

Vasu Vs. Chakki Mani

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Court : Kerala

Decided On : Jul-03-1961

Reported in : AIR1962Ker84

Judge : P.T. Raman Nayar, J.

Acts : [Code of Civil Procedure \(CPC\), 1908](#) - Sections 115 - Order 34, Rule 1;
Court-fees Act, 1870 - Sections 12

Appeal No. : Civil Revn. No. 276 of 1961

Appellant : Vasu

Respondent : Chakki Mani

Advocate for Def. : S. Bhoothalingam Iyer, Adv.

Advocate for Pet/Ap. : P.H. Sankaranayana Iyer, Adv.

Disposition : Petition dismissed

Judgement :

ORDER

P.T. Raman Nayar, J.

1. There are two objections taken by the petitioner, the defendant in a suit for the redemption of a possessory mortgage. The first is that the court-fee paid on the

plaint is 'insufficient and the second that his plea of non-joinder of persons (other than the plaintiffs) interested in the equity of redemption was wrongly decided by the court below. Neither seems to me to come Within the scope of Section 115 of the Code.

2. Taking the second first, no doubt Order 34 Rule 1 requires that all persons having an interest in the right of redemption shall be joined as parties. The plaintiff's claimed that they were solely entitled to the right of redemption and the court below upheld the claim, rejecting the case of the defendant that the daughter and grandchildren of the first plaintiff also had an interest therein. This decision, even if it be wrong, is not one involving any question of jurisdiction.

3. For the first, I read the recent decision of the Supreme Court in Rathnavarmaraju v. Smt. vimla, 1961 Ker LT (SC) 67: (AIR 1961 SC 1299) as meaning that no revision will lie at the instance of a defendant for the simple reason that the adequacy or otherwise of the court-fee paid is not a matter in which he is interested unless, as observed in Sathappa Chettiar v. Ramanathan, AIR 1958 SC 245 at page 251, the question of court-fee 'involves also the question of jurisdiction of the court either to try the suit or entertain the appeal'. Hence an erroneous decision on that matter cannot, unless jurisdiction is involved, invest him with a grievance entitling him to seek redress. (A complaint of over-valuation is understandable, for in the event of his losing, it will saddle the defendant with higher costs and higher court-fee for an appeal). In the case of a plaintiff or an appellant the position is different for he faces the danger of his suit or appeal being thrown out on the basis of the wrong decision.

That was the caSf> in Nemichand v. Edward Mills Co. Ltd., AIR 1953 SC 28 and the observation therein, (at P. 32 of the report) relied upon by the defendant, to the effect that where a decision on the question of court-fee suffers from a defect of jurisdiction the decision would be re-visable by the High Court, read in that light, cannot mean that the High- Court will entertain a revision at the instance of a person who has no legitimate grievance. True, a distinction is to be drawn between the question whether a suit falls under one section Or another of, the Court-fees Act, the question of. category as. it has been called, and the question

whether the value of the subject matter has been properly assessed, the question of valuation pure and simple as it is often described. The former¹, is a pure question of law and in fit cases can be the subject-matter of revision; not the latter.

True also that the question in 1961 Ker LT (SC) 67: (AIR 1961 SC 1299) would appear to be one of valuation pure and simple but the reason given there, namely, that the defendant is not aggrieved, and the observations made, apply equally to a case where the alleged inadequacy arises, through an error regarding category. So long as the error is not one affecting the jurisdiction of the court to try the suit, the defendant is not affected thereby; and the distinction between an error regarding category and an error regarding valuation, pure and simple is of no relevance in a revision by the defendant.

4. My attention has been drawn to the Full Bench decision in *Zainabey Razak v. Noor Mohammed Rothan*, 1960 Ker LT 1322: (AIR 1961 Kerala 146) which no doubt is in favour of the defendant. But it seems to me, and I say this with great respect, that that decision must be regarded as overruled by the decision of the Supreme Court in 1961 Ker LT (SC) 67 : (AIR 1961 SC 1299). I might perhaps add that the Full Bench decision merely approved of the decision in *Lakshmanan Nadar v. Krishnan Nadar*, 1960 Ker LT 1297: (AIR 1961 Kerala 142) (FB) without giving any reasons of its own. In that latter case the decision on the question of court-fee involved -also a decision on the question of the jurisdiction of the court to try the suit and both there and in the cases relied on therein, it was by reason of this circumstance that it was held that a revision would, lie at the instance of a defendant. (See paragraph 11 of the judgment). This aspect of the matter does not appear to have been considered in the Full Bench case.

5. The suit is for premature redemption on payment of half the mortgage money in accordance with Section 611 of Act 31/58. As that section stood at the time the suit was brought, it merely declared the right of the agriculturist mortgagor to redeem a mortgage before the expiry of its term and on payment of only half the money due, suffering a decree for the balance. It did not specify how the mortgagor was to move the court for the purpose, and hence he had to pursue his ordinary remedy of a suit. That was what the plaintiffs here did, and since Section

611 (3) expressly said that the mortgagor shall pay court-fee, as on a suit for redemption, only on the balance of the mortgage amount, namely, half the mortgage amount it would appear that the court-fee paid in the suit on such amount was correct.

However that might be, Section 611 of the Act has now been retrospectively amended by Act 2/6 by saying that the court is to be moved by an application and not by suit so that its provisions cannot apply to a suit for redemption. But I am told that the plaintiffs have applied to court for converting their suit into an application under Section 611, and, if that be so, and if the application is allowed, no question of the adequacy of the court-fee paid will arise at all.

6. I dismiss the petition with costs.

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