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Court : Allahabad

Decided On : Feb-02-1976

Reported in : AIR1976All441

Judge : M.P. Saxena, J.

Acts : [Code of Civil Procedure \(CPC\) , 1908](#) - Sections 115; Court-fees Act - Sections 6A and 6B

Appeal No. : Civil Revn. No. 1305 of 1972

Appellant : Hari Narain

Respondent : Williams and ors.

Advocate for Def. : H.P. Gupta, Adv.

Advocate for Pet/Ap. : K.C. Saksena, Adv.

Disposition : Revision dismissed

Judgement :

ORDER

M.P. Saxena, J.

1. This is a revision application under Section 115 of the Code of Civil Procedure against the finding dated 8-7-1972 given by the learned First Additional Civil

Judge, Dehradun on issue No. 9 relating to payment of court-fee.

2. Briefly stated, the facts giving rise to this revision application are that the plaintiffs opposite parties Nos. 1 and 2 are the owners of property bearing municipal No. 194, Rajpur Road, Dehradun. The defendant No. 1 agreed to purchase this property for a sum of Rs. one lac. Out of the said amount, a sum of Rs. 41,000 remained unpaid. Therefore, the plaintiffs filed a suit for the recovery of Rs. 41,800 with interest pendente lite and future. The suit was valued at Rs. 41,800 and a sum of Rs. 3,557.50-was paid as court-fee thereon. Later on the plaintiffs got their plaint amended and in the alternative claimed possession over the property in suit. The defendant contested the suit inter alia on the ground that the court-fee paid was insufficient. Issues were framed on 24-3-1971 and issue No. 9 read as follows:--

'Whether court-fee paid is sufficient?'

The issue of court-fee was taken up first and for its disposal the learned lower court held on 12-7-1971 that the suit is to be valued according to the market value of the property and this will have to be determined in accordance with the provisions of Section 7(v)1(c) and subsection II of Section 7 of the Court-fees Act, The plaintiffs moved an application 66-C/2 for issue of commission under Section 9 of the Court-fees Act for determining the value of the property. The application was allowed and a Commissioner was appointed for this purpose. The Commissioner valued the property at Rs. 14,608. The defendant filed objections. By means of his order dated 11-3-1972, the learned Civil Judge held the value of the property to be Rs. 14,608. The plaintiffs were directed to amend the plaint in the light of the said finding within the time allowed. Accordingly the plaintiffs got the plaint amended. The valuation of the suit still remained Rs. 41,800 but it included Rs. 14,608 the value of the property. Thereafter on 8-7-1972, issue No. 9 was disposed of with the following finding:--

'The valuation has been amended as directed. The Munsarim reports that no court-fee is payable. Issue No. 9 is, therefore, decided in the negative. Fix 28-8-72 for final hearing.'

It is against this finding that the defendant No. 1 has come up in revision.

3. The learned counsel for the plaintiffs opposite parties has argued that the revision application is legally not maintainable because the question of payment of court-fees is a matter between the State and the plaintiffs and the defendant is not affected or prejudiced by any order that may be passed in that connection. The learned counsel for the revisionist has repelled this contention on the ground that the property in suit has to be valued according to the allegations made in the plaint. In the instant case, the allegations made in the plaint show that the property was worth Rs. one lac. Therefore, there was no question of appointing a Commissioner. This was done in contravention of Section 9 of the Suits Valuation Act and was illegal. There was also a material irregularity in inviting a report from the Commissioner about the value of the property.

4. I have examined the whole position and there can be no manner of doubt that the valuation is to be made on the basis of the allegations made in the plaint and not on the basis of assertions made in the written statement. The question however, for consideration is whether in a case of this nature, the defendant is entitled to file a revision, if so when? This question at first came up for consideration in the case of 'Abdul Ghani v. Vishunath', 1957 All LJ 105 = (AIR 1957 Pat 337) in which a Division Bench of this Court observed :--

'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, C.P.C.

5. In 'Tewari Singh v. Gaya Prasad' (AIR 1957 Pat 450), it was held that if the question of valuation and court-fees is decided against the plaintiff, the plaintiff can come up in revision against that order but if the valuation and court-fees matter is decided in favour of the plaintiff, then the defendant cannot come up in revision and the High Court will not interfere with the order of the court below inasmuch as the matter of court-fees is not between the plaintiff and the defendant but is a matter between the State and the plaintiff.

6. This question again cropped up for consideration in the case of 'C. L. Basra v. Pyarey Lal Basra' (AIR 1960 All 590). In this case, a Division Bench observed:--

'To sum up, after the question of court-fees has been decided by the trial court there is no case decided which can entitle the parties to make an application in revision under Section 115, C.P.C. But on feeling aggrieved, the person called upon to make good the deficiency and no other person can prefer an appeal under Section 6A of the Court-fees Act and the Chief Inspector of Stamps can in certain circumstances detailed above move a revision under Section 6-B.'

