & Suits Valuation Act, 1958. There is a specific provision governing the valuation of the suit as per Section 50. Section 50 itself indicates that the value for the purpose of determining the pecuniary jurisdiction of the Court will be normally the value for the purpose of computing the Court fee, unless there is some other Act or legal provision governing the determination of the jurisdiction. Sub-section (2) of Section 50 only amplifies this provision by pointing out that when a fixed Court fee is payable for the purpose of determining the pecuniary jurisdiction, the actual market value shall be taken as the value determining the pecuniary jurisdiction. As already noted Section 35 provides for a fixed Court fee which in turn depends on the value of the plaintiff's share; which will be the value to determine the pecuniary jurisdiction of the Court.

6. This is in consonance with the general principle governing the suits. In MURKOTHKANDIYIL MUYYARIKKANDI KALANDER AND ORS. v. THATTANTAVITA VATAKKAYIL MUYYANIKANDI KUNHIPAKKI, AIR 1947 Madras 273 a Bench of the Madras High Court pointed out that for the purpose of jurisdiction it is the plaintiff's interest in the property that must be valued. The Bench observed as follows:

'It is clear from this Section that for purposes of jurisdiction it is the plaintiff's interest in the property that must be valued. The plaintiff's suit was for partition of their half share in the suit properties. In other words, they asked that their undivided half share in the properties should be converted into a divided half share. This relief could not be valued; and Court fee had to be calculated according to the provisions of Article 17 of Schedule ll, Court-fees Act. The matter in dispute in the suit was however whether the plaintiffs had a half share in the plaint schedule properties or not. According to their claim, they had an undivided half share in the suit properties, which they sought to have divided, and so it seems clear to us that the suit related only to a half share of the plaint schedule properties.'

The Orissa High Court noted this Decision but distinguished Madras Decision on the assumption that it involved a declaratory relief.

7. Mr. Chandrashekaraiah then, referred to the Decision of this Court in BILIYANEPPA v. DANAPPA : ILR 1990 KAR3764 . It was held in that Decision that the value of the subject matter of the suit which determines pecuniary jurisdiction has to be considered for the purpose of determining appellate jurisdiction also; while applying the provisions of Section 4 of the Karnataka Civil Courts (Amendment) Act, 1989. In other words, the value of the subject matter for purpose of considering the appellate jurisdiction is nothing but the value of the subject matter determined to consider the pecuniary jurisdiction in the trial Court. We have perused the original records of the said Appeal which is still pending in this Court, in R.F.A.No. 392 of 1986; that Appeal also arises out of a partition suit. For the purpose of Court fee, lands were valued with reference to their assessment. However, the plaint clearly indicates that for the purpose of pecuniary jurisdiction the total market value was arrived at and thereafter the plaintiff's claim was valued. In other words, the plaintiff's share in the said suit was valued for the purpose of pecuniary jurisdiction at Rs. 1,38,000/- and therefore the Bench held that the Appeal will have to be retained for consideration and cannot be sent to the District Court as per amendment Act. The conclusion at which we have arrived as to the concept of the subject matter is fully justified, when the records of the said Appeal were examined by us.

8. In the instant case, the value of the subject matter i.e., the value of the plaintiff's share, in the plaint was Rs. 21,920/- for the purpose of pecuniary jurisdiction. In fact, while filing the appeal itself the appellant has stated that for the purpose of jurisdiction the value of the subject matter is Rs. 21,920/-

9. In view of the above, the Appeal will have to be transferred to the District Court in view of the amendment made to the Civil Courts Act in the year 1989. Consequently, we direct the papers to be transferred to the District Court Mandya.