

(1968) 12 KL CK 0018

High Court Of Kerala

Case No: CRP No. 547 of 1968

Kalu Parvathi and another

APPELLANT

Vs

G. Krishnan Nair, Nedumangad

RESPONDENT

Date of Decision: Dec. 19, 1968

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Section 15, 6
- Kerala Court Fees and Suits Valuation Act, 1959 - Section 43, 7, 7(4), 7(4)(b), 7(4)(c)

Citation: (1969) KLJ 599

Hon'ble Judges: V.R. Krishna Iyer, J

Bench: Single Bench

Advocate: G. Viswanatha Iyer and R. Sreedharan, for the Appellant; P. Sukumaran Nair, K. Hrishikesan Nair and C.S. Rajan, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

V.R. Krishna Iyer, J.

The inter-relation between the valuation for purposes of court-fee and that for purposes of jurisdiction is regulated by statute and the present revision petition highlights the possible dispute that might arise when the actual value of a property is admittedly different from the value of the relief regarding that property for purposes of court-fee. In such a case what should be the valuation of the subject-matter for purposes of jurisdiction? The learned Subordinate Judge has held that for jurisdictional purposes the actual value i.e. the full market value will prevail even though for purposes of computation of court-fee the prescribed method is to fix the value at half the market value. This, it is contended, is wrong and opposed to the scheme of the Kerala Court Fees and Suits Valuation Act--for short, called the Act. O.S. No. 28 of 1967 on the file of the Subordinate Judge's Court, Trivandrum, is one for a declaration of the plaintiff's title to and possession of the property set out

in the plaint schedule and for a consequential relief of injunction to restrain the defendants from interfering with the plaintiff's enjoyment. The plaintiff valued the property at Rs. 6000/- for purposes of jurisdiction and for purposes of court-fee he put it at half of Rs. 6000/- u/s 25(b) of the Act. This provision prescribes the method of calculating the value of the relief for purposes of court-fee in a suit for declaratory decree coupled with a consequential relief in the shape of injunction where the relief sought is with reference to immovable property. According to Section 25(b), "fee shall be computed on one-half of the market value of the property or on rupees three hundred whichever is higher." The market value of the property is stated in the plaint to be Rs. 6000/- and no dispute has been raised about it by the defendants. Therefore, court-fee may be said to be correctly paid on Rs. 3000/- in this case. The trouble begins elsewhere. Paragraph 10 of the plaint relates to valuation and is in the following terms.

The annual income from the plaint schedule property will be Rs. 600/-. Calculating at ten times the annual profits the market value of the plaint schedule property is Rs. 6000/-. This suit is valued at Rs. 6000/- for purposes of jurisdiction. Court-fee of Rs. 275/- is paid on the sum of Rs. 3000/- being one-half of the market value of the plaint schedule property, u/s 25(b) of the Kerala Court Fees & Suits Valuation Act, X of 1960. As the subject matter of the suit will come within the pecuniary jurisdiction of this Court the suit is filed in this Court.

The valuation statement has been prepared taking it as ten times the annual profits, the multiple having been derived from Section 7(2) of the Act. Thus, the market value is shown as Rs. 6000/- and valuation for purposes of court-fees is shown as half that sum viz. Rs. 3000/-. According to the revision petitioner, the valuation for purposes of jurisdiction must follow and be the same as that for purposes of court-fees, which means that the jurisdiction value must be brought down to Rs. 3000/- and the plaint must be returned for re-presentation to the Munsiff's Court. The respondent contends that, for purposes of jurisdiction, we are concerned with the value of the subject matter which ordinarily is the market value of the property while for purposes of court-fees the artificial method prescribed in Section 25(b) of the Act will hold good. If there is substance in this contention the suit will lie in the Sub Court, even though for purposes of court-fee the value of the relief may be only Rs. 3000/-. In short, according to the counsel for the appellant, the valuation for the relief under the Court Fees Act and the valuation of the subject-matter for jurisdictional purposes under the same Act must be identical; while, according to the respondent, there is a basic distinction between the value of the subject-matter and the value of the reliefs.

