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Court : Kerala

Decided On : Nov-11-1983

Reported in : AIR1984Ker73

Judge : K. Bhaskaran, Ag. C.J.,; P.C. Balakrishna Menon and; K.S. Paripoornan, JJ.

Acts : Kerala Court-fees and Suits Valuation Act, 1960 - Schedule - Articles 4 and 11(2); [Succession Act, 1925](#) - Sections 278

Appeal No. : M.F.A. No. Nil of 1983

Appellant : ittoop

Respondent : Mathunni and anr.

Advocate for Def. : Govt. Pleader

Advocate for Pet/Ap. : Varghese Kalliath, Adv.

Judgement :

Paeipoornan, J.

1. This matter arises on a reference made by the taxing officer for determination of the proper court-fee payable in the appeal. When the matter came up before the Division Bench, it was felt by the learned Judges that the matter in issue deserves

to be considered by a Full Bench. The Division Bench felt that in view of the doubt expressed by the Full Bench in *Kuriyan. v. Ayyappan* : AIR1982 Ker214 about the approach and observations in *In Re Seetha-lakshmi* 1980 Ker LT 560, the matter merits consideration by a Full Bench. Accordingly, it was heard by this Full Bench.

2. The facts of this case are in a narrow compass. The appellant in the miscellaneous Appeal was the petitioner in O. P. No. 77 of 1981. It was a petition filed under Section 278 of the Succession Act for obtaining letters of administration with the will annexed. The father of the petitioner, Pulikkoottil Chaeku executed Ext. A1 will dt. 15-1.1-1956. He died on 2-3-1957. The will was registered subsequent to the death of the testator as document No. 12 of 1957. Deceased Chaeku left behind him Ms wife Kurihayi, three sons--the petitioner and two respondents and a daughter Kachannes. Kunhayi died on 8-9-1960. Kunhamen died on 16-3-1981. Kunhamen was allotted properties under the will and she sold those properties on 5-6-1978 with the knowledge of the respondents. Under the will the property was allotted to the petitioner with a direction that the petitioner should pay Rs. 500/- to the 1st respondent and Rs. 1000/- to the 2nd respondent. Thus the petitioner claimed that he is entitled to the estate of deceased Chaeku as legatee under the will. He filed an application for granting letters of administration of the property and credits of the deceased with the will annexed. Respondents 1 and 2, petitioner's brothers, filed a counter-statement and opposed the petition. It was contended that Chaeku had not executed any will on 5-11-1956, that he had, no testamentary capacity to execute the case, that he had no power to take an independent decision and that the will is concocted. The genuineness of the Will was disputed. It was said that the will was not valid that Kunhamen did not obtain any right under the will and she had no right to sell the properties. The value of the properties will come to Rs. 75,000/-. It was also contended that there are circumstances to show that fraud was practiced by the petitioner in bringing about the will. After taking evidence in the matter the learned Additional District Judge dismissed the O. P. The petitioner has filed the miscellaneous First Appeal from the aforesaid decision in O. P. No. 77 of 1981 dt. 17th of September, 1982.

3. In the appeal memorandum the petitioner has specified the valuation as follows :

'Valuation as in the lower court under petition fee as per Article 11(k)(ii)(2) of Schedule II of the Kerala Court-fees Act 10/60 ...Rs. 5.00' The said article runs as follows: '11 (k)(i). Application for probate or letters of administration to have effect throughout India Twenty-five rupees. (ii) Application for probate or letters of administration not falling under clause (i)(1) if the value of the estate does not exceed Rs. 1,000 ; Seventy-five paise. (2) if the value exceeds Rs. 1,000/- Five rupees.

Provided that if a caveat is entered and the application is registered as a suit, one-half the scale of fee prescribed in Article 1 of Schedule I on the market value of the estate less the fee already paid on the application shall be levied.'

The taxing officer took the view that court-fee paid on the appeal memorandum is insufficient. The petitioner maintained that the court-fee paid under Schedule II Article 11(k)(ii)(2) is proper. At any rate, according to the appellant, the maximum court-fee payable is under Schedule II Article 3(A)(i)(b) --i.e. Rs. 10/-. He relied on Section 52 of the Court Fees Act also. According to the taxing officer this plea is unsustainable and the relevant provision applicable is, Schedule I Article 4, under which one-half of the scale of fee prescribed in Article 1 on the amount or value of the subject-matter, is payable. In view of the dispute, the matter was referred to the Bench for consideration.

