

Rajendran Vs. State of Kerala

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Court : Kerala

Decided On : Feb-11-2003

Reported in : AIR2003Ker244; 2003(2)KLT222

Judge : K.S. Radhakrishnan and; J.M. James, JJ.

Acts : [Kerala Court Fees and Suits Valuation Act, 1959](#) - Sections 22, 25 and 27

Appeal No. : C.R.P. No. 1064 of 1997

Appellant : Rajendran

Respondent : State of Kerala

Advocate for Def. : K.L. Joseph, Government Pleader

Advocate for Pet/Ap. : K.P. Dandapani, Adv.

Disposition : Revision petition dismissed

Judgement :

ORDER

K.S. Radhakrishnan, J.

1. This Civil Revision Petition has been placed before us on a reference by the learned single Judge holding that the points raised are of considerable importance. The issue relates to payment of court fee. Learned single Judge also made

reference to a Bench decision of this Court in Sreekumaran v. State of Kerala.

2. The Civil Revision Petition arises out of an order dated 6.6.1997 in O.S. No. 182 of 1991 passed by the Subordinate Judge's Court, Thodupuzha. Since proper court fee was not paid, the suit was not proceeded with. Plaintiff was directed to amend the plaint giving proper valuation for the reliefs prayed for and to pay the required court fee within ten days from the date of the order. Court fee was not paid instead this Revision Petition was preferred and obtained stay of further proceedings in the suit.

3. Plaintiff was the successful bidder in respect of bit No. II of 1976 Wattle Plantation at Pazhathottam, in the auction held on 7.11.1990. Auction was confirmed by the Conservator of Forests, High Range Circle, Kottayam as per order dated 10.1.1991. Bid amount was Rs. 3.21.000/- and the plaintiff had remitted Rs. 25,000/- on 7.11.1990 as per the sale condition. Plaintiff instituted the suit on the plea that the confirmation of the auction was illegal and that the auction was null and void and prayed for the following reliefs:

a) Declaring the auction sale conducted by defendants 2 in respect of block No. II of 76 Wattle Plantation at Pazhathottam in Marayoor Range in Munnar Division on 7.11.1990 pursuant to notification No. 10945/89 dated 26.9.1990 illegal, null and void and allow the plaintiff to recover the sum of Rs. 31,725/- with future interest at 12% per annum on the sum of Rs. 25,000/- from the defendants.

b) A decree of perpetual injunction restraining the defendants from conducting re-auction of Block No. II of 1976 Wattle Plantation at Pazhathottam in Marayoor Range in Munnar division covered by the auction notification dated 26.9.1990. No. being M8-10945/89 at the risk and cost of the plaintiff.

Plaintiff has valued relief (a) at Rs. 31,725/- under Section 22 of the Court Fees Act. Relief (b) was not valued alleging that it was consequential to relief (a).

4. The court below by order dated 1.11.1996 directed the plaintiff to value the relief for declaration at Rs. 31,41,000/- and to amend the plaint. That order was challenged before this Court in C.R.P. No. 137 of 1997. It was submitted that the

sum of Rs. 31,41,000/- mentioned in the order of the court below was a mistake and the matter was remanded to the court below to pass appropriate orders regarding court fee payable by the plaintiff for the relief of declaration and for the relief of injunction in the light of Section 25 and proviso to Section 25(c) of the Court Fees Act and in the light of the decision in Sreekumaran 's case, supra (1996 (2) KLT 21). The court below then considered the matter and held that declaration sought for by the plaintiff is capable of valuation and consequently relief for declaration was liable to be valued at Rs. 3,41,000/- under Section 25(d)(i) of the Court Fees and Suits Valuation Act.

5. Plaintiff had alleged that third respondent by letter dated 6.3.1991 threatened re-auction of the block bid by the plaintiff at plaintiff's risk and cost treating the plaintiff as a defaulter. In the written statement defendant had pointed out that State sustained a loss of Rs. 2,58,630/-. Relief of injunction was sought for restraining recovery of the said amount. It was held by the court below that since injunction was sought for against recovery of the said amount, the said amount is liable to be valued at Rs. 2,58,630/-. Plaintiff had also prayed for a decree for realisation of Rs. 31,725/- which was liable to be valued at Rs. 31,725/- itself under Section 22 of the Court Fees Act.