2. According to Section 6 of the CPC a suit has to be instituted in a Court whose pecuniary limits of jurisdiction will take in the amount or value of the subject matter of the suit. Section 15 of the Code, however, insists that every suit shall be instituted in the Court of the lowest grade competent to try it. It is true that Section 6 of the

Code speaks of the value of the subject matter, but the semantic distinction sought to be spun out of the difference in phraseology is perhaps chimerical, because the expression "subject matter" means not the property involved in the suit but virtually the relief claimed, and it is its value that determines the jurisdiction. (See Mulla C.P.C. Vol. 1 page 26). I agree that ordinarily the value of the subject matter may be the market value of the property where the relief claimed is directly related to the property having a market value. However, a scheme has been envisaged in this regard by the Act. Section 53 of the Act which deals with valuation for jurisdictional purposes is in two parts. It is worthwhile reproducing the Section:-

53. Suits not otherwise provided for.

(1) In a suit as to whose value for the purpose of determining the jurisdiction of courts, specific provision is not otherwise made in this Act or in any other law, value for that purpose and value for the purpose of computing the fee payable under this Act shall be the same.

(2) In a suit where fee is payable under this Act at a fixed rate; the value for the purpose of determining the jurisdiction of courts shall be the market value or where it is not possible to estimate it at a money value such amount as the plaintiff shall state in the plaint.

3. Sub-clause (1) deals with cases where ad valorem court-fee is payable and sub-clause (2) deals with cases where a fixed fee is payable. Where fee is payable at a fixed rate it is clear that the court-fee leviable cannot give any indication regarding the precise value of the property for the simple reason that it is a fixed fee and not one geared to the valuation of the property. Naturally, jurisdictional value has to be determined independently and so Section 43 sub-section 2 lays down that where a fixed fee is payable under the Act, the value for the purpose of determining the jurisdiction of Courts shall be the market value and where it is not possible to estimate it at a money value such amount as the plaintiff may estimate in his plaint. We are not here concerned with a suit where a fixed fee is payable and therefore we are thrown back to Section 53(1) of the Act. When we are called upon to ascertain the forum, the first question to ask is what is the value for jurisdictional purposes. The next question to be asked is whether the suit is one where a fixed fee is prescribed under the Act; if it is so prescribed for the reliefs claimed in the suit, jurisdictional value has to be based upon the market value. If it has no market value, then the estimated value. The third question, if no fixed fee has been prescribed for court-fee, is whether a specific provision has been made, in the Act or in any other law, to calculate the value for purposes of determining the jurisdiction of Courts for such suits. If the answer is in the negative, the conclusion is that the value for purposes of determining jurisdiction will be fixed at the same figure as that for computing the fee payable under the Act; that is to say, the valuation for purposes of computing the court-fee has to be worked out first and the jurisdictional value fixed next but at the same figure. Thus, for instance, Sections 23 and 28 of the Act

specifically provide for jurisdictional value while Section 25 does not so provide. Therefore a study of the various provisions of the Act leads to the conclusion that the value for purposes of court-fee must be first fixed and then the same amount adopted for purposes of jurisdiction also when the suit is one for a declaration and consequential relief falling u/s 25(b).

4. Section II, Civil Courts Act, has also to be referred to in this context. All original suits, the amount or the value of the subject-matter of which does not exceed Rs. 5000/- will be entertainable in a Munsiff's Court and all other suits will have to be filed in a District Court or a Subordinate Judge's Court. No new guideline is given by Section II because the value of the subject-matter, in terms of which that provision speaks, has again to be fixed according to the method indicated in Section 53 read with Chapter IV of the Act relating to computation of court-fee. Of course, there is an apparent incongruity in that the market value has to be arrived at in the manner indicated in Section 7(2), but while fixing the value of the relief u/s 25(b) one has to take it at half such market value. But this incongruity is more apparent than real because the plaintiff claims not the property itself but only some relief relating to that property and often times, the relief may not relate to the entire bundle of rights or the totality of enjoyment but only a segment of it and it will be unfair to compel him to pay court-fee on the total value of the property while he is concerned with some lesser interests or benefits. In a ruling in [Jitendra Nath Mukherjee Vs. Commissioners of Baduria Municipality and Another](#), Mr. Justice Mukherjea dealt with this aspect of the matter and observed:

