Valambal Ammal Vs. Vythilinga Mudaliar

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SooperKanoon Citation : sooperkanoon.com/774545

Court : Chennai

Decided On : Dec-19-1900

Reported in : (1901)11MLJ119

Appellant : Valambal Ammal

Respondent : Vythilinga Mudaliar

Judgement :
ORDER

1. This is a suit for the cancellation of a sale deed executed to the defendant by the plaintiff for Rs. 2,500. In this court, on second appeal, a stamp duty for Rs. 150 was paid. On behalf of the respondent, the objection was raised that this court could not entertain the appeal because in the Court of First Instance and in the lower appellate Court a stamp duty of Rs. 10 only had been paid.

2. As regards the appeal to the lower appellate Court; the effect' of Section 582A of the Code of Civil Procedure is to enable a defective memorandum of appeal to be retrospectively validated, if the insufficiency of the stamp was caused by mistake on the part of the appellant. This section appears to have been introduced for the purpose of meeting a decision of the Full Bench of the Allahabad High Court--a decision which was dissented from by this court in two cases, Chennappa v. Raghunatha I.L.R. 15 M. 29, and Patcha Saheb v. Sub-Collector of North Arcot I.L.R. 15 M. 78to the effect that if a memorandum of appeal is not, when tendered, properly stamped, it is not at that time a memorandum of appeal, and the

subsequent affixing of the proper stamp cannot have a retrospective effect so as to validate the original presentation, unless it has been done by order of the court, and the court cannot make any such order, unless the memorandum has been received, filed, or used through mistake or inadvertence on the part of the court or its officers (Balkaran Rai v. Gobind Nath Tirpari I.L.R. 12 A. 129.

3. This section makes it clear that, at any rate as regards memoranda of appeals and applications for review, when the document is insufficiently stamped by reason of the mistake of the party, the 'defect may be afterwards made good and the document will be as Valid, as if it had been properly stamped in the first instance. The argument on behalf of the respondent was that, inasmuch as the Legislature in Section 582-A had dealt expressly with insufficiently stamped momoranda of appeals, the inference with reference to insufficiently stamped plaints was, that a defective plaint could not be subsequently validated so as to avoid the operation of the law of limitation We do not think that such inference ought to be drawn. The Allahabad decision only had reference to a defective memorandum of appeal and Section 582-A was apparently intended to meet this particular decision.

4. As regards the plaint, the argument on behalf of the defendant was that the plaint not having been properly stamped, the suit must be regarded as not having been instituted within the prescribed period, and that any order made under Section 28 of the Court Fees Act would not operate retrospectively, since that section must be read subject to the express provisions of Section 4 of the Limitation Act. It was contended that inasmuch as the plaint was not stamped in accordance with the requirements of Section 7 of the Court Fees Act, there had been no plaint at all, and that illustration (a) to Section 4 of the Limitation Act shows that this court has no alternative but to dismiss the suit as being now barred by limitation.

5. In the present case, the plaint was filed and used without being properly stamped through mistake of law as to the court fee payable. The case therefore falls within the express words of the second paragraph of Rules28 of the Court Fees Act. The decision of this court in 1he case reported in Venkataramayya v.

Krishnayya I.L.R. 20 M. 319 is, in our opinion, clearly distinguishable from the present case. In that case the plaint was presented on the day before the period of limitation expired and was rejected under Section 54(b) of the Code of Civil Procedure. The plaint was re-presented on the proper stamp paper within the time required by the court, the period of limitation having then expired. The court held that the suit was not instituted in time upon the ground that Section 54 of the Code of Civil Procedure does not give a court any power to extend the ordinarily proscribed period of limitation for suits. In a case reported in Jainti Prasad v. Bach Singh I.L.R. 15 A. 65 a Full Bench of the Allahabad High Court takes the same view. When the court acts under Section 54 of the Code of Civil Procedure, it rejects the plaint. In the. case reported in I.L.R. 20 M. 319 the period of limitation expired before the plaint was accepted. There was thus, according to the view taken in that case, no suit in existence at the time the period of limitation expired. In the present case the plaint was never rejected. It was accepted and acted upon by the court, and the plaintiff's claim has been adjudicated upon be by the Court of First Instance and the lower appellate Court. In the present case it cannot be said that there was no existing suit at the time the period of limitation expired.

6. We hold that the proper court fee payable on the plaint and the memorandum of appeal is Rs. 151 for each.

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[The deficient stamp duty was paid within the rime fixed by the Court and the case was heard on the merits. The final judgment is here omitted as unnecessary for the purposes of this report.]