SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com

Narayana Shetty Vs. Krishnamma

Narayana Shetty Vs. Krishnamma

SooperKanoon Citation : sooperkanoon.com/726950

Court : Kerala

Decided On : Oct-04-2004

Reported in : AIR2005Ker21; 2004(3)KLT596

Judge : S. Sankarasubban and; A.K. Basheer, JJ.

Acts : Kerala Court Fees and Suits Valuation Act, 1959 - Sections 87(2) - Schedule - Article 11

Appeal No. : C.M.P. ... of 2003 in S.A. No. 735 of 1998

Appellant : Narayana Shetty

Respondent : Krishnamma

Advocate for Def. : D. Krishna Prasad, Adv.

Advocate for Pet/Ap. : S.V. Balakrishna Iyer and; P.B. Krishnan, Advs.

Judgement :

S. Sankarasubban, J.

1. This matter has come before us on a reference by Justice R. Bhaskaran. The Second Appeal is filed against the judgment and decree in A.S. No. 114 of 1995. That appeal was filed against O.S. No. 152 of 1988 of the Munsiffs Court, Kasaragod. During the course of appeal, the first respondent in the Second

Appeal, Krishnamma died on 19.10.2000. Petitioner appellant filed C.M.Ps. for impleading the legal representatives, to set aside abatement and to excuse the delay in filing the application. In all these applications, the petitioner had paid Rs. 2/- as court fee. So far as the payment of court fee on these applications are concerned, it is contained in Schedule II, Article II(t). That Article says that application or petition presented to the High Court and not otherwise specifically provided for Rs. 2/-. There was an amendment of the Court Fees Act by Ordinance 8 of 2002. This is repealed by the Kerala Court Fees and Suits Valuation (Amendment) Act, 2003 came into force on 25th October, 2002. By that Amendment Act, various amendments were made.

2. As already stated, the appellant paid the court fee as it stood before the Amendment Act, 2003. The Office submitted that the court fee has to be paid on the basis of the amendment. In these circumstances the matter came before this Court. The question is whether court fee is to be paid as per the amended provisions.

3. Learned counsel for the petitioner submitted that the court fee has to be paid as it stood before the Amendment Act, 2003 as the suit was instituted earlier. The contention of the petitioner is that under Section 52 of the Court Fees Act, the court fee payable on the memorandum of appeal is as in the Court of first instance. Learned counsel submitted that Section 87(2) of the Court Fees Act (Act 10 of 1960) indicates that the court fee in all proceedings before the commencement of the Act has to be paid as per the earlier law and not under the 1959 Act. Further it is submitted that if the amendment is allowed, that will cause great difficulties because in many cases, the court fee on the appeal itself will be less than Rs. 10/-.

4. Learned counsel referred to Parvathi Amma v. Krishnan (1962 KLT 215). In that case, after coming into force of the Act 10 of 1960, vakalath was filed on February 12, 1962 in S.A. No. 855 of 1961. The Registry was of the view that the court fee has to be paid as per Act 10 of 1960. But the Court held that in the light of Section 87(2) of Act 10 of 1960 so far as appeals or suits filed and pending, they will be governed by the earlier Act. It is in that circumstances that the Court said that the

court fee payable under the Travancore Cochin Act is enough. Our attention was drawn to the decision in State of Bombay v. Supreme General Films Exchange Ltd. (AIR 1960 SC 980), wherein it is observed as follows : 'Where a suit is filed prior to 1.4.1954, on which the Court fees (Bombay Amendment) Act, 1954, levying enhanced court fees, came into force, in the absence of provisions giving retrospective effect to the amendments, the court fees payable on the memorandum of appeal filed after the relevant date are payable according to the law in force at the date of filing of the suit and not according to the law in force at the date of the filing of the memorandum of appeal'. It is further contended that on the basis of the decision in Garikapati Veeraya v. N. Subbiah Choudhry and Ors. (AIR 1957 SC 540), the right of appeal is a vested right and that right cannot be taken away by an amendment.

5. We are of the view that so far as the petitions are concerned, it cannot be given the same status as the court fee payable on appeal. In the present case, Section 87(2) does not apply because, Section 87(2) was introduced when Act 10 of 1950 came into force repealing the Acts in the Travancore-Cochin and Malabar area. According to us, the argument that in an appeal court fee will be paid to the petitions only on the basis of the Law that stood at the time of filing the suit cannot be accepted. So far as the petitions and other matters are concerned, they are different from the memorandum of appeal. According to us, in the above matters, the court fee has to be paid on the basis of which the Law stands at the time of filing of the petitions. In this case, at the time of filing of the petitions, the court fee has to be paid at Rs. 10/-. Hence, we answer the question.

C.M.P. is disposed of as above.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com