First, the subject-matter in dispute is not necessarily the subject matter of the suit..... the subject matter of the suit in hand is no doubt the hat in controversy, fetching, as it is said Rs. 15,000/- a year. But the subject matter in dispute is the suing municipality's possession being clouded by an ex-parte order of a magistrate. In the event of the municipality's success, the cloud is removed. That is all. What is the value of the cloud? Certainly not the value of the hat. Therefore, you cannot equate the one with the other.....If I sue a trouble shooter for a declaration of my title, undisputed by all except he, and indisputable too, to my own house, say: worth a lakh of rupees, and restraining him from interfering with my possession, going by the benefit tests, I shall have to pay ad valorem court-fees on a lakh of rupees. A clear reductio ad absurdum.....The relief sought is one thing, and the value of the property another.....

5. These observations strengthen the view I have accepted. Section 7(4) of the Court Fees Act (Central) deals with suits for declaration and consequential reliefs and Section 8 of the Suits Valuation Act (Central) governs the determination of the value of suits for purposes of jurisdiction. Of course, under the Kerala Act, both these enactments are telescoped into one statute. Their Lordships of the Supreme Court had occasion to deal with an action falling u/s 7(4)(b) of the Central Court fees Act and the nexus between the value for purposes of court-fees and for purposes of

jurisdiction, Gajendragadkar J. (as he then was) observed in *S. Rm. Ar. S. Sp. sathappa Chettiar v. S. Rm. Ar. Rm. Ramanathan Chettiar* (1953 S.C.R., 1021 1034).

What would be the value for the purpose of jurisdiction in such suits is another question which often arises for decision. This question has to be decided by reading section 7(4) of the Act along with Section 8 of the Suits Valuation Act. This latter Section provides that, where in any suits other than those referred to in Court Fees Act, Section 7, para. 5, 6 and 9 and para. 10 cl. (d), court-fees are payable ad valorem under the Act, the value determinable for the computation of court-fees and the value for the purposes of jurisdiction shall be the same..... Section 8 of the Suits Valuation Act provides that the value as determinable for the computation of court-fees and the value for the purposes of jurisdiction shall be the same. There can be little doubt that the effect of the provisions of Section 8 is to make the value for the purpose of jurisdiction dependent upon the value as determinable for computation of court-fees and that is natural enough.....once the plaintiff exercises his option and values his claim for the purpose of court-fees, that determines the value for jurisdiction. The value for court-fees and the value for jurisdiction must no doubt be the same in such cases; but it is the value for court-fees stated by the plaintiff that is of primary importance. It is from this value that the value for jurisdiction must be determined. The result is that it is the amount at which the plaintiff has valued the relief sought for the purposes of court-fees that determines the value for jurisdiction in the suit and not vice-versa.

The observations of the Supreme Court apply with full force to the present case because the Kerala Act is substantially similar in scheme and structure to the two enactments considered by their Lordships. The result is that the valuation for the purpose of court-fees will have to be fixed first and that has been fixed at Rs. 3000/- and the valuation for purposes for jurisdiction must follow suit. If there is a discrepancy, it may not be fair to force the plaintiff to adopt for purposes of court-fees the same valuation he has given for purposes of jurisdiction. In the same ruling of the Supreme Court it has been observed:

If the Court comes to the conclusion that the case falls u/s 7(4) (b) or Section 7(4) (c) ordinarily liberty should be given to the plaintiff to amend his plaint and set out specifically the amount at which he seeks to value his claim for the payment of court-fees. It would not be reasonable or proper in such a case to hold the plaintiff bound by the valuation made by him for the purposes of jurisdiction and to infer that the said valuation should be also taken as the valuation for the payment of court-fees.....Section 8 of the Suits Valuation Act postulates that the plaintiff should first value his claim for the purpose of court-fee and it provides for the determination of the value for jurisdiction on the basis of such claim.

