

In Re: Katagiri

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Court : Chennai

Decided On : Oct-22-1929

Reported in : (1930)58MLJ510

Appellant : In Re: Katagiri

Judgement :

ORDER

Kumaraswami Sastri, J.

1. The Maharaja of Venkatagiri, who is the petitioner, filed separate suits against his tenants for rent on the ground that they raised a second crop. The tenants defended the suits on the ground that they did not raise a second crop and that the suit was barred by limitation. The suits were tried together and the witnesses examined were treated as witnesses in all the suits. There was one judgment but separate decrees were passed. Separate appeals have been filed in the High Court. The present application is to consolidate the appeals so filed for the purpose of (1) treating the Court-fee payable as the Court-fee on the entire value of the suits, and (2) filing only one vakalat in all the suits, and the question is whether such consolidation is permissible.

2. As to the inherent power of the Court to consolidate suits or appeals, there can be no question. *Vengu Naidu v. The Deputy Collector of Madura Division* (1916) 34 M.L.J. 279 *Narayan Vithal v. Jankibai* I.L.R.(1915) B. 604 (F.B.), *Kali Charan*

Dutt v. Surja Kumar Mondal 17 C.W.N. 526 Dharam Das v. Dharani Das (1917) 40 I.C. 182 and Kashi Prosad Singh v. Secretary of State for India in Council I.L.R.(1901) C. 140. But the point which we have to determine is whether a consolidation can be effected which will conflict with the specific provisions of the Court-fees Act and the Civil Procedure Code as to the filing of appeals against the decrees of the Lower Courts.

3. Consolidation of suits or appeals may be for various purposes and the main object of consolidation is to prevent unnecessary delay in the : disposal of suits or appeals and also to prevent unnecessary costs being incurred (Martin v. Martin & Co. (1897) 1 Q.B. 429 and The Creteiforest L.R. (1920) Pro. D. 111). The costs saved are costs as between party and party and cannot mean stamp duty payable to the Crown under specific enactments.

4. Section 4 of the Court-fees Act enacts that no document of any kind specified in the first or second schedule to the Act as chargeable with fees shall be filed, exhibited or recorded in, or shall be received by, any of the High Courts in the exercise of its jurisdiction as regards appeals from the Courts subject to its superintendence, or in the exercise of its jurisdiction as a Court of reference or revision, unless in respect of such document there be paid a fee of an amount not less than that indicated by either of the above schedules as the proper fee for such document.

5. Section 6 contains a similar provision as regards Court-fee payable in respect of suits or appeals in the Subordinate Courts.

6. Where, therefore, there is nothing either in the Code or in any other enactment to prevent this course from being adopted, Courts have power to consolidate but I do not think that such power can be extended in a manner to conflict with the provisions of any enactment like the Court-fees Act or the express provisions of the Civil Procedure Code as regards the filing of appeals.

7. It seems to me that consolidation can only be asked when there are suits or appeals properly instituted and on the file. Where the Legislature lays down certain requirements necessary to be satisfied before it can be seized of the suit or

appeal, e.g., a plaint or memorandum of appeal on a proper stamp it is difficult to see how an order can be passed consolidating suits or appeals for the purpose of getting over the stamp duty payable.

8. There are two classes of cases in which consolidation can be ordered. One relates to cases where although one suit could have been filed against several defendants in the Lower Court, the party has not chosen to do so but has filed separate suits, and the other relates to cases where although one suit could not have been filed, the questions for determination are the same and it will save costs and expenses to consolidate the suits either in the Lower Court or in appeal. In the former case the provisions of Section 17 of the Court-fees Act are imperative, because in the case of a suit embracing two or more distinct subjects, the plaint or memorandum of appeal should be chargeable with the aggregate amount of the fees to which the plaints or memoranda of appeal in suits embracing each of such subjects would be liable under the Act. In cases where one suit could not have been filed, it is difficult to see how the aggregate value of the subject-matter in all the suits can be treated as the amount on which Court-fee has to be paid. In cases which do not fall under Section 17, there is no question of treating the aggregate value of the various suits or appeals as one for the purpose of Court-fee, as the provisions of the Court-fees Act are specific and state that each of such suits should bear the Court-fee prescribed by the schedules to the Act.

9. Reference has been made to *Kashi Prosad Singh v. Secretary of State for India* in Council I.L.R.(1901) C. 140. It was a case under the Land Acquisition Act and it was held that as the parties were the same in all the cases and the plots of land were contiguous to one another and formed part of an estate, although in the occupation of different tenants who were not parties to the appeals, the appeals should be consolidated and the Court-fee paid upon the value of the consolidated appeals under Section 17 of the Court-fees Act subject to the maximum of Rs. 3,000. The maximum of Rs. 3,000 has, however, now been omitted and Court-fee has to be paid ad valorem without any maximum so that consolidation cannot in any view affect the Court-fee.