They further observed:--

'After the appeal or revision has been decided by the higher Court that decision shall amount to a case decided and all the parties to that proceeding, namely, an appeal under Section 6-A or revision under Section 6-B can move an application under Section 115, C.P.C. considering that none of these orders are appealable provided the court deciding the appeal or revision had exercised the jurisdiction not vested in law or had failed to exercise jurisdiction so vested or acted illegally or with material irregularity in the exercise of jurisdiction.'

The aforesaid observations make it clear that the defendant has no right of revision against the decision on adequacy of court-fees by the trial court unless it affects jurisdiction of the Court. He can do so only against an order passed in appeal under Section 6-A or in revision under Section 6-B of the Court-fees Act.

7. The contention of the learned counsel for the revisionist that the defendant will be entitled to prefer a revision, if the order of the trial court on the question of court-fees is manifestly erroneous, is also not tenable. He will be entitled to do so only if the order affects jurisdiction. I respectfully agree with the view expressed in *Vasu v. Chakki Mani*, (AIR 1962 Ker 84) that even if there is an erroneous decision on the question of court-fees which does not affect jurisdiction of court to try the suit, no revision lies at the instance of the defendant. In the present case whether the valuation of the suit is Rs 41,800 or rupees one lac it will be triable by the learned Civil Judge, in whose court it is already pending. Therefore, the finding on issue No. 9 cannot be said to affect jurisdiction.

8. In 'Rathnavarmaraja v. Smt. Vimla' (AIR 1961 SC 1299), this question was considered in some detail. It will be of advantage to refer to the relevant observations :--

'The Court-fees Act was enacted to collect revenue for the benefit of the State and not to arm a contesting party with a weapon of defence to obstruct the trial of an action..... We fail to appreciate what grievance the defendant can make by seeking to invoke the revisional jurisdiction of the High Court on the question whether the plaintiff has paid adequate court-fee on his plaint. Whether proper court-fee is paid on a plaint is primarily a question between the plaintiff and the State. How by an order relating to the adequacy of the court-fee paid by the plaintiff, the defendant may feel aggrieved, it is difficult to appreciate. Again the jurisdiction in revision exercised by the High Court under Section 115 of the Code of Civil Procedure is strictly conditioned by Clauses (a), to (c) thereof and may be invoked on the ground of refusal to exercise jurisdiction vested in the Subordinate Court or assumption of jurisdiction which the court does not possess or on the ground that the Court has acted illegally or with material irregularity in the exercise of its jurisdiction. The defendant who may believe and even honestly that proper court-fee has not been paid by the plaintiff has still no right to move the superior courts by appeal or revision against the order adjudging payment of court-fee payable on the plaint.' It was a case to which Madras Court-fees and Suits Valuation Act, 1955 was applicable and it was held that Section 12 (2) of the said Act only enables the defendant to raise a contention as to the proper court-fee payable on a plaint and to assist the court in arriving at a just decision on that question. There is no provision in the Madras Court-fees Act or any other statute which enables the defendant to move the High Court in revision against the decision of the court-fee payable in a plaint. The provisions do not arm the defendant with a weapon of technicality to obstruct the progress of the suit by approaching the High Court in revision against an order determining the court-fee payable. In the U. P. Court-Fees Act also there is no provision entitling a defendant to come up in revision against such an order.

9. In Shamsheer Singh v Rajendra Prasad (AIR 1973 SC 2384) the observations made in Rathnavarmaraja's case were considered and it was held that the ratio of

that decision was that no revision on a question of court-fee lay where no question of jurisdiction was involved and that this case was correctly interpreted by the Kerala High Court in *Vasu v. Chakki Mani* (supra) when it pointed out that no revision will lie against the decision on the question of adequacy of court-fee at the instance of the defendant unless it involves also the question of jurisdiction of the Court.

10. The result of this discussion is that in the instant case the defendant, who, is not at all affected by the order of the learned Civil Judge on the question of court-fee has no right to come up in revision. The State can be the aggrieved party but the Inspector of Stamps has not chosen to file any revision under Section 6-B of the Court-fees Act.

11. The learned counsel for the revisionist has also argued that there is no proper finding on issue No. 9 inasmuch as the learned Civil Judge has given no reasons for holding that the court-fee paid is sufficient. There is no speaking order and the finding is based on the report of the Munsarim. This contention has no force because after the relief for possession over the suit property was added in the plaint the necessity arose for determining the valuation of the suit and court-fee payable thereon. For this purpose the learned Civil Judge issued commission and got the valuation done. It might have been a wrong step but the Stamp Inspector alone could challenge it. The valuation clause of the plaint was accordingly amended and the Munsarim, as usual, gave his report about court-fee. According to him the court-fee paid was sufficient. The learned Civil Judge agreed with this report and disposed of issue No. 9 in its light. If this finding is read with previous orders there will be no scope for argument that the court did not apply its mind to the controversy.

12. For the aforesaid reasons the revision application is legally not maintainable and is dismissed with costs to the opposite party. The stay order, if any, is vacated. The record may be sent back to the learned lower court without delay.