4. The relevant provisions of the Kerala Court Fees and Suits Valuation Act, 1909 (Act 10 of 1960) that were referred during the course of arguments before us are the following :--

'Schedule I, Article 4. Memorandum of appeal against order in proceedings under the Indian [Succession Act, 1925](#).

An amount of one-half the scale of fee prescribed in Article 1 on the amount or value of the subject-matter.'

'Schedule II Article 3. Memorandum of appeal from an order inclusive of an order determining any question under Section 47 or Section 144 of the Code of Civil Procedure, 1908, and not otherwise provided for when presented -

(iii) to the High Court -

(A) From an order other than sen order under the Kerala Agriculturists Debt Relief Act, 1958.

(1) where the order was passed by a subordinate Court or other authority -

(a) If the order relates to a suit or proceeding, the value of which exceeds one thousand rupees, ... Ten rupees.

(b) In any other case ... Five rupees'(Schedule II Article 11(k)(ii)(2) -- quoted in para 3 above)

'Section 52. Appeals -- The fee pay-able in 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 :

Prodded that, in levying fee on a memorandum of appeal against a final decree by a person whose appeal against the preliminary decree passed fey the court of first instance or by the court of appeal is pending, credit shall be given for the fee paid by such person in the appeal against the preliminary decree.'

Counsel for the appellant contended that the court-fee paid by the appellant for the application filed before the lower court is Rs. 5/- only. Under Schedule II, Article 11 (k) (ii) (2) of the Court Fees Act read with Section 52 of the Act, the court-fee payable in the appeal filed from the order passed on the application is Rs. 6/- only. At any rate, counsel contended that if Schedule II, Article 11 (k) (ii) (2) is not applicable, Schedule I, Article 3 (iii) (A) (1) (a) will apply and if that article applies the court-fee payable is Rs. 10/-. It is incorret to say that Sehedule I, Article 4 will apply to the instant case. Mr. Varghese Kalliath, counsel for the appellant argued that the provisions in a taxing statute should be construed strictly and in favour of the subject and it is all the more so, in a statute levying court-fees. Counsel invited our attention to the decision to Mukundan v. Nalini : AIR1971 Ker183 wherein at page 746 V. M. Krishna Iyer J. (as he then was) observed as follows:

'While I do not agree that all fiscal measures should be always interpreted against the State and in favour of the tax-payer in the new jurisprudence being evolved in the socio-economic context of India, I have no doubt that there is another great principle that should be remembered by courts when interpreting and applying the court-fee law. Every jurist will recall to mind the historic document by which, in 1218 A. D., on the meadow of Runnymede, King John agreed to the great rights embodied in the Magna Carta one of which assured to no one will he sell, deny, or delay right or justice.' In later centuries, this guarantee blossomed into a constitutional mandate in many parts of the world, including the United States of America and India that every citizen shall be entitled to the equal protection of the laws. In its procedural emanations this right carries the connotation that the rich and the poor may pursue their legal remedies without being inhibited or impeded by the demand for payment of heavy court-fee. In a poor country like ours, the court may not be able to render justice to all or effectively ensure the observance of the rule of law if parties can be scared away by demand of heavy sums initially before entry into the temple of justice. This means that the Court-fees Act will have to be so construed that the benefit of any serious doubt must go against the levy of fees, and only if the court, on a strict construction, finds that the proceeding comes squarely within any of the provisions of the Act, will it direct payment thereof.' Reliance was placed on the decision in *Seethalakshmi* 1980 Ker LT 560 wherein in an appeal filed against an order dismissing an application filed for grant of succession certificate on ground of insufficient security, a Bench of this Court held that the court-fee payable is only under Schedule II, Article 3 (iii) (A) (1) (b) of the Act,-- Rs. 5/-. Referring to Schedule 1, Article 4 of the Court-fees Act, the Bench expressed as follows:

'From the above, it is seen that what is taxed ad valorem is the certificate and not the application. An application for a succession certificate shall be made by a petition only as provided for in Section 372 of the Succession Act. The fee for it is governed by Schedule II, Article 11 (1) (i) or (ii) i.e. Rs. 5 or Rs. 10.That article speaks of an order in proceedings under the Indian Succession Act 1925 and to the scale of fee prescribed in Article 1 on the amount or value of the subject-matter. No doubt an order on an application for the grant of a succession certificate is an order in a proceeding under the Succession Act. But as we saw it

earlier, for that application Article 1 of Schedule I does not apply. The latter Article applies to only plaints, written statements and memorandum of appeal to which an ad valorem court fee is payable under specific provisions of the Act. There is no specific provision in the Court-fees Act relating to application for a succession certificate. Hence we have to find out whether ad valorem court-fee is payable to any proceedings under the Succession Act.'

