

In Re: Court-fee Act and

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Court : Kolkata

Decided On : Apr-28-1930

Reported in : AIR1930Cal686

Appellant : In Re: Court-fee Act and ;kalipada Mukharjee

Judgement :

Rankin, C.J.

1. In Suit No. 135 of 1926 certain mortgagees sued to enforce by sale a mortgage granted by the present plaintiff-appellant for Rs. 40,000 and interest over property which the plaintiff now values at Rs. 1,20,000. A puisne mortgagee was impleaded as defendant. In the end, the property was sold to respondent 1 on the present appeal for Rs. 58,500. The amount due upon the first mortgage is not stated but the Registrar of this Court has been informed that it amounted to some Rs. 60,000. The sale was confirmed and a sale-certificate issued. On the auction purchaser seeking an order for possession there under the plaintiff objected and his objection was dismissed.

2. Alleging that an extension of time to deposit the balance of the purchase money was fraudulently obtained from the execution Court by the auction purchaser and that the auction purchaser was merely a benamidar for the puisne mortgagee defendant the plaintiff brought the present suit asking for a declaration that he still retains his equity of redemption and that the sale was illegal and inoperative and for an injunction restraining the auction purchaser and puisne mortgagee from

taking possession of the mortgaged property which is still in plaintiff's possession. The suit was brought on 5th July 1929 before the Subordinate Judge.

3. Para 19 of the plaint was as follows:

For determining the jurisdiction of the Court and court-fees, the suit for declaration rights etc., in respect of the disputed property being laid at Rs, 1,20,000 the value of the disputed property, the plaintiff brines this ease on payment of a court-fee of Rs. 20 for declaration and a court-fee of Rs. 8-2-2 on Rs. 50 at which the suit is valued for issue of an injunction.

4. No objection on the score of jurisdiction or of sufficiency of court-fee was taken in the trial Court which (on 25th January 1930) heard and dismissed the Suit on the merits.

5. Thereupon a memo random of appeal was pre-ented to this Court headed:

Suit valued at Rs, 1,20,000, Suit for a declaration and for an injunction valued at Rs. 50

and stamped with Rs. 23-12-0 by way of court-fee. The sufficiency of this court-fee having been objected to by the office. I am dealing with the matter under Section 5, Court Fees Act, upon a reference by the Registrar.

6. The suit is in substance a suit to set aside a sale in execution with an ancillary prayer for a permanent injunction which would have been better omitted. It is somewhat curious that nowhere in the Court-fees Act is there any express or specific mention of a suit to set aside a Court sale. If there had been any fee prescribed for such a suit or any principle of valuation laid down there for I should have made the plaintiff pay Court-fee in accordance wherewith and on the authority of Phul Kumari v. Ghanshyam Mishra (1907) 35 Cal. 202 refused to charge him anything more. But I can find no such provision and the suit is in form a suit for a declaration and for an injunction by way of consequential relief. I have some doubt whether a decree setting aside a sale is really and only a declaration but under the Court-fees Act it has apparently been so considered and in the present case the plaintiff asked expressly for a declaration. This being so I am of

opinion that the plaint had to be stamped in accordance with Section 7(iv)(c), Court-fees Act, 1870. The suit being

to obtain a declaratory decree or order where consequential relief is prayed.

7. Court-fee was payable

according to the amount at which the relief sought is valued in the plaint or memorandum of appeal.

8. The case is clearly outside the provisions of Section 17 of the Act and in my opinion the plaintiff had the right and duty to put down one single and entire sum as representing the value of the total relief sought by him in the suit. I have observed decisions of other High Courts which seem to mean that so much is to be put down for the declaration and so much for each consequential relief prayed for, but this is in my opinion a plain perversion of the Act. Cumulative fees are dealt with by Section 17 and the litigant is not intended to pay in respect of the same thing over and over again because of the need for consequential relief. The Act, in Sub-section (4), is dealing with claims which do not yield themselves readily to any statement of money value and in leaving the matter to the plaintiff's valuation, subject to Sections 4 and 9, Suits Valuation Act, it proceeds just as much upon a considered policy as it does when by Article 17, Schedule 2, of the Act it charges certain classes of suits with a fee which is irrespective of value : *Phul Kumari v. Ghanshyam Misra* (1907) 35 Cal. 202.

