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Court : Chennai

Decided On : Dec-11-1984

Reported in : (1985)2MLJ54

Appellant : Madhavan

Respondent : Muniammal and ors.

Advocate for Pet/Ap. : Mr. N. Sivamani

Judgement :

ORDER

Nainar Sundaram, J.

1.Considering the limited scope of the controversy involved, the revisions themselves are taken up for final disposal today.

2. The petitioner has preferred cross-objections in regular appeals before the lower appellate Court. The cross-objection relate to the adverse finding of the trial court with reference to the adverse finding of the trial court with reference to the will marked Ex.B-43. The lower appellate Court had directed payment of court-fees on the cross-objections. Hence these revisions.

3. It is well settled proposition that with reference to an adverse finding against him, the respondent in an appeal by the opposite party, can take objections to

such finding in order to support the decree. Such objections though they may take the formal character of cross-objections are not cross-objections to the decree as such. Order 41, Rule 22(1), Civil Procedure Code hereinafter referred to as the Code, amply enables the respondent, though he may not have appealed from any part of the decree, to support the decree by stating that the finding against him in the court below in respect of any issue ought to have been in his favour. The relevant part of the rule prior to its amendment by Act 104 of 1976 read as follows:

Any respondent, though he may not have appealed from any part of the decree, may not only support the decree on any of the grounds decided against him in the Court below, but take any cross-objection to the decree which he could have taken by way of appeal....

After the amendment, it reads as follows:

Any respondent, though he may not have appealed from any part of the decree, may not only support the decree but may also state that the finding against him in the court below in respect of any issue ought to have been in his favour; and may also take any cross-objection to the decree which he could have taken by way of appeal....

The amendment has also introduced an Explanation, which reads as follows:

A respondent, aggrieved by a finding of the court in the judgment on which the decree appealed against is based may, under this rule file cross-objections in respect of the decree so far as it is based on that finding, notwithstanding that by reason of the decision of the court on any other finding, which is sufficient for the decision of the suit, the decree is, wholly or in part, in favour of that respondent.

The amendment and the introduction of the Explanation has not altered the impact and implication of the rule, but only a more convenient language has been adopted to have the position clarified. The Explanation has been added empowering the respondent to file cross-objection in respect of a finding adverse to him notwithstanding that the ultimate decision is wholly or partly in his favour. Order 41, Rule 2 of the Code gives two distinct rights to the respondent in an

appeal. The first one is the right to support the decree of the first court on any of the grounds decided against him by the first court. The respondent can state that the ground ought to have been found in his favour by the first court and by this the respondent does not attack the decree, which has ensured in his favour. He only supports the decree and wants to demonstrate that an adverse finding by the first court is not a correct one. Still by doing this he only supports the decree and does not attack it. The second right given to the respondent is to take cross-objections to the decree as such passed by the first court, which decree would have gone against him in part and/or would have ensured to him in other respects. That cross-objection is a cross-objection in the real sense and it partakes the character of an appeal for all practical purposes including payment of court-fees. The real test is to find out as to whether the respondent attacks the decree or supports the decree or in other language takes exceptions to the decree or accepts the decree irrespective of the fact that the decree wholly or in part is in his favour. If he accepts the decree but only attacks the findings which have gone against him. The objections need not necessarily be in writing and could be a matter of arguments. Cross-objections in the real sense must be to the decree. If the objections are to the findings, the nomenclature adopted the cross-objections will not alter the real position. If the cross-objection is in respect of the decree in the sense it attacks the decree, it cannot escape being treated as an appeal as such and it would have all the incidents of an appeal annexed to it including payment of court-fees. If, on the other hand, the objections are only in respect of an adverse finding and the intention was only to support the decree, by having that finding also turned and rendered in his favour, the objections by the respondent cannot be treated as cross-objections on par with an appeal entailing payment of Court-fees. When the decree is in his favour either in whole or in part, the respondent seeks to support such a decree by advancing a plea that even a point or points decided against him by the first court, ought to have been found in his favour. By this process he does not attack the decree and he only supports the decree. The decree of the first court could also have gone against the respondent and he would like to get rid of that portion of the decree, which has gone against him, and in that sense, the respondent has to prefer the cross-objection to the decree, paying the requisite court fee therefor. In the first case where the respondent wants to support the

decree, though he does this ad modum cross-objections, they are not cross-objections to the decree, and the nomenclature of cross-objections is adopted only by way of abundant caution. Such cross-objection do not call for payment of Court fees.

4. Mr. N. Sivamani, learned Counsel for the petitioner, brought to my notice the pronouncements in Ram Prasad Kalwar v. Musamat Ajanasia, 44 All.577 : : AIR1922 All280 and Siva Pershan Moria v. Swarajlakshmi (1959)2 AW.R.452 has followed the observations of the Full Bench of the Court in Gaddam Chinna Venkatarao v. K. Satyanarayanamurthi (1943) 2 M.L.J. 3361 : 943 Mad.698 : 56 L.W.527, apart from the' observations of the Division Bench of the High Court of Allahabad in Ram Prasad Kalwar v. Musam mat Ajanasia, : AIR1922 All280 . These pronouncements place the legal position on this question beyond any ambiguity. In view of the legal position, these revisions are allowed and I make no order to costs.

5. The office is directed to return the memorandum of cross-objections filed along with these civil revision petitions to the learned Counsel for the petitioners so as to enable him to present the same before the court below and the court below will receive them without insisting upon payment of court-fee on the same.

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