Damodar Prasad Vs. Hardeo Prasad

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Court : Allahabad

Decided On : Jun-02-1930

Reported in : 131Ind.Cas.253

Judge : King, J.

Appellant : Damodar Prasad

Respondent : Hardeo Prasad

Judgement :

King, J.

1. This is a reference under Section 5 of the Court Fees Act.

2. The plaintiff claimed Rs, 9,562-8-3 as principal and interest on acoount of profits due at the date of suit, together with, pendente lite and future interest at 12 per cent, per annum. The suit was decreed for Rs. 5,304-15-4 which included interest at 12 per cent, up to the date of suit. No pendente lite interest was decreed, but future interest was decreed at the rate of 6 per cent, per annum.

3. The plaintiff appealed, claiming a further Sum of Rs. 2,541-10-3. He also claimed pendente lite interest and made this the subject-matter of one of his grounds of appeal.

4. He paid a Court-fee on Rs. 2,541-10 3. The question is whether he should not pay a further Court-fee on the sum claimed as pendente lite interest, which by calculation comes to Rs. 663.

5. Under Article 1, Schedule I the memorandum of appeal must be stamped ad valorem on 'the amount or value of the subject-matter in dispute,' When the appellant has expressly claimed a definitely ascertainable sum by way of pendente lite interest, which was disallowed by the trial Court, I think that sum must be held to be part of 'the amount or value of the subject-matter in dispute.' Otherwise, if the appeal.had related to the pendente lite interest only, we should be forced to hold that there was no 'subject-matter in dispute' in the Appellate Court, and such a conclusion seems absurd.

6. No clear rulings on this point have been brought to my notice. The Chief Inspector of Stamps relies upon Rowlins v. Lachmi Narain Jha 44 Ind. Cas. 50 : 3 P.L.J. 443 : (1918) Pat. 264 : 5 P.L.W. 223 but that case has no direct bearing upon the point in dispute, as it deals only with the Court-fee payable upon appeals or cross-objections in redemption or foreclosure suits. This is a suit of a different nature.

7. The appellant's Advocate relies upon Vi-thal Hari Athalve v. Govind Vasudeo Thoedr 17 B. 41. In that case the plaintiff obtained a decree for certain sum due upon a mortgage, together with interest up to the date of suit. The plaintiff appealed on the ground, inter alia, that he was entitled to interest up to the date of payment. The Court held that the appellant was not bound to pay an additional Court-fee on account of the claim for interest from institution of the suit until payment. The reason was that the claim for interest stood on the same footing as a claim for future mesne profits which had been held not to fall under Section 7 of the Court Fees Act. This case was decided before the amendment of Article 1 of Schedule I of the Court Fees Act by Section 155 and the Fourth Schedule of the Code of Civil Procedure, 1908. The amendment makes it clear that Article 1 of Schedule I is a substantive provision governing the Court-fees payable upon memoranda of appeal. Section 7 applies to suits only and not to appeals. For this reason I think the Bombay ruling can no longer be considered good law.

8. A Division Bench of this Court in Bhawani Prasad v. Kutub-un-nissa Bibi 27 A. 559 : A.W.N. (1905) 84 : 2 A.L.J. 263 did not expressly dissent from the above-mentioned Bombay ruling, which does not appear to have been brought to their notice, but they took a different view. In that case the trial Court, in a suit upon a mortgage, awarded interest up to the date fixed for payment. The plaintiff appealed claiming future interest from the date fixed for payment until realisation. The Court did not hold (as in the Bombay ruling) that no Court-fee was payable upon the amount claimed as interest. They held that it was impossible to determine the amount of future interest and, therefore, a fixed Court-fee was payable under Schedule II, Article 17 (vi).

9. This lends support to the view that I take, that when the sum claimed in appeal as interest definitely ascertainable (as in the present case) then an ad valorem Court-fee is payable under Schedule I, Art, 1 as the sum claimed is part of the 'subject-matter in dispute' in the Appellate Court.

10. I may add that the appellant's Advocate has also cited Kali Prasad Singh v. Mathura Prasad Singh 77 Ind. Cas. 1054 : A.I.R. 1923 Pat. 28 : 1 Pat. L.R. 16 : 3 P.L.T. 813 and Sadhu Saran Rai v. Barhamdeo Lal 103 Ind. Cas. 592 : 8 P.L.T. 355 : A.I.R. 1927 Pat. 230 but they seem to be beside the point as they deal with cases where a plaintiff appeals against the total dismissal of a suit for money. In the present case the plaintiff's suit was partly decreed and the principles laid down in those rulings do not seem to be applicable.

11. I hold that the appellant is bound to pay an ad valorem Court-fee on the ascertainable amount of pendente lite interest when he has expressly made it part of the subject-matter in dispute in the appeal.