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In Re: Badrajala Naidu

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Court : Chennai

Decided On : Aug-30-1957

Reported in : (1958)1MLJ99

Appellant : In Re: Badrajala Naidu

Judgement :
ORDER

Ramaswami, J.

1. This reference arises out of the Office Note relating to S.R. Nos. 18960 and 18971 of 1957.

2. The facts are : These S.R. Numbers are connected with S.R. Nos. 18969 and 18970 which are being dealt with separately and arise from the proceedings of the lower Court appointing a Commissioner for an enquiry into the waste committed by the respondent and for ascertainment of future mesne profits respectively, under Order 20, Rule 12. This order for appointment of a Commissioner, I need not point out is not one of the orders appealable under Order 43, Rule 1. The lower appellate Court entertained however an appeal under the latter provision and dismissed it. Thereupon these C.M.S. As. are being sought to be filed against the order of the lower appellate Court.

3. These S.R. Numbers cannot be allowed to be filed as C.M.S.As. at all, and if so advised, they can be filed only as revision petitions. Here are my reasons:

4. First of all assuming for the sake of argument that the order is appealable, there can only be an appeal therefrom under Section 104 and this appeal has already been exhausted. Therefore there is no further appeal available to the aggrieved party. Only revision petitions will be competent as against the orders impugned. This argument is, of course, based on the assumption that an appeal is a proper remedy and it is mentioned only in the circumstances of this case to show that in any event a second appeal cannot be preferred.

5. In reality the real contention of the learned advocate is this matter falls under Section 47, Civil Procedure Code, and that therefore these C.M.S. As. would lie against the orders of the lower appellate Court, and for this position he relied upon Balaramcharya v. Chidambaragouda : AIR1938 Bom320 .

6. Learned Government Pleader points out that this decision is not applicable to the facts of this case, because as pointed out in the very judgment, the correct procedure under the present Code is for the Court to direct an inquiry as to the mesne profits, and then pass a final decree for the amount found due on the inquiry.

7. Now a grievance of this nature is covered exactly by Order 20, Rule 12, which runs as follows:

Where a suit is for the recovery of possession of immoveable property and for rent or mesne profits, the Court may pass a decree...(c) directing an inquiry as to rent or mesne profits from the institution of the suit until (i) delivery of possession to the decree-holder, etc.

8. It has been laid down by a Bench decision of this Court in Balarama Naidu v. Sangan Naidu (1921) 42 M.L.J. 184 : I.L.R. 45 Mad. 280 that an order determining the amount of mesne profits payable subsequent to the filing of a suit is a final decree within Order 20, Rule 12(2), Civil Procedure Code ; and ad valorem Court-fee is chargeable under Article 1 of Schedule I of the Court-Fees Act calculated on the amount of mesne profits in dispute in appeal.

9. The Patna High Court has gone even further. In Sideshwari Prasad v. Ram Kumar Rai A.I.R. 1933 Pat. 694 it has been held that an appellant has to pay ad valorem Court-fee on the amount for which he seeks to avoid liability or for the amount by which he seeks to enhance the value of the appeal and the rule applies to all appeals from decisions determining the amount of mesne profits, whether the profits may have accrued before suit, or after the date of the institution of the suit; the decision in Dhanukdhari Prosad Pande, In re A.I.R. 1933 Pat. 188 was followed.

10. Therefore, I am unable to hold this matter falls under Section 47 and that C.M.S. As. would lie against the orders of the lower appellate Court.

11. Therefore it is left open to the petitioners to prosecute these S.R. Numbers treating them as C.R. Ps. if so advised against the trial Court's orders with petitions to excuse delay.

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