Referring to Schedule II, Article 11 (k) (ii) (2) and Section 295 of the Act, the Division Bench proceeded to say: 'Thus it will be seen that contested probate proceedings are really in the nature of suits and are taxed at one-half of the scale of fee prescribed in Article I on the amount or value of the estate. An order in such proceedings is the one referred to in Article 4, Schedule I. The court-fee is sensibly the same for the application and an appeal in such cases.'

5. On the other hand Mr. Mustha-fakani Rawthor, counsel for the Revenue, contended that the provisions in the Court-fees Act should be fairly and reasonably construed, that, the above observations of the Division Bench in *In Re Seethalakshmi* 1980 Ker LT 560 should be confined to the facts of the particular case, and at any rate, does not represent the correct law and it has been doubted by a Full Bench of this Court in *Kuriyan v. Ayyappan* : AIR1982 Ker214 . It was also contended by the counsel for the Revenue that in so far as the proceedings in this case were contentious, it is plain that Schedule I, Article 4 of the Court-fee Act will apply. It does not matter whether a caveat was entered in the proceedings or the application was registered as a suit. The sole factor to be looked into is whether the proceedings which is appealed against, is one, which was contested or not; if the decision rendered was after contest, in whatever form, Schedule I, Article 4 will apply.

6. Counsel for the appellant pressed for the acceptance of the view expressed by the Division Bench in *In Re Seetha-lakshmi* 1980 Ker LT 560 to the facts of the instant case, in the light of the principles laid down in *Mukundan v. Nalini* 1971 Ker LT 743 : AIR 1971 Ker LT 183. Counsel contended that the approach made by the Full Bench in *Kuriyan v. Ayyappan* : AIR1982 Ker214 by making reference to 'the spirit and intendment' of the statute, to justify the conclusion that the court-fee

payable shall be as per Schedule I, Article 4 of the Court-fees Act is unjustified or unwarranted. Says counsel, that this approach is against the ratio of the decision reported in *Bank of Chettinad v. Commr. of Income-tax* wherein the Judicial Committee said:

'The principle of all fiscal legislation is that if the person sought to be taxed comes within the letter of the law, he must be taxed however great the hardship may appear to the judicial mind to be. On the other hand if the crown seeking to recover that tax cannot bring that subject within the letter of law it the subject is free however apparently within the spirit of the law the case might otherwise appear to be.

7. We heard counsel at length. Having bestowed our anxious thoughts, we are of opinion that the case on hard, squarely falls within the language of Schedule I, Art. 4 of the Court-fees Act, which is to the following effect.:

'Memorandum of appeal against order in proceedings under the Indian Succession Act 1925.

An amount of one-half the scale of fee prescribed in article 1 on the amount or value of the subject-matter.'

The statutory provision is clear and plain. The eye need not to look any further. The fact that the proper fee is fixed, as an amount of one-half of the scale of fee prescribed in Article 1 on the amount or value of the subject-matter and that Article 1 refers to a plaint does not mean that the proceeding in the lower court should necessarily be registered as a plaint or it should be numbered as a suit. It is common ground, that in this case though no caveat was entered or the application was registered as a suit, the proceedings were contentious. From the rejection of an application, in such a case, we have no doubt in our mind, that the provisions of Schedule I, Article 4 will clearly apply. It is true, that if the person sought to be taxed will not come within the letter of the law, he cannot be taxed, by a mere reference to the 'spirit of the law' or bearing in mind the hardship that may be caused, But, it is trite law that a fiscal statute like any other statute, should receive a fair and reasonable construction. A taxing provision should be interpreted 'fairly',

'reasonably' and in consonance with justice. Reference may be made in this connection to the observations in *Tennant v. Smith* 1892 AC 150 : 3 Tax Cas 158, *I. R. C. v. Jamieson* 1964 AC 1445 (House of Lords), *C.W.T. v. Kripashanker Dayashanker Worah* : [1971]81ITR763(SC) and *Jodha Mal Kuthigla v. C. I. T.* : [1971]82ITR570(SC) .

