

B. Devendrakumar Vs. R. Ranganathan

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Court : Chennai

Decided On : Mar-13-1998

Reported in : (1998)2MLJ578

Appellant : B. Devendrakumar

Respondent : R. Ranganathan

Judgement :

ORDER

K. Govindarajan, J.

1. The petitioner, aggrieved against the order of the court below, directing him to pay the additional court-fee for the future mesne profits determined at the rate of Rs. 15,000 p.m. from December 1993, till date of decree, has filed the above revision.

2. The respondent/plaintiff filed the suit in O.S.No. 952 of 1993 on the file of the learned Sub-Judge, Dindigul praying for a decree for possession of the land in question, for damages for use and occupation for the months of October and November, 1993 and for future damages for use and occupation at the rate of Rs. 20,000 per month from the date of the plaint till date of delivery of possession of the suit property and for consequential permanent injunction. In the plaint, the plaintiff has paid the court-fee towards recovery of future damages under Section 22 of the Tamil Nadu Court-fees and Suits Valuation Act, 1955. The plaintiff

undertook to pay necessary court fee for future damages from the date of the suit till delivery of possession of the suit property at the rate of Rs. 20,000 per month. The trial court in the judgment and decree dated 15.11.1996 decreed the suit and quantified the future damages at Rs. 15,000 per month. Clause (3) of the said decree reads as follows:

3. Aggrieved against the said judgment and decree the petitioner filed an appeal in A.S.No. 21 of 1997 on the file of the learned District Judge, Dindigul. Pending the appeal the respondent/plaintiff filed a memo to the effect that unless the appellant/defendant pays the court-fee in accordance with Section 52 of the Tamil Nadu Court Fees and Suits Valuation Act, 1955, the appeal cannot be entertained accepting that memo the court below directed the petitioner to pay the court-fee. Aggrieved against the same, the petitioner has filed the above revision.

4. The learned Counsel appearing for the petitioner has submitted that though the plaintiff had given an undertaking to pay the court-fee as and when the future damages as quantified, the trial court ought not to have decreed the said suit in respect of that relief, without even directing the plaintiff to pay the court-fee. On that basis, according to the learned Counsel, only if the court-fee is paid on the quantified amount by the plaintiff, the decree can be passed. So, the decree now passed has to be construed only as a preliminary decree and not a final decree, since the decree is a preliminary decree, according to the learned Counsel, the appellant is correct in paying the same court-fee that has been paid by the plaintiff in the suit.

5. It cannot be denied that there is a decree in favour of the plaintiff in the said suit for future damages. Clause (3) of the said decree, as narrated above, will clearly show that the decree is passed in favour of the respondent/plaintiff for future damages at the rate of Rs. 15,000 per month. Though in Section 44 of the Tamil Nadu Court Fees and Suits Valuation Act, 1955, it is stated that no decree shall be passed until the difference between the fee actually paid and the fee that would have been payable had the suit comprised the whole of the profits so ascertained is paid, in this case, unfortunately, the trial court passed the said decree. The fact remains that there is a decree with respect of the future damages in favour of the

plaintiff, which has been challenged by the defendant in the appeal. Even in the Appeal grounds, such a plea has been taken. So, the defendant at this stage cannot come forward with the plea that there is no final decree quantifying the future damages in this case. It can be said that the decree with respect to that clause is passed contrary to Section 44 of the said Act. By that, it cannot be said that the decree itself has to be ignored, Since the decree is passed with respect to future damages, there is no other procedure to be followed to quantify the same. Hence the contention of the learned Counsel that there are some procedures to be followed and so the decree now passed has to be construed only as preliminary decree and not a final decree cannot be accepted. The learned Counsel has relied on a number of authorities or show that if some procedures have not been followed before passing a final decree, then the decree passed cannot be construed as a final decree, but it is only a preliminary decree. There cannot be any quarrel with respect to the said principle. In this connection, the learned Counsel has relied on the decisions in *Diwan Bros v. Central Bank Bombay* : AIR 1976 SC1503 , in *Bal Kishan v. Tulsa Bai* A.I.R. 1987 M.P. 120, in *S. Veluchamy Nadar v. Diravia Nadar and Ors.* (1991)1 L.W. 502 and in *P.L. Kantha Rao v. State of A.P.* : (1995)11LLJ299SC . In the case on hand, as stated earlier, no further procedures have to be followed to quantify the amount or to pass the decree, so, the abovesaid decisions relied on by the learned Counsel do not give any assistance to the case of the petitioner.

