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Court : Chennai

Decided On : Jan-04-1957

Reported in : AIR1957Mad667

Judge : Panchapakesa Ayyar, J.

Acts : Court-fees Act, 1870 - Sections 7 and 11

Appeal No. : Civil Revn. Petn. No. 394 of 1953

Appellant : T.E.K. Muhammad Amiruddin

Respondent : T.E. Muhammad Ibrahim and ors.

Advocate for Pet/Ap. : R. Gopalaswami Aiyangar, Adv.;Asst. Govt. Pleader

Disposition : Petition allowed

Judgement :

ORDER

Panchapakesa Ayyar, J.

1. This is a peculiar case. The petitioner, Muhammad Amiruddin, filed O. S. No. 70 of 1952 in the Sub-Court, Kumbakonam, for the taking of accounts of a dissolved partnership concern, in which he claimed he was a partner along with the defendants, and alleged further that the partnership was dissolved on 18-9-1950,

long before the filing of the suit. He valued the suit, under Section 7(iv)(f) of the Court-fees Act, at Rs. 4,500 and paid court-fee thereon. The court-fee examiner issued a check slip, stating that, in essence, the petitioner must be deemed to have asked for a declaration that he was a partner with the defendants, since the defendants were denying that he was a partner, and that, as the partnership assets would be worth Rs. 40,000, he ought to pay an additional court-fee of Rs. 500 for such declaration. The lower Court agreed with him and called upon the petitioner to pay the additional court-fee of Rs. 500. This civil revision petition has been filed against that order. During its pendency, the petitioner and the defendants settled the suit out of Court, and asked the lower Court to dismiss the suit as settled, the defendants not pressing for costs. The lower Court dismissed the suit on 11-2-1954 on such representation, but added in its order of dismissal.

'But the plaintiff shall be liable to pay the Government court-fee of Rs. 500 as ordered by this Court's order dated 30-2-1953 on court-fee check-slip, if the High Court happens to dismiss C. R. P. No. 394 of 1953, wherein an order for stay of the order, requiring additional court-fee was granted.'

The petitioner's counsel says that coercive steps or contempt proceedings are contemplated by the phrase 'shall be liable.'

2. I have perused the entire records and heard the learned counsel for the petitioner and the learned Assistant Government Pleader contra. In my opinion, the lower Court's order was clearly wrong. The learned Assistant Government Pleader was not prepared to support it. When a plaintiff asserts that he is a partner, and does not want a declaration about it, no Court has the power to compel him to ask for such a declaration and pay the court-fee due on such declaration simply because the defendant denies the status, though it has got the power to frame an issue as to whether he is a partner, in a suit for accounts of the dissolved partnership. Just as it has power to frame an issue as to whether he is the husband of the defendant in a suit for restitution of conjugal rights and to frame an issue whether he is an adopted son in a suit by the plaintiff for the recovery of some property from the defendant basing his right as an adopted son. If on that issue he fails, the suit will fail. The court-fee has normally (and in the absence of a clear attempt to

evade) to be based on the reliefs claimed in the plaint, and not on what a court-fee examiner or the defendant or the Court thinks the plaintiff ought to have asked for after paying additional court-fee. The ruling in *In re, Thiagarajaswami Devasthanam, Tiruvanir*, : AIR1951 Mad206 (A), relied on by the learned counsel for the petitioner, will apply. Thus a man may ask for damages for one rupee where both his legs have been hopelessly fractured by a motor car running over him negligently, and the legs have to be amputated. A Court cannot compel him to ask for damages of Rs. 10,000 as the loss of both the legs would certainly not be compensated for by one rupee, and would be valued at Rs. 10,000 by any reasonable individual. The law allows liberty to a plaintiff to ask for the relief he wants, without restricting him to apply for reasonable reliefs, or such reliefs as a court-fee examiner or the Court will approve of. The only condition is absence of evasion. In that view, it is obvious that the lower Court's order compelling the petitioner--plaintiff to ask for a declaration that he was a partner simply because the defendants denied it and making him pay an additional court-fee of Rs. 500, was wrong, and must be set aside, and it is accordingly set aside, allowing the civil revision petition. There will be no order as to costs in this civil revision petition.

3. I may add that I agree that the direction in the further order of the lower Court, dated 11-2-1954 making the plaintiff liable to pay the additional court-fee of Rs. 500 in case this civil revision petition was not allowed, in spite of the suit being dismissed, as requested for by both sides, and not pressed, was without jurisdiction, as urged by the learned counsel for the plaintiff, though the point is only of academic interest in the view I have taken. No Court can compel any party to pay the additional court-fee, even if rightly levied, when he does not want to pay it, for whatever reason, and is willing to have the suit dismissed for such default.

The penalty for not paying the additional court-fee due is the dismissal of the suit, even with the costs of the other side if it is on record and presses for it. After the dismissal of the suit for such default (and not on merits) there is no jurisdiction in the Court to levy the court-fee from him by coercive process, or to proceed against him for contempt for not paying the balance of court-fee due. The Court could have refused to dismiss it on request till court-fee 'was paid and dismissed it for default of payment. In hundreds of cases, plaintiffs and others fail to pay the

additional court-fee really due, and the only penalty they incur is the dismissal of their suit or proceeding and the forfeiture of the court-fee already paid,

I have never heard of any coercive process being taken against a plaintiff for recovering the additional court-fee by sale of his properties or by his arrest. The suit is simply dismissed for default of payment of the additional court-fee, ever, when it is really due. In a recent case, a Bench of this Court, to which I too was a party, has held that even where a Court has spent much time and energy and passed an order in final decree proceedings in a partition suit, and that decree has to be drawn up on stamp paper, in order to be executable, the Court has no power to draw up the final decree and levy coercive process, against the parties liable, for recovering that stamp amount, and that the Court is only given the liberty not to draw up the final decree if the requisite stamp paper is not furnished.

So, the lower Court could have merely refused to dismiss the suit, on 11-2-1954, on the request by both the parties, unless the additional court-fee was paid, and could have dismissed it for default of payment of the additional court-fee if this civil revision petition had been dismissed, and the additional court-fee was held to be due. It could never have resorted to coercive or contempt proceedings to recover the additional court-fee, even if it was held to be due in this civil revision petition. It is not a case akin to recovering the court-fee in a pauper suit, for which there is a specific provision in the Civil Procedure Code, whereas there is no such provision for coercive recovery in cases like these.

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