8. We are of opinion that the approach to the construction of fiscal statutes has been stated with admirable brevity and clarity in the following decisions of the House of Lords. We may usefully quote them. In *Ormond Investment Co. Ltd. v. Bette* (11)28 AC 143 : (13 Tax Cas 400 : 1928 All ER 709 Lord Atkinson stated the principle thus:

'.....it is well established that one is bound in construing revenue Acts to give a fair and reasonable construction to their language without leaning to one side or the other, that no tax can be imposed on a subject by an Act of Parliament without words in it clearly showing an intention to lay the burden on him, that the words of the statute must be adhered to and that so-called equitable constructions of them are not permissible

More recently in *Inland Revenue Commissioners v. Jamison* 1964 AC 1445 : 1963 (2) All ER 1030 Lord Jankins stated the principle as follows: 'The task of the courts, as in any other revenue case, is to construe the provisions of the taxing enactment according to the ordinary and natural meaning of the language used and then to apply that meaning to the facts of the case. If by the application of this process the tax-payer is brought fairly within the net, he is caught, otherwise he goes free; but there must be no straining of--language either way.'

9. We are aware of the more recent decision of the Judicial Committee of the Privy Council in *Mangin v. Inland Revenue Commr.* (1971 AC 739 : 1971 (1) All ER 179 wherein delivering the majority opinion and in restating some of the rules of interpretation of the taxing Acts, Lord Donovan stated at page 182 of the All ER as follows:

'First, the words are to be given their ordinary meaning. They are not to be given some other meaning simply because their object is to frustrate legitimate tax

avoidance devices. As Turner J. said in his (albeit dissenting) judgment in *Marx v. Inland Revenue Commr* moral precepts are not applicable to 'the interpretation of revenue statutes.

Secondly,

'.....one has to look merely at what is clearly said. There is no room for any intendment. There is no equity about a tax. There is no presumption as to a tax. Nothing is to be implied. One can only look fairly at the language used.' I Per Rowlatt J. in *Cape Brandy Syndicate v. Inland Revenue Commrs.*, approved by Viscount Simons LC in *Canadian Eagle Oil Co. Ltd. v. Regem.*)

Thirdly, the object of the construction of a statute being to ascertain the will of the legislature, it may be presumed that neither injustice nor absurdity was intended. If therefore a literal interpretation would produce such a result, and the language admits of an interpretation which would avoid it, then such an interpretation may be adopted.

Fourthly, the history of an enactment and the reasons which led to its being passed may be used as an aid to its construction.'

It should be stated that the Editors of *Simon's Taxes*, 3rd Edn. at page 184, have commented on the above as follows :

'Those principles are not settled and judicial dicta ranging from complete or limited acceptance of, to disagreement with those views abound.'

10. We are of the view that the decision in *In Re Seethalakshmi* 1980 Ker LT 560 is distinguishable. The said decision should be confined to the peculiar facts which arose for consideration in that case. That was a case where an application for the grant of a succession certificate was dismissed on the ground that security furnished was insufficient. The application was not a contentious one. This is a vital distinguishing factor. The court took the view that the fee for the application (which originated the proceeding) in that case was governed by Schedule II, Article 11 (1) (i) or (ii) -- i. e. Rs. 5 or 10.

'(1) Original petitions not otherwise provided for when filed in -

(i) a Munsiffs Court -

(1) under the Madras Village Court's Act, 1889 (Madras Act 1 of 1889), or the Cochin Village Courts Act, XII of 1110 or the Travoncore Village Pancha-yat Court Act, 1090. ... One rupee.

(2) in other cases ... Five rupees.

(ii) the sub-court or ... Ten rupees. a District Court (iii) the High Court... Twenty rupees,'

When such an application is dismissed for any reason and an appeal is filed from such an order, it was held that the said appeal will be governed for the purpose of levy of court-fee, by Schedule II, Article 3 of the Court-fees Act and it will not be an appeal from an order, mentioned in Schedule I, Article 4. The position obtaining here is different. A memorandum of appeal filed against an order, passed under the Indian Succession Act -- which originated in a proceeding for which Schedule II, Article 11 (k) (ii) (2) applies keeping in view the impact of the proviso thereto, will be an appeal, from an order as envisaged and provided for, in Schedule I, Article 4 of the Kerala Court-fees-and Suits Valuation Act.

11. In the light of the above discussion, on the facts of this case, wherein the proceedings initiated under the Indian Succession Act, is a contentious one, and for which express provision is made in Schedule I, Article 4 of the Court fees Act, we are of opinion that the decision in *In Re Seethalakshmi* 1980 Ker LT 560 is clearly inapplicable. In this view of the matter, we are not called upon to express our views as to how for the doubt expressed by the Full Bench in *Kuriyan v. Ayyappan* : AIR1982 Ker214 about the decision in *In Re Seethalakshmi* 1980 Ker LT 560 is warranted or justified.

12. We hold that the correct court fee payable in the instant case is the one under Schedule I, Article 4 of the Kerala Court-fees and Suits Valuation Act. The appellant will value the appeal accordingly and remit the proper court-fee within one month from today.