6. The petitioner has filed the Appeal and paid the court-fee, That court-fee should be in accordance with Section 52 of the Tamil Nadu Court Fees and Suits Valuation Act, 1955. Section 52 of the said Act reads as follows:

The fee payable in an appeal shall be the same as the fee that would be payable in the court of first instance on the subject-matter of the appeal. Provided that, in levying fee on a memorandum of appeal against a final decree by a person whose appeal against the preliminary decree passed by the court of first instance or by the court of appeal is pending. Credit shall be given for the fee paid by such person in the appeal against the preliminary decree.

7. When the defendant appeals against the final decree, he knows the exact value of this relief. He should pay the court fee on the amount of decree passed against him except; in cases where he appealed only against a portions of the decree Section 52 of the said Act compels the appellant to pay the same court-fee that would be payable in the first instance on the subject matter of appeal. Irrespective of the court fee paid by the plaintiff in the suit, the appellant has to pay the court - fee that would be payable in the suit. The said provision insists to pay the court-fee on the subject-matter of the appeal. Admittedly the subject-matter of the appeal is also the quantum of future damages fixed by the trial court, so, the defendant cannot take advantage of the fact that the plaintiff has not paid the court-fee and contend that he need not pay the court-fee on that. While dealing with similar issue, the Division Bench of the Andhra Pradesh High Court in Kudappasubbaramma, In re. A.I.R. 1957 A.P. 6 has held as follows:

Having regard to the provisions of the Court-Fees Act and the decisions interpreting the said provisions, the law may be briefly stated thus: In a suit for mesne profits whether past or future, if the mesne profits are ascertained and decreed, the party preferring an appeal should pay court-fee on the amount or value of the subject-matter in the appeal. If the defendant files an appeal seeking to get rid of the decree in whole or in part, he will have to pay court-fee in whole or in part, on the amount decreed which he seeks to vacate.

If a plaintiff seeks to file an appeal questioning the correctness of the amount ascertained and decreed in his favour, the subject-matter of the appeal will be excess amount he claims to have over that already awarded to him, and, therefore, he will have to pay ad valorem court-fee on the additional amount, he claims, In either case, the mesne profits are ascertained and the party, be he a plaintiff or a defendant, knows 'the exact amount, which is the subject-matter of appeal'. We answer the reference accordingly

8. The Full Bench of this Court, while dealing with the liability of the defendant to pay the court-fee in Dhanukodi Nayakar, In re. A.I.R 1938 Mad. 435 : 47 L.W. 488, has held that the Act gives great freedom to the plaintiff/respondent but it does not give the same freedom to the defendant/appellant. When the defendant, also

appeals against the final decree the knows exactly the value of the relief sought for by him. So the defendant cannot be heard to say that he is liable to pay the Court fee only which had been paid by the plaintiff in the suit. If such interpretation is given to Section 52 of the said Act, it will go against the real spirit of the entire Act itself. In a case where the suit was filed in forma pauperis, the plaintiff will not pay court fee. In such circumstances the aggrieved defendant while filing appeal cannot take advantage of the said Act and say that he will not pay court fee. The words 'would be' mentioned in Section 52 of the said Act will clearly indicate the court fee payable before the court of first instance and not the actual court-fee paid. As stated earlier, Section 52 of the said Act also indicated that the court-fee should be paid on the subject-matter of the appeal. It cannot be disputed that in the present case the future damages quantified by the trial court is also the subject-matter of the appeal, merely because the trial court has committed an error in passing the decree for future damages without even insisting the/payment of court-fee (which can be done even now by the trial court), the defendant cannot come forward with the plea that he need not pay the court-fee with respect to the subject-matter of the appeal.

9. In view of the above discussions, I do not find any merits in the revision. Hence, the same is dismissed. No costs. Consequently, C.M.P.No. 17740 of 1997 is closed.

K. Govindarajan, J.

After delivering the order, the learned Counsel appearing for the petitioner has requested time to pay the court-fee. The petitioner is permitted to pay the court-fee within three weeks from this date.

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