In the decision reported in *Narayani Amma v. Lakshmikutty Amma* (1962 K.L.J. 1270) my learned brother Raghavan J. has pointed out that the value for purposes of jurisdiction shall follow the value to be given for purposes of court-fee, not

vice-versa. In cases where there is discrepancy in the two calculations "the plaint should have been returned for amendment, so that the plaintiff might elect on a single Valuation for both purposes, namely jurisdiction and court-fees, as required by law." Although there is no reference to the Supreme Court ruling, the same conclusion has been reached by Raghavan J. on the points with which I am concerned in this revision.

6. I might just refer to a few decisions mentioned at the bar such as the ones reported in *Kanakaraju v. Venkataraju* (A.I.R. 1936 Mad. 262(2)), *The Official Receiver of Ramnad v. Arunachalam Chettiar* (65 M.L.J. 420) and *Loganathan v. Channarayappa* (A.I.R. 1959 Mys 167). The propositions laid down in these rulings are not different from those I have already set out and do not call for any detailed or separate consideration.

7. Learned counsel for the respondent strongly relied upon the ruling reported in *Rachappa Subrao Jadhav Desai v. Shiddappa Venkatrao Jadhav Desai* (A.I.R. 1918 P.C. 108). Sir Lawrence Jenkins was dealing, in that case, with a suit where fixed fee was payable and therefore the jurisdictional value had to be arrived at independently. His Lordship observed as follows on this crucial point.

If regard be had to the real as distinct from the imputed value of the property, the suit was properly instituted in the Court of First Class Subordinate Judge, and if any part of the fee payable and paid was a fixed fee under Schedule II of the Act, then the notional value of the property or any part of it could not displace its real value for purposes of jurisdiction.

Conversely, if the fee payable was not a fixed fee, the notional value of the property for purposes of court-fee could displace its real value for purposes of jurisdiction. I, therefore, do not think that the judicial committee was concerned with a case where ad valorem fee had to be paid and the observations made in that ruling do not militate against the conclusion I have reached. In the circumstances, the valuation for the court-fee having been fixed at Rs. 3000/- the Munsiff's Court would be the appropriate forum u/s 15 of the Civil Procedure Code. However, counsel for the respondent brings to my notice T.A. No. 1022 of 1968 dated 7-2-1968 filed by him by which he had sought to make some amendments to the plaint. I do not think that there is any clear modification of the valuation for purposes of court-fee contained in that application. It is true that court-fee has been paid for Rs. 6000/- although the valuation still is retained at Rs. 3000/-. It is represented before me by counsel for the respondent that he elects to treat the valuation for purposes of court-fee and jurisdiction at Rs. 6000/- and that consequential amendments to the plaint would be made by him. Now that the correct court-fee as on Rs. 6000/- has been paid, there is no need to return the plaint and start the course of the litigation do novo in another court. After all, as Sir Lawrence Jenkins pointed out in the ruling adverted to by me above "The Court fees Act was passed not to arm a litigant with a weapon of technicality against his opponent, but to secure revenue for the benefit of the State."

This having been achieved, and since the Subordinate Judge's Court has unlimited jurisdiction, I do not think there is need to direct return of the plaint. All that I need do is to observe that the plaintiff's advocate undertakes to apply for the necessary amendments suggested above.

8. The learned Subordinate Judge it is unfortunate, has sneered away the point raised by the defendant, although it is really one of substance as I have indicated at some length. He has even indicated that the excess court-fee paid could be refundable to the plaintiff. All this is wrong. Anyway, in the view I have taken, there is no need to give any directions except to say that no court fee will be refundable to the plaintiff. Subject to the above observations, I dismiss the Civil Revision Petition. There will be no order as to costs.