6. Counsel appearing for the revision petitioner submitted that since plaintiff has sought for only declaration that the auction conducted on 7.11.1990 was illegal and void and the subject matter is not capable of valuation. Consequently no court fee need be paid. Decree of perpetual injunction was only consequential and is not liable to be valued. We find it difficult to accede to the contention of the counsel for the revision petitioner. Plaintiff sought for a declaration that the auction was null and void. Bid amount admittedly was Rs. 3,21,000/- as per the allegation in the plaint. Section 25 of the Court Fees Act reads as follows:

25. Suits for declaration. In a suit for a declaratory decree or order, whether with or without consequential relief, not falling under Section 26.

(a) where the prayer is for a declaration and for possession of the property to which the declaration relates, fee shall be computed on the market value of the property or on rupees one thousand whichever is higher.

(b) where the prayer is for a declaration and for consequential imposition and the relief sought is with reference to any immovable property, fee shall be computed on one-half of the market value of the property or on rupees one thousand, whichever is higher.

(c) where the prayer relates to the plaintiffs exclusive right to use, sell, print or exhibit any mark, name, book, picture, design or other thing and is based on an infringement of such exclusive right, fee shall be computed on amount at which the relief sought is valued in the plaint or on rupees one thousand, whichever is higher.

(d) in other cases -

(i) where the subject-matter of the suit is capable of valuation, fee shall be computed on the market value of the property, and

(ii) where the subject-matter of the suit is not capable of valuation fee shall be computed on amount at which the relief sought is valued in the plaint or on rupees one thousand, whichever is higher.

Counsel for the revision petitioner submitted that in this case declaration sought for would fall under Section 25(d)(ii). We find it difficult to accept the said contention. In our view the declaration sought for would fall under Section 25(d)(i). The subject matter of the suit capable of valuation is Rs. 3,21,000/-. Plaintiff is seeking declaration that the auction held on 7.11.1990 for Rs. 3,21,000/- which was confirmed by order dated 10.1.1991 is null and void. In our view, court fee is liable to be computed on the market value of the property. Plaintiff also sought for a perpetual injunction restraining the defendant from conducting re-auction. Notice was sent by the defendant on 4.3.1991 threatening re-auction. It has been specifically stated in the written statement that the State has sustained loss of Rs. 2,58,630/-. Plaintiff is seeking perpetual injunction restraining the defendant from conducting re-auction. Re-auction has already been conducted and the State sustained a loss of Rs. 2,58,630/-. If injunction is granted State would not be able to recover the said amount. Section 27 of the Court Fees Act deals with suits for injunction, which reads as follows:

27. Suits for injunction. In a suit for injunction.-

(a) where the relief sought is with reference to any immovable property, and

(i) where the plaintiff alleges that his title to the property is denied, or

(ii) where an issue is framed regarding the plaintiff's title to the property, fee shall be computed on one-half of the market value of the property or on rupees five hundred whichever is higher.

(b) where the prayer relates to the plaintiff's exclusive right to use, sell, print or exhibit any mark, name, book, picture, design or other thing and is based on an infringement of such exclusive right, fee shall be computed on the amount at which the relief sought is valued in the plaint or on rupees five hundred, whichever is higher.

(c) in any other case, whether the subject matter of the suit has a market value or not, fee shall be computed on the amount at which the relief sought is valued in the plaint or on rupees five hundred whichever is higher.

Provided that where the relief sought by the plaintiff is in respect of money sought to be recovered from him such relief shall not, for the purpose of computation of fee, be valued at an amount less than one half of the amount sought to be recovered.

Counsel for the revision petitioner submitted that in any view of the matter, revision petitioner need pay court fee on amount less than one half of the amount sought to be recovered. Plaintiff has also prayed for recovery of an amount of Rs. 31,725/-. Since the suit is for recovery of money Section 22 of the Court Fees Act would apply. Consequently court fee has to be computed on the amount claimed. We find no reason to take a different view from the interpretation given by the Division Bench in Sreekumaran 's case, supra, with respect to Section 25(d)(i) of the Act. In such circumstances reference is answered as above. Civil Revision Petition will stand dismissed. However, plaintiff would pay court fee as directed by the court below within a period of one month from today, failing which the suit will stand dismissed.

