

S. Parameswaran Vs. S. Sarveswaran and ors.

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Court : Chennai

Decided On : Jul-01-1959

Reported in : AIR1960Mad260

Judge : Ramachandra Iyer, J.

Acts : Court-fees Act, 1955 - Sections 12(1) and 36(1); Bankruptcy Act, 1883 - Sections 6

Appeal No. : Civil Revn. Petn. No. 1027 of 1958

Appellant : S. Parameswaran

Respondent : S. Sarveswaran and ors.

Advocate for Def. : Mr. A. Ramachandran

Judgement :

ORDER

(1). This is a revision petition at the instance of the plaintiff against the order of the lower court directing the petitioner to pay the court fee on Rs. 32,000 less the court fee already paid on the plaint.

(2) The plaintiff filed a suit for accounts of a dissolved partnership from 1948 upto the date of the suit and to have the assets realised including therein the good-will, plant and machinery which according to him were wrongfully taken over by the

defendants. In paragraph 22 of the plaint it was stated that the plaintiff estimated his share of the assets payable to him in the sum of Rs 8000. A court fee of Rs. 600 was paid under S. 36(1) of the Court-fees Act of 1955. There was also an undertaking to pay an additional court-fee after the ascertainment of the amount due by him.

The first defendant contested the correctness of the valuation of the plaint. Issue 15 was raised as to the proper court-fee payable on the plaint. The learned Assistant City Civil Judge held that the proper value on the basis of a plaint would be a sum of Rs. 32,000 and required the plaintiff to pay the additional court-fee thereon. The plaintiff has filed this civil revision petition challenging the correctness of the order requiring an additional court-fee. The finding of the learned Judge was that the plaintiff's share in the partnership business would come to Rs. 32000. This was based on the allegations contained in paragraph 14 of the plaint.

The case of the plaintiff was that although he was a partner, he was practically excluded from taking part in the affairs of the firm, and that on 22-7-1954, one of the defendants acting at the instance of the others sent a notice of dissolution of the firm. In paragraph 14 of the plaint the plaintiff gave instances of certain transactions followed by some adjustments in the accounts by the defendants. It is necessary to refer to that paragraph for the purpose of appreciating the points in dispute in the present case. Paragraph 14 of the plaint runs as follows:

'Accordingly on 12-8-1954, a meeting was held and with their united strength, the defendants decided upon the dissolution of the firm and proceeded to a series of steps to try to deny and deprive the plaintiff of his just share in the assets of the firm. (1) As manager, the plaintiff had been given bonus, dearness allowance and holiday wages from 1947-48 to 1950-51, i. e., during a period of his management, year after year, aggregating to Rs. 1961-6-0 with the consent and to the knowledge of all the partners. After the said amounts had been appropriated and paid and spent, they now claim to have discovered the irregularity and proceeded to reverse it and debit the amount personally to the plaintiff.

(ii) In order to wipe out his share, the defendants decided that the good-will which had been valued at Rs. 1,25,099-9-6 and which had stood for several years should

be wiped out and each partners was to be debited his own sixth share of the amount, thus taking away at one stroke from the plaintiff Rs. 20,833-5-4.

(iii) Lastly they also seem to have decided that all the plant and machinery should be valued and sold to themselves at Rs. 84,000 which did not represent the real value at all and which was really worth not less than one and a half lakhs. Neither the resolution nor the sale was communicated to the plaintiff, nor was his consent obtained.'

(3) In that paragraph three instances of manipulations of accounts and improper dealing with the partnership property are given. Such instances do not by themselves show what exactly would be the share of the plaintiff if an account were to be taken from 1948 to the date of the suit. It may be that even if the plaintiff's case were to be accepted in regard to the three instalments set out in paragraph 14, the plaintiff might not get more than Rs. 8000, the amount estimated by him in the plaint.

The amount due to the plaintiff could be ascertained only after the entire accounts were taken. The only other averment in the plaint in regard to the valuation of the relief as to accounting is contained in paragraph 22 of the plaint. That gives the value of the relief as to accounting in a sum of Rs. 8000. There is nothing in the other portions of the plaint, which would entitle the court to depart from that valuation. The conclusion arrived at by the learned Assistant City Civil Judge that the real estimate of the relief which the plaintiff seeks should be Rs. 32,000 cannot be accepted.

(4) The conclusion arrived at by the lower court was supported by the learned advocates appearing for the contesting defendants and for the Government. It was first contended that the estimate given by the plaintiff in the plaint could not be accepted as final and that under the Court-fees Act of 1955 it would be open to the court to embark upon an enquiry and find out the real value of the relief as to accounting. That contention was based on the provisions of S. 36(1) which runs

'In a suit for dissolution of partnership and accounts or for accounts of dissolved partnership, fee shall be computed on the value of the plaintiff's share in the

partnership, as estimated by the plaintiff.'

Mr. A. Ramachandran appearing for the defendants urged that although the aforesaid provision would entitle the plaintiff to give his estimate of the value, the court would not be bound by such value and that it would have power under S. 12(1) of the Act to determine what a proper valuation would be. Section 12(1) runs thus:

'In every suit instituted in any court other than the High Court, the court shall, before ordering the plaint to be registered, decide on the materials and allegation contained in the plaint, and on the materials contained in the statement, if any, filed under S. 10 the proper fee payable thereon, the decision being however subject to review, further review, and correction in the manner specified in the succeeding sub-sections.'

