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Court : Chennai

Decided On : Mar-29-1932

Reported in : AIR1933Mad108; (1932)63MLJ822

Appellant : Palaniappan Chettiar and ors.

Respondent : Settichi and ors.

Judgement :

Anantakrishna Aiyar, J.

1. In O.S. No. 436 of 1927 on the file of the District Munsif's Court of Melur the plaintiff sued for a declaration that a release deed executed by the widow, the 5th defendant, in favour of the reversioners-defendants 1 to 4, was not valid, for the appointment of a Receiver of the estate of the last male-holder inherited by his widow, the 5th defendant, and subsequently said to be in the possession of defendants 1 to 4, and also for directions to defendants 1 to 4 to rebuild a house, belonging to the estate, alleged to have been damaged or pulled down by defendants 1 to 4. The plaintiff is the daughter of the 5th defendant and is the sister of the 6th defendant. Defendants 1 to 4 are said to be the gnaties of the husband of the 5th defendant. The learned District Munsif passed a decree declaring that the ultimate reversioners would not be bound by the release deed executed by the 5th defendant in favour of defendants 1 to 4 but that they would be bound to pay the defendants 1 to 4 the sum of Rs. 1,188-4-0 which the

defendants 1 to 4 were found to have spent to the benefit of the last male-holder's estate. The decree also stated that the plaintiff would be entitled to apply for the appointment of a Receiver in the event of the dismissal by the Court of Suit No. 627 of 1929 instituted by the 5th defendant against defendants 1 to 4 for certain reliefs concerning the release deed executed by her. Defendants 1 to 4 appealed to the District Court against the decree passed by the District Munsif. The question arose in the Appellate Court as to the proper court-fee payable on the Memorandum of Appeal. The learned District Judge, as I understand his order, found that in respect of the relief granted by the District Munsif concerning the appointment of a Receiver, a court-fee of Rs. 15 has to be paid under Article 17-A of the second schedule of the Court Fees Act. As regards another prayer in the Appeal Memorandum, which the learned District Judge calls 'the counter-claim of the appellants,' he directed as follows : 'Appellants will pay court-fee on the amount awarded in the Lower Court (Rs. 1,188-4-0) and on the amount in excess claimed (Rs. 909-12-0)'. Defendants 1 to 3 - appellants in the Lower Appellate Court - have filed the present Revision Petition against the order passed by the District Judge.

2. It was argued by the learned advocate for the petitioners that the learned District Judge was in error in directing the appellants to pay court-fee on the amount awarded to them by the Trial Court (Rs. 1,188-4-0), and on the amount in excess claimed by them in appeal - Rs. 909-12-0. As the learned District Judge has not fully discussed that aspect of the question, I am inclined to think that what he probably intended to order was that the appellants should pay court-fee only on the difference between the amount claimed by them in the first Court and the amount awarded to them by the decree of the District Munsif; but I must admit that on the face of the order of the learned District Judge, it would seem as if he directed the petitioners to pay the court-fee both on Rs. 1,188-4-0 and Rs. 909-12-0. In my opinion the learned District Judge was clearly in error in directing court-fee to be paid on both the amounts. I fail to see how defendants 1 to 4 could be directed to pay court-fee in respect of Rs. 1,188-4-0 for which they had already got a decree in the first Court. However, having regard to the view I take about that main declaration claimed by the plaintiff, I think that the defendants 1 to 4 need not pay court-fee on either of the two amounts mentioned in the order of the District

Judge.