9. Section 8, Suits Valuation Act, and Section 24, Civil P.C., have to be considered in relation to the class of case specified in Clause 0, Sub-section (4), Section 7, Court-fees Act. The District Court or the High Court can always transfer a case to a Court more suitable than the Court in which it is brought, but subject thereto the jurisdiction of the trial and appellate Courts will depend in the cases dealt with by Sub-section (4) upon the plaintiff's valuation : *Sundarbai v. Collector of Belgaum* A.I.R. 1918 P.C. 135.

10. In the present case it is clear that the plaintiff valued his suit in a manner contrary to the statute. He dealt with his claim for a declaration under Article 17,

Schedule 2, which applies only to a suit for a declaratory decree where no consequential relief is prayed for and then he valued his claim to consequential relief independently as a claim for an injunction under Clause (d), Sub-section (4), Section 7, of the Act. He coupled this, contrary to Section 8, of Rs. 1,20,000 for purposes of jurisdiction. The plaint should have been returned to him for proper valuation under Clause (e), Sub-section 4, Section 7. He never has valued 'the relief sought' within the proper meaning of Clause (d).

11. Now that he has presented an appeal the question is as to the proper course to be adopted. The stamp reporter thought that the appeal should be valued for court-fee on either Rs. 58,500 (the auction price) or Rs. 1,20,000, the plaintiff's value of the property. The Registrar suggests that Rs. 1,20,000 less Rs. 60,000 due on the mortgage would be the proper figure. The senior Government Pleader argues that Rs. 1,20,000 as the plaintiff's own valuation for purposes of jurisdiction should be the figure taken for court-fee and refers me to *Bal Krishna v. Jankinai* (1919) 44 Bom. 371, *Manni Lal v. Radhe* : AIR1925 All602 and *Raj Krishna v. Bepin Behary* (1912) 40 Cal. 245. It seems clear that whatever figure be adopted it must under Section 12, Court-fees Act, be made applicable both to the suit and to the appeal.

12. Now I must reject altogether the suggestion that it would be Reasonable in this case to require the appellant to pay court-fees on Rs. 1,20,000. That figure, according to him, is the unencumbered value of the mortgaged property. Because in a way which is entirely misconceived he has given that as the-value of the suit for purposes of jurisdiction, claiming at the same time to assess court-fee in an entirely different-way, he cannot be said directly or indirectly to have valued the relief sought at that figure. He has claimed to be exempt horn valuing his claim to a declaration, and he has valued his claim to an injunction at Rs. 50. The meaning of Section 8, Suits Valuation Act, is that the value for purpose of jurisdiction shall follow the value to be given for purpose of court-fee not vice versa. To charge him with court-fee on Rs. 1,20,000 would be an irrational and illogical procedure, and the cases cited do not in my opinion justify such action in the present case. The Bombay decision seems to be reasonable enough and the Calcutta case depends upon the view that the Court can revise the plaintiff's valuation. But whether they

be right or wrong I need not for this purpose consider.

13. The next question is whether from the plaint and memorandum of appeal the Court can put a valuation of its own on the relief sought. In *Umatul v. Mt. Nauji* (1907) 11 C.W.N. 705 it was held that the Court can revise the plaintiff's valuation if it is capricious and arbitrary, but in recent cases *Official Trustee, Bengal v. Gobardhan Guchait* (1928) 118 I.C. 357 this view has not been taken. As at present advised I incline to think that the view is that adopted in the last mentioned case. If we take the statute book as we find it to-day then, while Order 7, Rule 11, clearly applies to cases coming within Sub-section 4, Section 7, Court-fees Act, it is very difficult indeed to take the phrases 'where the relief claimed is undervalued' and 'where the relief claimed is properly valued' both quite general phrases applicable to all classes of suits as trenching upon the right of the plaintiff to pay court-fee on the footing of his own valuation of the relief sought. Order 7, Rule 11 is mere procedure : it is not meant to enlarge any taxing section but only to ensure the proper application of the Court-fees Act and other Acts. It was thought ill *Umatul's* case (1907) 11 C.W.N. 705 that the previous history of these enactments warranted the conclusion that the plaintiffs valuation can be corrected by the Court.

