

Thimmaiah Vs. Sreenivasa

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Court : Karnataka

Decided On : Apr-16-1999

Reported in : ILR1999KAR2937; 1999(5)KarLJ37

Judge : Mohamed Anwar, J.

Acts : [Suits Valuation Act, 1887](#)

Appeal No. : Civil Revision Petition No. 3636 of 1997

Appellant : Thimmaiah

Respondent : Sreenivasa

Advocate for Def. : Sri K.S. Ramaswamy Iyengar, Adv.

Advocate for Pet/Ap. : Sri S. Krishna Swamy, Adv.

Judgement :

ORDER

1. Heard.

2. This revision by defendant 2 in O.S. No. 50 of 1992 is directed against the Trial Court's order rejecting his I.A. No. 3 which was made praying to first try preliminary issues 5 and 6 in the suit relating to pecuniary jurisdiction of the Trial Court and Court fee paid on theplaint.

3. The said suit was instituted by the respondent-plaintiff for partition and separate possession of his share in the suit properties and for mesne profits. The petitioner, who is defendant, has filed his written statement contesting plaintiff's claim contending, inter alia, that the suit property has been overvalued by the plaintiff as also that the Court fee paid on the plaint was not correct and proper. On these objections two of the issues framed by the Court below viz., issues 6 and 7 are:

6. Whether the defendants prove that this Court has no pecuniary jurisdiction to try the suit?

7. Whether the defendants prove that the suit is not properly valued and the Court fee paid on the plaint is insufficient?

4. I.A. 3 was made by the petitioner-defendant 2 before the Trial Court requesting it to decide the aforesaid preliminary issues before proceeding with further trial of the suit. That application had been rejected by its impugned order on the ground that both the issues involved the mixed question of the law and facts which require recording of evidence for decision.

5. Relying on the unreported Single Bench decision of this Court in CRP No. 3651 of 1998, DD: 16-11-1998, learned Counsel for petitioner maintained that the Trial Court should have allowed petitioner's said application since under Section 11(2) of the Karnataka Court Fees and Suits Valuation Act, it was required to decide the said two issues first as preliminary issues. Per contra, learned Counsel for respondent-plaintiff argued in support of the impugned order and reliance was placed on two Single Bench decisions of this Court. They are, B. Mohammed Ali v D. Dawood Basha and Mahammad Iqbal v Mohamadgous Lalmiya and Others .

6. In Mahammad Iqbal's case, supra, this Court has taken the view that the fact that the issue is an issue involving jurisdictional fact is not by itself sufficient for the Court to try such issue as preliminary issue, inasmuch as an issue requiring evidence is not a preliminary issue that could be so tried under Order 14, Rule 2 of the CPC. In a decision reported in the case of Umarabba v Pathunni and Others, it has been stated that under Section 11(2) of the Act, which is a special Act, the Trial Court is required to first decide the issue, whether the Court fee paid is

proper or not. In its Single Bench decision in the case of Mohammed Ali, supra, this question was again dealt with and has been observed:

'(i) If there are issues of fact or issues involving mixed questions of law and fact then even if they relate to jurisdiction cannot be tried as a preliminary issue. That Order 14, Rule 2(2) provides issue of law pure or simple can be tried as a preliminary issue provided they relate to question of jurisdiction or bar to the entertainment of the suit and Court is of opinion that the suit or case or part thereof can be disposed on the basis thereof. Any other question of law or any question of law other than one touching or relating to jurisdiction or other than relating to bar created in the suit, cannot be tried as a preliminary issue.

(ii) The question as to valuation of the suit for the purpose of jurisdiction is the issue on fact which has to be first determined and the decision of this issue will involve recording of evidence to determine it. It is upon a finding on this issue, the Court may have to record other finding whether the suit is within the jurisdiction as well as the Court fee paid is insufficient. Thus, it is not even a pure issue of law but it involves a mixed question of fact and law'.

7. The learned Counsel for the petitioner placed great emphasis on the provisions of Section 11(2) of the Karnataka Court Fees and Suits Valuation Act which reads as under:

'Section 11(1).....

(2) Any defendant may, by his written statement file before the first hearing of the suit or before evidence is recorded on the merits of the claim but, subject to the next succeeding sub-section, not later, plead that the subject-matter of the suit has not been properly valued or that the fee paid is not sufficient. All questions arising on such pleas shall be heard and decided before evidence is recorded affecting such defendant, on the merits of the claim. If the Court decides that the subject-matter of the suit has not been properly valued or that the fee paid is not sufficient, the Court shall fix a date before which the plaint shall be amended in accordance with the Court's decision and the deficit fee shall be paid. If the plaint be not amended or if the deficit fee be not paid within the time allowed, the plaint shall be

rejected and the Court shall pass such order as it deems just regarding costs of the suit'.

8. The learned Judge in the case of Umarabba, supra, referring to Section 11(2) of the Karnataka Court Fees and Suits Valuation Act, has held:

'It is incumbent on the Trial Court to decide the issue relating to Court fee before recording evidence affecting the parties on the merits of their claim'.

Therefore, when the special statute has made it incumbent on the Trial Court to decide the issue of Court fee before recording evidence on merits of the respective claim of the parties, the Trial Court has to follow the mandate of law. It is not permissible to give a go-by to this mandate in the special statute. In the latter decision, cited supra, the earlier decision of this Court in the case of Umarabba, supra, was not taken note of. I do not find any good ground to hold the ratio in Umarabba's case, supra, has lost its authority.

9. In this case, the Trial Court, instead of deciding the question of Court fee first as a preliminary issue, it has proceeded with the findings on other issues in the suit. A statutory direction that certain act must be done in certain manner, must be complied with and done in accordance therewith by the Trial Court. Therefore, I find sufficient legal substance and force in the contention of the learned Counsel for petitioner. In that view of the legal position, the impugned order of the Court below cannot be sustained.

10. Hence, the revision is allowed. The impugned order of the Court below is set aside. Petitioner's I.A. 3 filed before it is allowed with a direction to first try the preliminary issues 6 and 7 and then proceed further with the trial of the suit in the light of its decision on these issues.