

Mallappa Vs. Thippanna

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Court : Karnataka

Decided On : Aug-12-1985

Reported in : ILR1985KAR3622

Judge : Kulkarni, J.

Acts : Karnataka Court Fees and Suits Valuation Act, 1985 - Sections 49;
Karnataka Civil Courts Act, 1964 - Sections 19 and 49

Appeal No. : C.R.P. No. 199 of 1983

Appellant : Mallappa

Respondent : Thippanna

Advocate for Def. : K. Appa Rao, Adv.

Advocate for Pet/Ap. : S.R. Shivaprakash, Adv. for Shivaraj Patil, Adv.

Disposition : Revision allowed

Judgement :

ORDER

Kulkarni, J.

1.This is an appellant's revision against the order dated 4-12-1982 passed by the District Judge, Gulbarga, in R.A. No. 17 of 1981 returning the appeal memo to the

appellant for presentation in a proper Court.

2. The respondent-plaintiff filed O.S. No. 8 of 1979 on the file of the Civil Judge, Yadgir. The subject matter of the suit was for recovery of Rs. 16,560/-with future interest. The said suit was decreed. The defendant approached the District Judge with an appeal. The total amount recover-able under the decree would be Rs. 25,551-89P. Under Section 49 of the Karnataka Court Fees and Suits Valuation Act, 1958, the interest also will have to be included for the purpose of valuation to be made before the Appellate Court. Under Section 49 of the Act, the appellant will have to pay the court fee on the amount due under the decree till the date of filing of the appeal. Explanation (3) to Section 49 of the Karnataka Court Fees and Suits Valuation Act, 1958, reads as -

'In claims which include the award of interest subsequent to the institution of the suit the interest accrued during the pendency of the suit till the date of decree shall be deemed to be part of the subject-matter of the appeal except where such interest is relinquished.'

Therefore while preferring the appeal, the appellant will have to pay the court fee not only on the subject matter of the original suit but also on the interest subsequently accrued during the pendency of the suit. Therefore it is only for the purpose of ascertaining the value of the subject matter of the appeal that the future interest within the meaning of Section 49 of the Act will have to be calculated and the court fee will have to be paid on the subsequent interest also which has accrued. The valuation for the purpose of payment of court fee is something different from the valuation for the purpose of preferring an appeal. Section 19 of the Civil Courts Act reads as :-

'9. Appeals from Civil Judge :- Appeals from the decrees and orders passed by a Civil Judge in original suits and proceedings of a civil nature, shall when such appeals are allowed by law, lie, -

(1) to the District Court, when the amount or value of the subject matter of the original suit or proceeding is less than twenty thousand rupees ;

(2) to the High Court, in other cases.'

Section 19 of the Civil Court Act says that if the value of the subject matter of the suit filed in the Civil Court is less than Rs. 20,000/-, an appeal against such a decree passed by the Civil Court would lie to the District Court. Therefore for ascertaining whether the appeal lies to the District Court or the High Court, the valuation put on the subject matter of the suit in the Trial Court will have to be taken into consideration. Therefore the valuation within the meaning of Section 19 of the Civil Courts Act is entirely different from the valuation to be made under Section 49 of the Karnataka Court Fees and Suits Valuation Act, 1958. As already stated above, the valuation for the purpose of Court fee in the appeal would be governed by Section 49 Explanation (3) of the Karnataka Court Fees and Suits Valuation Act while the valuation for the purpose of determining the appellate forum would be governed by Section 19 of the Civil Courts Act. Admittedly the valuation of the subject matter of the suit as filed in the Trial Court was round about Rs. 16,560/-. This is less than Rs. 20,000/-. Therefore the appeal as per Section 19 of the Civil Courts Act would lie to the District Court though the valuation for the purpose of paying Court fee in the appeal might exceed Rs. 20,000/-. Therefore the District Court alone is the competent appellate authority under the Civil Courts Act.

3. Therefore, the order passed by the Court below ordering the return of the plaint is not correct. Accordingly it is set aside. The revision is allowed. The District Court should proceed with the appeal according to law. The matter is sent back to the District Court for fresh disposal according to law.

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