

**Scaria Joseph Vs. Mathai George**

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**Court :** Kerala

**Decided On :** Sep-13-1974

**Reported in :** AIR1975Ker24

**Judge :** Gopalan Nambiar,; George Vadakkal and; Chandrasekhara Menon, JJ.

**Acts :** Kerala Court-Fees Act, 1125 - Sections 25 and 52 - Schedule - Article 3;  
Kerala Agriculturists' Debt Relief Act, 1970 - Sections 4

**Appeal No. :** C.P.P. No. 1127 of 1973

**Appellant :** Scaria Joseph

**Respondent :** Mathai George

**Advocate for Pet/Ap. :** P.C. Chacko, Adv.

**Disposition :** Revision dismissed

**Judgement :**

**Chandrasekhara Menon, J.**

1. In a suit for recovery of money on the basis of a promissory note, the only contesting defendant -- the first defendant in the action -- raised the plea that he is entitled to the benefits of the Kerala Agriculturists' Debt Relief Act -- Act 11 of 1970 -- (hereinafter referred to as the Act). The trial court -- Munshiffs court -- held that

though the 1st defendant is an agriculturist entitled as such to the benefits of the Act, as the plaintiff has claimed interest only at the rate of 6%, and -as the defendant has committed default in payment of three consecutive instalments, he cannot avail of these benefits. A decree was passed in the suit making the 1st defendant also personally liable for a sum of Rs. 3609.85 with interest at 6% per annum from date of suit till realisation with proportionate costs.

2. The 1st defendant has taken up the matter in appeal to the District Court. In the grounds enumerated in the memorandum of appeal, it is stated that the judgment and decree of the trial court are objected to only in so far as it denies the appellant benefits under the Act. Therein it is further clarified that the appeal is filed for securing the right of instalment payments provided for under the Act with a statement that there is no dispute regarding the subject-matter of the decree. No valuation is given for relief claimed in the appeal but it is stated that a court-fee of Rs. 2 is paid for securing the rights under the Act only since there is no dispute regarding the subject-matter of the decree. It is difficult to fathom the meaning of the appellant's statement that there is no disputes regarding the subj act-matter of the decree because in the appeal the decree is impugned in so far as it denies the appellant benefits under the Act.

3. The learned District Judge held that the court-fee paid is insufficient and the appellant has to pay court-fee on the amount decreed against him. It was pointed out in his order that what the appellant really seeks is a reversal of the decree on the basis of his plea for benefits under the Act.

4. Questioning the order of the District Judge, the 1st defendant has filed this revision petition. When the case came before a Division Bench consisting of two of us, on a reference made by Justice Nambudripad, our attention was drawn to a ruling of a Division Bench of this court on a court-fee reference in A. S. No. 489 of 1971 (Ker.), wherein, in an appeal from a decree in which appellant's claim was one for relief under the Act as in this case, it had been held that court-fee need be paid only under Schedule II. Article 3 of the Kerala Court-Fees Act. As we thought that the decision requires reconsideration, the revision petition was referred for a determination by a Full Bench.

5. Mr. Chacko, learned counsel for the revision petitioner contends before us that the 1st defendant has pleaded in his written statement that he is entitled to benefits under the Act and this plea could very well be treated as a petition under the Act, especially because a separate petition filed under the Act by the revision petitioner had been earlier disposed of on the ground that this claim could be decided in the suit itself. Therefore, it is argued that the rejection of the petitioner's claim for benefits under the Act as per the decree could be deemed to be an order under the Act and, therefore, appealable as such. The court-fee of Rs. 2 paid is, therefore, said to be more than sufficient and the order of the District Judge consequently erroneous.

6. We have no hesitation in rejecting this contention. A plea in the written statement claiming a relief cannot be detached, and considered apart, from the plaint claim in reply to which the written statement is filed and the relief in question asked for. On the pleadings on both sides in the case, issues have been framed in the suit and the decree passed answering these issues. In this connection we may quote the following observations of the Supreme Court in *Prem Raj v. Ram Charan*, (1974) 2 SCC 1 at p. 8 = (AIR 1974 SC 968 at p. 972)

'Unlike the plaint the written statement ordinarily does not include any request to the court. It is simply a defence to the plaintiff's claim. Order VIII Code of Civil Procedure, deals with matters which ought to be included in a written statement. Rule 6 thereof enables the defendant to make a claim for set off. To the extent a written statement includes the claim for set-off it may be treated as a plaint. It is perhaps arguable that a written statement filed in an interpleader suit may also be treated as a plaint. But we express no opinion on this aspect Leaving aside Rule 6 and the interpleader suit, there is nothing in Orders VI and VIII, Code of Civil Procedure, to show that a written statement could legally include any request to the court. We are aware of the general practice in the Mufassil of including in the written statement prayer that the suit should be dismissed with costs. But this prayer is supererogatory and would not convert a written statement simpliciter into an 'application'.'

