

Smt. Sardar Devi Vs. Nihalkaran and ors.

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Court : Rajasthan

Decided On : Jul-20-1960

Reported in : AIR1961Raj184

Judge : Sarjoo Prosad, C.J. and; C.B. Bhargava, J.

Acts : Court-fees Act, 1870 - Schedule - Article 17

Appeal No. : First Appeal No. 75 of 1960

Appellant : Smt. Sardar Devi

Respondent : Nihalkaran and ors.

Advocate for Def. : Kansingh, Government Adv.

Advocate for Pet/Ap. : Sagar Mal Mehta, Adv.

Judgement :

Sarjoo Prosad, C.J.

1. The only question which arises at this stage is in regard to the court fee paid by the appellant on the memorandum of appeal. The office has objected to the court fee paid on the ground of its insufficiency and it claims that the appellant is liable to pay ad valorem court fee on the difference of the decretal amount taken as a whole and the present value of the instalments.

2. The plaintiff appellant instituted a suit to which this appeal relates for recovery of a sum of money. The court below has passed a decree in her favour for a sum of Rs. 11,500/- principal in addition to interest at 6 per cent upto the date of the institution of the suit and the date of the decree, thereby making a total sum of Rs. 12,526, 43 nP. Thereafter the decree allows interest to the appellant at 4 1/2 per cent from 1-10-59 till realisation on the principal sum remaining due.

The decree further directs payment of the amount in instalments. The plaintiff has appealed against the decree granting instalments to the defendant-respondent and has paid a court fee of Rs. 10/- only treating the memorandum of appeal as falling under Schedule 2 of Article 17(6) of the Court-fees Act. Incidentally in the grounds of appeal the appellant has taken exception also to the reduction of interest pendente lite by the court below and grant of interest at 4 1/2 per cent after the passing of the decree; but that is a matter which lies in the discretion of the court and therefore the appellant is not liable to pay court fee on that account.

3. The learned counsel for the appellant submits that her main grievance in the appeal is about the grant of instalments and it is therefore, in the circumstances of this case, not possible to estimate the money value of the subject matter in dispute. The decree in question does provide for payment of interest also and all that the appellant now desires is that the whole amount decreed should be paid to her immediately instead of being paid in instalments. Therefore, such a relief is not possible of being valued in money.

4. On behalf of the State the learned Government Advocate contends that some notional value should be attached to this relief, because after all if the amount is realised it is reasonably expected that the appellant would make some investment of the amount and intends to be able to earn larger profits and interest than what has been allowed under the decree in question. He, therefore, submits that the court fees should be paid on this notional valuation.

We are unable to assess any notional value on the basis suggested by the learned Government advocate. Even if it is assumed that the part of the decree which seriously affects the appellant is the direction that only in case of default of three instalments she would be entitled to the whole decretal amount and as such she

should be liable to pay court fee on the value of the three instalments granted, we find that that assumption would not be correct. The obvious reason is that it may be that the defendant respondent may continue to pay the instalments due as directed in the decree.

It is essentially a penal clause against the defendant. Thus we come back to the position that all that the appellant wants in the appeal is to recover the whole decretal amount at once avoiding the instalments and since interest has been already decreed to her the only conclusion at which we arrive is that no pecuniary valuation can be put on the relief prayed.

The decree does grant her interest and all that she suffers is that instead of getting the amount due at once the payment of the amount is postponed to certain periods as indicated in the decree.

5. We have not been able to have any direct precedent on that point either of this Court or of any other court; but our attention has been drawn to certain cases which may be of some assistance in the context. In *Lukhun Chunder Ash v. Khoda Buksh Mondul*, ILR 19 Cal 272 a decree was made payable in three instalments and the plaintiff appealed on the ground that it should not have been made so payable. The court held in the circumstances that:

The appellant had to pay court-fee on the memorandum of appeal calculated upon the difference between the amount claimed in the court below and the sum of the present values of the three instalments payable on the dates mentioned in the decree'.

On that basis they assessed this difference at Rs. 60/- and directed the appellant to pay court fee on that amount.

6. In another case *Gobind Lal v. Rao Baldeo Singh*, AIR 1914 Lah 390 it was also held that:

'In an appeal by the decree-holder from a decree for money fixing instalments, court fees must be paid on the difference between the amount claimed in appeal and the amount decreed, and also on the difference to the appellant between

getting his money on the date of the decree under appeal and getting it by instalments as ordered.'

In that case the plaintiff sued for a sum of Rs. 6,991/13/- and costs and interest from the date of the institution of the suit to the date of payment; but the District Judge passed a decree for Rs. 4,084/-and costs, payable in certain instalments. On appeal the plaintiff claimed a decree for the whole amount and asked further that the decree for instalments should be set aside. He paid court fee on the difference between the amount claimed by him and the amount decreed.

It was contended that the plaintiff should pay further court fee on the relief against the decree for instalments and the learned Judges held that the plaintiff should be directed to pay court fee on this relief according to the difference between getting his money on the date of the District Judge's decree and getting it by instalments as ordered. They found that the difference came to about Rs. 300/- and he was accordingly asked to pay court fee of Rs. 22/8/- on that amount. They did not ask the plaintiff appellant to pay any further stamp duty on the prayer for future interest.

7. Here as we have seen, in the circumstances of the case before us, it is difficult to calculate this difference in money value in getting the amount immediately on the date of the decree of the court below and getting it by instalments as directed by the court. One could understand the position if there was any loss of interest during the period.

8. The case of Makhan Singh v. Lakhmi Das, AIR 1937 Pesh 31 relates to a similar position. The suit was a mortgage suit in which the mortgagee claimed a decree for Rs. 32,000/- against the mortgaged property and person of the mortgagor. The court passed a decree making the decretal amount payable in eight annual instalments and entitling the mortgagee to possession under Order 34 Rule 2 of the Civil Procedure Code, in case the mortgagor failed to pay three instalments regularly. The mortgagee appealed from the decree and wanted immediate recovery of the sum of Rs. 32,00/- . Their Lordships held that :

'Upon calculation we find that the present value of the sum decreed in favour of the appellant, if reckoned at 6 per cent per annum simple interest, came to Rs. 25,498/-; but since he wanted a decree for immediate recovery of Rs. 32,000/- he was directed to pay court fee on the balance due'.

Here the plaintiff has got interest on the face of the decree itself and therefore no calculation is possible. Their Lordships in that case further held that;

'In respect of the second relief asking for a decree under Orde 34, Civil P. C., the case fell under Article 17(6) Schedule 2 of the Court Fees Act and therefore the court fee of Rs. 10/- was sufficient'.

These cases as we have said do not directly bear upon the point in consideration before us but lend some assistance to it. We have already held that in the circumstances of this case it is difficult to put the money value of the relief claimed by the appellant and therefore the only possible course is to treat the memorandum of appeal as under Article 17(6) Schedule 2 of the Court Fees Act and hold that the court fee paid by the appellant is sufficient.

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