

Abdul Ghani Vs. Vishunath

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Court : Allahabad

Decided On : Nov-29-1956

Reported in : AIR1957All337

Judge : Desai and ;Beg, JJ.

Acts : [Code of Civil Procedure \(CPC\) , 1908](#) - Sections 115 - Order 7, Rule 11;
Court-fees Act, 1870 - Sections 7; [Suits Valuation Act, 1887](#) - Sections 3

Appeal No. : Civil Revn. No. 276 of 1952

Appellant : Abdul Ghani

Respondent : Vishunath

Advocate for Def. : J.N. Waghrey, Adv.

Advocate for Pet/Ap. : Pratap Narian Bakshi, Adv.

Disposition : Application dismissed

Judgement :

Desai, J.

The opposite party filed a suit against the applicant for possession of a piece of land after demolition of a construction made thereon by the applicant. For purposes of jurisdiction and also of court-fee he valued the land only according to

its market price; he did not include the value of the construction standing upon it. An objection was raised by the applicant against the valuation and the court-fee paid on the plaint.

The Munsif held that the correct value of the land was Rs. 1694/- and ordered the opposite party to increase the valuation to Rs. 1694/- and pay additional court-fee thereon. He assessed the value of the construction at Rs. 4623/- but was of the opinion that it was not to be taken into consideration in deciding the valuation of the suit for purposes of jurisdiction and court-fee. Against his decision the applicant has come up in revision.

2. There is a preliminary objection on the ground that the revision is not maintainable because the learned Munsif's deciding that the valuation of the land is Rs. 1694/- and that court-fee should be paid on that amount does not amount to his deciding a case within the meaning of Section 115, C. P. C. The opposite party relies upon *Buddhoo Lal v. Mewa Ram*, ILR 43 All 564: (AIR 1921 All 1 (FB)) (A) which has been confirmed in *Ram Richpal v. Daya Nand Sarup* : AIR1955 All309 . The question what was the valuation of the property in suit and what was the court-fee payable on the valuation was a question that arose in the suit itself and was not a separate case.

Any decision given on the question could not be said to be deciding a case separately from the suit itself and therefore would not be liable to be revised under Section 115. On behalf of the applicant reliance was placed on *Mt. Mohri Kunwar v. Keshri Chandra* : AIR1941 All298 and *Hafiz Mohd. Ishaq v. Chief Inspector of Stamps, U. P.*, 1947 All LJ 99: (AIR 1947 All 340) (D). The observation in the first case at p. 381 (of All LJ) : (at p. 300 of AIR) to the effect that deciding a question of court-fee is deciding a case within the meaning of Section 115, C. P. C. was an obiter.

The facts in 1947 All LJ 99: (AIR 1947 All 340) (D) were different; there the question of court-fee was raised not by the defendant, a party to the suit, but by a third person who was not a party to the suit, namely, a Stamp Inspector. When such a question was raised by a third person who was not a party to the suit, it could be contended that deciding it was deciding a case and not deciding any

matter in the suit itself. It could not be said to be deciding a matter in the suit because the Stamp Inspector, was not a party to the suit: if he could raise a question he could do so only by means of a case separately from the suit. We agree with Shri Bannerji, counsel for the opposite party, that this revision application is not maintainable.

3. Even on merits the application is bound to fail. The opposite party sues for possession over the land only; he does not want possession over the construction standing on it. As a matter of fact he wants the construction to be demolished. It is open to the applicant to remove it himself before the suit is decreed or even before the possession over the land is delivered to the opposite party in execution of the decree. So long as the applicant is not prevented from removing it, if he so desires, it cannot be said that it is included within the scope of the suit and that its price should be added to the price of the land to arrive at the valuation for purposes of jurisdiction and court-fee.

The opposite party does not claim possession over the construction; he claims possession over the land only. If something is permanently fixed to the land and when possession is delivered over the land the fixture also goes with it, it is immaterial for purposes of jurisdiction and court-fee; the opposite party cannot be required to add its value to the value of the land. It was not necessary for it to seek demolition of the construction at all; it might have as well claimed relief of possession over the land saying that the applicant was at liberty to remove the construction before the possession was delivered to it, in which case no question of taking into consideration the price of the construction could have arisen.

4. The learned Munsif ought not to have passed a composite order requiring the valuation of the subject-matter in the plaint to be corrected and additional court-fee to be paid on the corrected valuation. Requiring a plaintiff to increase the valuation and requiring him to pay additional court-fee are two distinct orders, with different consequences arising out of their being not complied with and must be kept separate and should never be passed simultaneously. An order requiring additional court-fee to be paid can be passed only if the valuation is increased in compliance with the other order; on the valuation originally stated on the plaint the

court-fee is (presumably) sufficient. If the valuation is not increased as directed by the Court, the plaint must be rejected; vide Order 7, Rule 11 (b), C. P. C., and the Court has no occasion to pass the other order.

It is only when the valuation is increased in compliance with the order that the question of paying additional court-fee can arise; the proper procedure in such a case is to call for a report from the office about additional court-fee payable, if any, on the increased valuation, and to pass an order, requiring the plaintiff to pay additional court-fee specifying its amount. A vague order like 'The plaintiff shall pay additional court-fee within..... days' is not a good order, the plaintiff has a right to be informed of the exact amount of the additional court-fee to be paid by him.

The words used in Order 7, Rule 11(c) are 'to supply the requisite stamp paper'. If the additional court-fee is not paid within the time allowed, the plaint must be rejected under this rule. The opening words of the rule are highly significant;

'where the relief claimed is properly valued but the plaint is written upon paper insufficiently stamped.'

means that the plaintiff can be ordered to pay the additional court-fee only after he has increased the valuation. No appeal lies from an order requiring correction of the valuation; but an appeal is permitted from the other order for payment of additional court-fee, vide Section 6A(1), Court-fees Act. If the plaintiff does not make good the deficiency and appeals from the order, further proceedings in the suit must be stayed under Section 6A(2).

Passing a composite order requiring correction of the valuation and payment of additional court-fee besides being illogical and wrong as shown above may make the whole order appealable though really only the order requiring payment of additional court-fee is made subject to challenge. On an appeal under Section 6A (1) the appellate court may be concerned only with the question whether the provisions of the Court-fees Act are correctly applied but in an appeal against a composite order it may be required to enter into the question of the valuation also. Complications like this result from the erroneous composite order. What the learned Munsif has done in this case is done by almost every Court, and we trust

that the wrong practice will be given up at once.

5. The application is dismissed with costs;The record should be sent to the trial Court atonce which should dispose of the suit withoutfurther delay.

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