3. As already mentioned, the suit was one for a declaration that a release deed executed by the 5th defendant in favour of defendants 1 to 4 would not be binding on the ultimate reversioners. On such a plaint the court-fee payable is Rs. 15 under Article 17 of the Court Fees Act, seeing that the suit was filed in the District Munsif's Court. No doubt the decree granted by the District Munsif gave a declaration (though a qualified one) in favour of the plaintiff. As I understand the Appeal Memorandum filed by defendants 1 to 4, they impugn the whole of the declaratory decree granted by the Trial Court. That being so, the court-fee payable in respect of this portion of the claim could be only that payable in respect of a declaratory relief, under Article 17-A of the second schedule of the Court Fees Act. It is no doubt true that the defendants raised an alternative ground of appeal, namely, that even in case the Court should hold that the plaintiff would be entitled to a declaration, the declaration should not be entirely unconditional but should be one subject to a condition that the ultimate reversioners should pay the defendants a certain sum of money. In such a case I think the principle applicable is one, similar to the rule laid down in *Sekharan v. Eacharan Nair* (1909) 20 M.L.J. 121 and *Pathumma Umma v. Aliyammakkanakath Mohideen* : AIR1928 Mad929 . Cases from Malabar have come before this Court where the plaintiff seeks relief in ejectment, and the defendant in possession not only raises pleas against the right of the plaintiff to eject but also claims compensation for improvements in case the Court should direct the ejectment. In such cases it has been held that when the defendant prefers an appeal against the decree in ejectment passed by the Trial Court which also directs the plaintiff to pay a certain amount of money as compensation for improvements or otherwise due to the defendant, the court-fee payable on the appeal should be calculated on the basis of the plaint in an ejectment suit 'as the defendant in appeal has raised objection to the decree in ejectment altogether'. 'The circumstance that he also raised a ground claiming a larger amount for compensation due to him ' has been held not to alter the real nature of the suit or the appeal. In fact in *Sekharan v. Eacharan Nair* (1909) 20 M.L.J. 121 the defendant preferred an appeal and contended that the whole suit should be dismissed, though he also claimed a very large amount as due to him for value of improvements in case the decree in ejectment was ultimately confirmed.

This Court has held that notwithstanding the subsidiary prayer, which will arise only in the alternative when his contention as regards the ejectment is overruled, the proper amount of court-fee is that leviable in a suit in ejectment and that the defendant-appellant need not pay any court-fee calculated on the value of the improvements relating to which he has taken a ground of appeal. When, however, the plaintiff who has obtained a decree in ejectment prefers an appeal questioning only the amount that has been directed to be paid by him to the defendant, then there are some cases which were cited to me which hold that in such cases the plaintiff, appellant, should value the appeal according to the amount to which he has raised a dispute. But the present case is one where defendants 1 to 4 oppose the grant of any declaratory decree at all; and that being so, I think the principle of the cases I have mentioned applies to the present case; and I am of opinion that the appellants 1 to 4 were bound to pay court-fee of Rs. 15 only under Article 17-A of the second schedule of the Court Fees Act, and that, they need not pay any additional court-fee in respect of any portion of what the learned Judge calls 'the counter-claim of the defendants'. This disposes of the main question that was argued before me.

4. The learned advocate for the petitioners raised another question as to the amount of court-fee payable in respect of the relief by way of the appointment of a Receiver mentioned in the decree of the District Munsif. It was argued that the appointment of a Receiver is a consequential relief, and that the same need not be separately valued, and that the learned District Judge was in error in directing the appellants to pay court-fee of Rs. 15 in respect of that relief claimed by the defendants. On reading the decree of the Trial Court in this case, I find that the Court has not in fact directed the appointment of a Receiver. As I read the decree, the Court would seem to have in substance declared that a Receiver will be appointed in case another suit, No. 627 of 1929, which was pending between the defendants to this litigation, was decided in a particular way. I think that, having regard to the decree passed in this particular case and the allegations in the plaint, the learned District Judge was 'right in directing the appellant to pay court-fee of Rs. 15 in respect of this relief. The decision of Venkatasubba Rao, J., in *Karuppanna Tevar v. Angammal* : AIR1926 Mad678 , also (in my view) supports the decision of the learned District Judge on this point. No doubt it is possible, as

the learned Judge observed in *Karuppanna Tevar v. Angammal* : AIR1926 Mad678 , that in particular cases the appointment of a Receiver may be a consequential relief; but for disposing of the case before me I need not go into that question in detail, because, reading the decree passed by the District Munsif in the present case, there is, in substance, only a declaratory decree granted by him, so far as the prayer relating to the appointment of a Receiver is concerned. It therefore seems to me that the second contention raised by the learned advocate for the petitioners before me should fail and the court-fee of Rs. 15 fixed by the Lower Appellate Court with reference to that relief will stand.

5. The result then is that in respect of the first point argued before me, I modify the order passed by the learned District Judge, and I hold that the petitioners need not pay any court-fee in respect of any portion of the claim covered by what is called 'counter-claim' by the defendants, and that the court-fee of Rs. 15 paid under Article 17-A of the second schedule of the Court Fees Act is enough for that purpose. With regard to the court-fee in respect of the relief claimed for the appointment of a Receiver, the Lower Appellate Court's order is hereby confirmed. In the circumstances I pass no order as to costs in the High Court.

6. It is mentioned to me that the appellants in the Lower Appellate Court have, in obedience to that Court's order, paid the court-fee as ordered by the learned District Judge. If they have already paid any excess court-fee, then they will be entitled to apply to that Court for a refund of the excess court-fee.