The effect of that provision is that notwithstanding the valuation by the plaintiff it would be open to the court to determine the value on the basis of the allegations in the plaint. But in doing so the court could only proceed on the allegations in the plaint which should be assumed as correct for the purpose. Its power is only to find out the estimate of the plaintiff and not to substitute its estimate for the plaintiff's. Under the circumstances neither the evidence of the valuation nor the estimate by any other party would be relevant.

While it can be said that a court would not be bound by the valuation as given in the plaint, its power to go behind it cannot extend beyond ascertaining the real value for the documents referred to in S. 12(1). Further under S. 36(1) the value to be adopted is the plaintiff's estimate and the power of the court would extend only to ascertain that estimate. I have already indicated that in my opinion paragraph 14 of the plaint far from indicating any estimate of the relief to which the plaintiff will be entitled to only purports to give three instances of the improper entries in the accounts to justify the plaintiff's claim for having the accounts taken through court.

There is nothing on the other averments in the plaint from which it could be inferred that the plaintiff's estimate of the relief to which he was entitled was

anything other than that he himself has stated in paragraph 22 of the plaint. Mr. Ramachandran then contended that under S. 12 the test to be applied is what he called an objective test by the court and not a subjective test of what the plaintiff's estimate of the relief is. I cannot agree with that contention. In cases coming under S 36(1) the plaintiff would be entitled to make a valuation on the basis of his own estimate of the relief which he prayed.

What all the court is entitled to ascertain is whether that was the real estimate or some other amount was the estimate. In either case it should be the estimate of the plaintiff and not an estimate by the court or be converted into an attempt to ascertain the actual value of the relief. It must be remembered in such cases viz., where relief as to accounting is prayed for, the plaintiff could only anticipate what the result of the account taking would be. He could not be expected at that stage to state or attempt to state what the actual result of the taking of the account would be.

(5) Mr. V. Ramaswami, appearing for the Additional Government Pleader, contended that on the terms of S. 36(1) itself the court would have a power to estimate the value of the relief as to accounting. According to him, when the legislature employed the words 'estimate by the plaintiff' in substitution of the words 'amount at which the relief sought is valued in the plaint' in S. 7(4)(f) of the Court-fees Act of 1870, it should be held that it was intended that the valuation viz., the plaintiff's estimate, should be one subject to acceptance by the court.

I cannot however accept this interpretation. If the estimate were a sham estimate the court can ask the plaintiff to make a proper estimate. But mere inaccuracy in the estimate cannot make it a sham one and therefore the court would not be entitled to embark upon an enquiry as to what the result of the account taking will be so as to find out the real value of the relief. In *Button In re, Voss Ex parte*, (1905) 1 KB 602, a question arose under the Bankruptcy act. A secured creditor presented a petition and gave an estimate of the value of his security.

That estimate was disputed by the person who opposed the petition in bankruptcy on the ground that the creditor was not entitled to present a petition as he had not the necessary qualification to rank as a creditor. Under the provisions of S. 6 of the

Bankruptcy Act of 1883 a secured creditor could estimate the value of his security and may sustain a petition for the balance of the debt due to him. In considering the meaning of the word estimate under that section Vaughan Williams J. stated (page 605).

'He has given an estimate, and it is admitted that his estimate is such that it is not possible to say that it is a mere sham and not a substantial estimate. It has been urged upon us that the Registrar should, when the petitioning creditor estimates his security, inquire whether the estimate is right. I think that the intention of the sub-section, which throws upon the creditor the duty of making the estimate, is to avoid the necessity of such inquiry.'

In *R v. Cambridge County Council*, 1937 1 KB 201, a certain local authority was given a right to obtain from the county council for its expenses on the basis of an estimated amount. The local authority demanded the amount calculated at the rate of 2d per (which was the rate prescribed) on the previous years rateable value. The question arose whether that could be said to be a proper estimate when no allowance regarding cost of collection of the rates was made. It was held that a calculation may properly fulfil the character of an estimate there might be in it some ingredient of necessary inaccuracy and uncertainty. Lord Hewart C. J. observed at page 208 thus:

'They, I think, are to make the estimate, and they are to make the estimate upon the materials which they have, and part of these materials is the statement, which at any time they may ask for, relating to the totals of the rateable values in the several years. It matters not, I think, that having these materials and being engaged--and I think, is a vital matter--upon the task of fixing a maximum and not any other amount, they have taken the total rateable value, multiplied it by two, and so arrived at their sum in pence. The ingredient which differentiates an estimate from an actual calculation is, I think, clearly supplied by the fact, from which there is no escape, that the Board, when it makes its calculation, no matter by what method it makes it, is seeking to dip into the future and must have regard not to the product of the rate in some preceding year, but to the estimated amount which the rate would be likely to produce in a year in future.'

(6) When therefore the plaintiff purports to make an estimate in regard to what he would get on the taking of an account there would necessarily be an element of some guess or speculation. There is bound to be some kind of inaccuracy if one were to consider it in relation to the actual amount that would ultimately be found due. But if the estimate is on the face of it a sham one or so obviously wrong or if the other portions of the plaint make it clear that that is not the real estimate which the plaintiff himself had in mind it would be open to the court to look at the plaint and ascertain what the real estimate is. But so long as there is no other averment in the plaint which renders the plaintiff's estimate a sham one or which shows that the estimate was some other amount the court would be bound to accept the estimate as given by the plaintiff. Reality and not the accuracy is the test for ascertaining a proper valuation under S. 36(1).

(7) The result is, that the valuation given by the plaintiff and the court-fee paid thereon is correct. This civil revision petition is allowed and the lower court is directed to proceed with the trial of the suit on the basis of the plaint. Respondents 2 to 4 will pay the costs of the petitioner.

(7) Revision allowed.