7. To establish his claim in the appeal the 1st defendant has to get a reversal, or more correctly, a variation of the decree of the trial court. That is why the revision petitioner has filed the appeal from the decree passed. However, as he was bound to do, he has not valued the relief he claims in the appeal. Court-fee on the appeal will depend on the valuation of the relief in the appeal.

8. We might, in this connection, refer to Section 52 of the Kerala Court-fees Act which states that the fee payable in an appeal shall be the same as the fee that would be payable in the court of first instance on the subject-matter of the appeal. Explanation (1) to the section states that whether the appeal is against the refusal of the relief or against the grant of a relief, the fee payable in the appeal shall be the same as the fee that would be payable on the relief in the court of first instance.

9. As the court-fee payable in an appeal depends upon the subject-matter in the appeal and its valuation, we have to look for the subject-matter in the appeal. In 1965 Ker LT 69; Chief Justice M. S. Menon. quoting from Ramanatha Iyer's Law Lexicon said that the subject-matter involved in a litigation is the right which one party claims as against the other and demands the judgment of the court upon it. Where the subject-matter in the appeal coincides with the subject-matter in the suit, the value of the appeal for the purposes of court-fee will be the same as that of the suit. But if the subject-matter in appeal relates only to a Dortion or part of the suit claim, then that portion will have to be separately valued and court-fee paid on the same.

10. In the instant case, the first defendant appellant's prayer in the appeal is that he should be held entitled to benefits of Act 11 of 1970 and the decree consequently varied. In valuing the relief in the appeal, one will have to take into account, how far allowing the relief would result in reduction of the decretal amount. Even if the prayer in the appeal is only one for allowing the payment of debt in instalments it still involves a variation of the decree, and the subject-matter of the appeal in effect and substance, if not in fact may well be regarded as for a declaration allowing such instalments payment. The subject-matter then will have to be valued in accordance with Section 25. If the granting of the relief prayed for

in the appeal results in variation of the decree as such, it would be difficult to say that subject-matter of the appeal is not capable of valuation.

11. In (190V) ILR 30 Mad 96--Ramakrishna Reddi v. Kotta Kota Reddi -- in a suit for recovery of a certain amount due on a hypothecation bond, the trial court decreed the suit for the amount claimed against the hypothecated properties, excepting the items purchased by defendants Nos. 6 to 9 in the suit. The plaintiff in the suit appealed on the ground that the properties were wrongly exonerated from liability; court-fee was paid on the value of the land exonerated. In holding that the court-fee paid is proper the court said:--

'The amount of the decree is not in dispute the liability of the lands other than the lands claimed by the defendants Nos. 6 to 9 is not in dispute. The question in dispute is the liability of the lands claimed by defendants Nos. 6 to 9 to be proceeded against for the debt. If the plaintiff succeeds on appeal he will no doubt be entitled to proceed against the lands claimed by the defendants Nos. 6 to 9 for the satisfaction of the whole debt, but he can only recover the sale proceeds of these lands. The lands have been valued at Rs. 4000 and unless this valuation is successfully impeached by the respondents it must, on the principle of the decision in Krishnammachariar v Sri-nivasa Ayyangar, (1882) ILR 4 Mad 339 -- be taken as the value of the subject-matter in dispute in this appeal.'

12. Similarly in a suit for recovery of possession in which a claim for value of improvements has been disallow-ed, an appeal questioning the denial of the value of improvements will have to be valued on the amount claimed, and ad valorem court-fee paid thereon -- see AIR 1952 Trav-Co 368.

13. In this case the revision petitioner has not cared to give any valuation in the appeal. And in answer to our query, his counsel stated that he does not propose to value the relief in the appeal. As allowing the appeal would result in setting aside the decree as such, we cannot say the court below committed any error of jurisdiction in directing the revision petitioner to pay court-fee on the amount decreed against him. In any view of the matter court-fee cannot be paid as if the appeal is one from an order attracting the provisions of Schedule II, Article 3. And the revision petitioner's refusal to value the relief in the appeal leaves as with no

option but to affirm the order of the court below.

14. Therefore, we dismiss the revision petition with costs.

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