10. In *Vengu Naidu v. The Deputy Collector of Madura Division* (1916) 34 M.L.J. 279 there was an application to consolidate several appeals filed from the awards passed by the District Judge of Madura on reference made to him by the Land Acquisition Officer. The District Judge treated all the references as 47 separate petitions and passed a separate award on each of them although they were all tried together and disposed of in one judgment. Phillips, J., held that the power of consolidation was inherent in the Court although no express power was conferred by the Code and followed *Enayetollah v. Radha Churn Roy* (1871) 15 W.R. 395 *Kashi Prosad Singh v. The Secretary of State for India* I.L.R.(1901) C. 140 *Fink v. The Secretary of State for India* I.L.R.(1907) C. 599 *In re Dorabji Cursetji* (1907) 10 Bom. L.R. 675 and *In the matter of the 'Falls of Ettrick'* I.L.R.(1894) C. 511. The learned Judge considered the objection that consolidation would affect the revenue and says the fact that only one notice was sent under Section 12 and one objection filed under Section 18 prima facie indicated that there was only one award the correctness of which had to be determined by the District Court. He was of opinion that the fact that the award contained several items did not make any difference.

11. I do not think that Land Acquisition cases afford any safe guide as the considerations which exist in such cases and which the learned Judge points out are absent in ordinary suits and it is doubtful whether having regard to the amendment of the Land Acquisition Act in 1921 (section 26, Clause (2) of the Act), the same consideration can now exist.

12. I may also point out that the same learned Judge refused consolidation in S.R. No. 828 of 1928 (Civil Miscellaneous Petition). There were two suits filed for partition in the District Munsif's Court and second appeals were filed. An application was put in that the second appeals should be consolidated on the ground that the two suits must be deemed to be one suit and consolidated for purposes of appeal. The learned Judge refused consolidation on the ground that the suits did not relate to the same subject-matter.

13. I now come to the question of consolidation for the purpose of filing one vakalat in all the appeals.

14. Order 41, Rule 1 of the Civil Procedure Code provides that every appeal shall be preferred in the form of a memorandum signed by the appellant or his pleader.

15. Rule 3 provides that if the memorandum is not drawn up in the manner prescribed it may be rejected or be returned for the purpose of being amended.

16. So, before there could be a valid presentation of an appeal, the memorandum must be signed by the appellant or his pleader. If a pleader is employed, Article 10 of Schedule II to the Court-fees Act prescribes the fee to be paid on the vakalat.

17. Having regard to the provisions of the Civil Procedure Code and the Court-fees Act, there can be little doubt that every appeal presented if not signed by the party should be signed by a pleader who has authority to act and such authority has to be stamped under the provisions of the Court-fees Act. .

18. Rule 31 of the Appellate Side Rules also provides that where a person is a party to two or more connected suits he shall execute a separate vakalatnama in each notwithstanding he may retain the same pleader in all the suits.

19. In *In re Perumal Nadar* (1927) 54 M.L.J. 595 (2) the question as to consolidation arose as regards vakalats. There were several second appeals filed. An application was made to consolidate 38 second appeals into one batch and 52 into another batch for the purpose of filing one vakalatnama in each of the batches. The Government Pleader contended that separate vakalatnamas ought to be filed. Devadoss, J., held that only one vakalatnama in each batch need be filed. The learned Judge was of opinion that the very object of consolidation is to save the party unnecessary expense and the Court unnecessary trouble, that where the Court allows consolidation it allows the parties to the appeals to treat the consolidated appeals as one and that Article 10 of Schedule II to the Court-fees Act does not stand in the way of consolidation.

20. Dealing with the argument based on Order 41, Rule 1 which requires a separate memorandum of appeal, the learned Judge was of opinion that it does not follow that because a separate memorandum ought to be filed in each case the engagement of the pleader should be separate. He, however, held that the

production of one vakalatnama in different cases does not at all obviate the necessity of producing the decree in each case though the Court may dispense with the production of copies of judgments in each case.

21. With all respect I am unable to agree with the conclusion. It is difficult to see how the requisites of the Civil Procedure Code and the Court-fees Act the compliance with which is a condition precedent to the Court being seized of the appeals can be got over by an order of consolidation. Again, Rule 31 of the Appellate Side Rules which are framed under statutory power expressly requires separate vakalatnamas.

22. I would answer the reference in the negative.

Curgenven, J.

23. I agree.

Pakenham Walsh, J.

24. This matter came in the first instance before me and in my referring order I considered the cases quoted in support of consolidation and specially the judgment of Devadoss, J., reported in *In re Perumal Nadar* (1927) 54 M.L.J. 595 (2). It was because I doubted the correctness of that decision that I made the reference which has finally come before a Bench of three Judges. I have given in my Order of Reference my reasons for doubting that decision and for distinguishing it from the salvage case and the land acquisition cases quoted in support of it. I entirely agree with the reasons given by my learned brother Sir Kumaraswami Sastri, J., and have nothing to add.

25. Deficient Court-fee should be paid in one month. Separate vakalat will be filed in one month.

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