

Kunharamu Vs. Kunhalankutty

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Court : Kerala

Decided On : May-28-2002

Reported in : 2003(1)KLT216

Judge : K.A. Mohamed Shafi, J.

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

Appeal No. : C.R.P. No. 573 of 1999

Appellant : Kunharamu

Respondent : Kunhalankutty

Advocate for Def. : Lal George, Government Pleader

Advocate for Pet/Ap. : M.P.M. Aslam, Adv.

Disposition : C.R.P. dismissed

Judgement :

ORDER

K.A. Mohamed Shafi, J.

1. The plaintiff in O.S. No. 31/1998 on the file of the Munsiffs Court, Tirur is the revision petitioner. The order dated 30.1.1999 returning the plaint for presentation before the appropriate court finding that the suit should be valued under the

proviso to Section 27(c) of the Kerala Court Fees and Suits Valuation Act, in which case the suit will be beyond the pecuniary jurisdiction of the court, is under challenge.

2. The suit is filed by the plaintiff - revision petitioner seeking a permanent prohibitory injunction against the revenue recovery proceedings initiated against the plaint schedule properties for the arrears of sales tax amounting to Rs. 32,28,000/- due from the 1st defendant in the suit.

3. The plaintiff valued the suit for injunction under Section 27(c) of the Court Fees Act and paid the fixed court fee. The lower court found that since the relief sought for is in respect of money sought to be recovered from the plaintiff, the suit has to be valued at an amount not less than half of the amount sought to be recovered under the proviso to Section 27(c) of the Court Fees Act.

4. The plaintiff revision petitioner has filed the suit seeking permanent prohibitory injunction restraining defendants 2 to 4 from selling or alienating the plaint schedule properties in any manner affecting the rights of the plaintiff and his children for realisation of the arrears of sales tax due from the 1st defendant who is one amongst his children in pursuance of the notice issued by the 2nd defendant, alleging that the plaint schedule properties belonged to him and his seven children jointly including the 1st defendant in the suit. He has valued the suit under Section 27(c) of the Court Fees Act and paid fixed court fee valuing the relief at Rs. 500/-.

5. As already noted the relief claimed by the revision petitioner in this case is against recovery of Rs. 32,28,000/- alleged to be due from the 1st defendant being arrears of sales tax. The proviso to Section 27(c) of the Kerala Court Fees and Suits Valuation Act reads as follows:

'Provided that where the relief sought for 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 so recovered.'

6. The revision petitioner has contended that the above suit is not in respect of money due from the plaintiff but a third party, the 3rd defendant here. He has also contended that no dispute regarding the title has arisen in the suit and therefore, the court fee payable in this case is only under Section 27(c) of the Court Fees Act. In support of this contention the counsel for the revision petitioner has relied upon the decision in *Itty v. State of Kerala* (1997 (2) KLT 597) wherein a single Judge of this Court has held that in a suit filed for declaration of title where the property belongs to the plaintiff and not to the 5th defendant that the prayer for injunction is against the revenue recovery authorities from proceeding against the property for the liabilities and that the liabilities are not challenged, the suit does not come within the ambit of the proviso to Section 27(c) of the Kerala Court Fees and Suits Valuation Act and the suit is liable to be valued under Section 27(c) of the Act.

7. The facts and circumstances of the case obtaining in the reported case and the above case are entirely different. In that case there was a relief regarding declaration of title to the plaint schedule property and consequential injunction restraining the revenue authorities from proceeding against the plaint schedule property under the Revenue Recovery Act for the dues from the 5th defendant therein. The above suit, on the other hand, is a simple suit for injunction and there is no prayer for declaration of title.

8. In the decision in *Sreekumaran v. State of Kerala* (1996 (2) KLT 21) a Division Bench of this Court has held that where the subject-matter of the suit is the amount claimed in the revenue recovery notice and in respect of which the plaintiff has sought the relief of declaration that he has no liability in terms of the notice, the suit should be valued under Section 25(d)(i) of the Court Fees Act on the sum sought to be recovered and challenged in the suit.

9. In the decision in *Manmathankutty v. State of Kerala* (1997 (1) KLT 317), in which the facts and circumstances of the case are almost similar to the facts and circumstances in this case, this Court has held that the subject-matter of the suit is the amount claimed in the recovery notice and in respect of which the plaintiff sought the relief of injunction. This Court has also held that from the language

used in the proviso to Section 27(c) of the Kerala Court Fees and Suits Valuation Act, it is clear that court fee should be paid on one-half of the amount shown to be recovered, whatever may be the relief sought by the plaintiff in respect of money sought to be recovered from him and whether he admits the claim or not. I am in respectful agreement with the above dictum laid down by the single Judge.

10. In this case the relief sought by the plaintiff is an injunction restraining defendants 2 to 4 from proceeding against the plaint schedule properties for the arrears of sales tax due from the 1st defendant in the suit. Even though the amount claimed by respondents 2 to 4 as per the notice issued under the Revenue Recovery Act is not disputed, the revision petitioner - plaintiff is liable to value the suit at one-half of the amount sought to be recovered, as stipulated in the proviso to Section 27(c) of the Kerala Court Fees and Suits Valuation Act.

Hence the finding entered by the court below that the suit is liable to be valued under the proviso to Section 27(c) of the Kerala Court Fees and Suits Valuation Act and as such the suit is beyond the jurisdiction of the court and the same is liable to be presented before the appropriate court is perfectly justified. Therefore, the impugned order is confirmed and the C.R.P. is dismissed.

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