14. I quite appreciate that it may be said of the subsequent cases that the argument of Mookerji, J., has not been grappled with and I think it also true to note that the Privy Council in the case of *Sunderbai v. The Collector of Belgaum* A.I.R. 1918 P.C. 135 had not this exact point before it; but there are great difficulties in the view taken in *Umatul's* case (1907) 11 C.W.N. 705. At the time the decision was given, there was a large body of authority the other way. It is clear from the Court-fees Act that there is no provision in that Act itself for the revision of the plaintiff's valuation in such cases as the present. The provision in the Civil Procedure Code is certainly a provision which is intended to apply to cases under Sub-section (4), Section 7. The present case is a very good example of the necessity of that. Here is a case within Sub-section (4), Section 7, Court-fees Act, and yet no valuation is given for one claim and the whole case is dealt with on a principle which is erroneous altogether. Such a case as that must be amenable to the jurisdiction of the Court under Order 7, Rule 11, Civil P.C., and there are many

reasons which show that that rule is applicable to all classes of suits. But it is another thing altogether to say that because the words used are 'if the plaintiff's claim is undervalued' they mean that the Court in the special class of cases where the plaintiff is allowed to put his own valuation has a right to revise the valuation. I do not think that Mookerjee, J., in coming to the conclusion to which he did in Umatul's case (1907) 11 C.W.N. 705 gave sufficient weight to the circumstances that the cases dealt with in Sub-section (4) are cases where no real objection based on valuation will in general be possible.

15. They are cases which are not easily valued and in many cases not capable of being valued in money terms on any precise principle. It does strike me being at all incredible that with regard to that limited class of case³ the legislature should have thought it right to give to the plaintiff a certain amount of option as to the value which is to be put upon the claim especially as I find that in certain cases the legislature has thought fit to allow people to pay a small fixed court-fee in respect of the relief claimed. However that may be, I am sitting here as a taxing Judge and I do not think that it is admissible that in the capacity in which I am really representing the interest of revenue, I should undertake, unless I am obliged to pronounce finally upon matters which have produced differences of opinion between Divisional Benches, In the present case the plaintiff has at no time made a valuation of the relief sought as he should have done under Section 7, Courtfees Act. On the face of the plaint and the memorandum of appeal I do not think there are sufficient materials for the Court to make a valuation for itself even if it has the power. In any case, if the plaintiff originally had a right to value and if he has not done so, there is every advantage, in my judgment, in applying the Act in the way which the Act contemplates. It appears to me therefore that the fairest thing will be to require the plaintiff to value his relief in this memorandum of appeal properly. I may observe that this case was tried by a Subordinate Judge aft Alipore and I find, looking at the name of the gentleman and the time, that, if the plaintiff had not put this high valuation for purposes of jurisdiction but had put a valuation under Rs, 2,000 the case would have been tried by a Munsif. It is quite clear that the plaintiff cannot now put his valuation at less than Rs. 2,000. The plaintiff will have however liberty by a petition and within one fortnight from today to value the relief sought in this appeal properly and in the plaint properly, the two things being exactly the

same.

16. But the figure at which he values it is not to be less than Rs. 2,000 in view of the fact that he has represented the value for purposes of jurisdiction to be a figure which has resulted in the case being already tried by a Subordinate Judge. It will be open to the plaintiff to value it at less than Rs. 5,000 or at more than Rs. 5,000 and, according as he does that or not, he will have an appeal to the High Court or somewhere else. In any event, whether he has an appeal to the High Court or another Court it will be the duty of that Court to see that not only does he pay the proper court-fee upon the memorandum of appeal but also that under Clause (2), Section 12, he is made to pay the court-fee upon the plaint in the trial Court. That appears to me to be the reasonable way of dealing with this case. The actual form of the order will be an order under Order 7, Rule 2, Civil P.C., requiring the appellant to value the relief within a fortnight from today and to amend his valuation by lodging a proper petition to that effect and stamping the memorandum of appeal in accordance therewith. When that has been done the procedure no doubt will be for the appeal to be registered and any action necessary to be taken under Section 12 will be taken thereon.

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