

(1973) 11 KL CK 0031
High Court Of Kerala
Case No: A.S. No. 88 of 1973

State of Kerala

APPELLANT

Vs

B. Nesan

RESPONDENT

Date of Decision: Nov. 12, 1973**Acts Referred:**

- Kerala Civil Courts Act, 1957 - Section 12, 13
- Kerala Court Fees and Suits Valuation Act, 1959 - Section 35(1), 53

Citation: (1973) KLJ 976**Hon'ble Judges:** V.P. Gopalan Nambiyar, J; George Vadakkal, J**Bench:** Division Bench**Advocate:** K. Sudhakaran, for the Respondent

Judgement

Gopalan Nambiyar, J.

The preliminary objection raised by the counsel of the respondent that the appeal is not maintainable in this Court is well-founded and must be upheld. The suit O.S. 72 of 1969, Sub Court, Trivandrum, against the final decree from which this appeal has been filed, was for settlement of accounts between the plaintiff and the defendant, namely state of Kerala, in respect of the contract for the work of "improvements to the trace from Chayam to Peringammala I S. 2nd mile" on the basis of reasonable rates prevalent during the actual work period, etc. For purpose of valuation and court fee the plaintiff contained the following statement:

As for settlement of accounts the plaintiff values it tentatively at Rs. 5,050/- under S. 35(1) of Kerala Court Fees & Suits Valuation Act, and a court fee of Rs. 500/- is paid. The plaintiff is agreeable to pay such additional court fee found due from him as and when the accounts are settled.

A preliminary decree was passed in the suit directing accounts to be taken and settling the amount due to the plaintiff. In pursuance of the preliminary decree, an application was made for passing a final decree and a final decree was passed by

judgment of the court dated 25th September, 1972 for a sum of Rs. 63,480.24 with interest at 6% from 14-7-1956 and costs. Against the said decree the defendant - State has preferred the above appeal.

S. 12 and 13 of the Kerala Civil Courts Act, 1957 are as follows:

12. Appeals from decree and orders of District Court or Subordinate Judge's Court: Save as provided in S. 13, regular and special appeals shall, when such appeals are allowed by law, lie from the decrees or orders of a District Court or a Subordinate Judge's Court to the High Court.

13. Appellate jurisdiction of District Court and Subordinate Judge's Court:

(1) Appeals from the decrees and orders of a Munsiff's Court and where the amount or value of the subject-matter, of the suits does not exceed ten thousand rupees from the original decrees and orders of a Subordinate Judge's Court shall, when such appeals are allowed by law, lie to the District Court:

Provided that whenever a Subordinate Judge's Court is established in any district at a place other than the place where the District Court is stationed, the High Court may, with the approval of the Government, direct that appeals from the decrees or orders of Munsiff's Courts within the local limits of the jurisdiction of such Subordinate Judge's court to be preferred in such Subordinate Judge's Court.

Provided further that the District Court may remove to itself from time to time appeals so preferred and dispose of them itself or may, subject to the orders of the High Court, refer any appeals from the decrees and orders of Munsiff's Courts preferred in the District Court to any Subordinate Judge's Court within the district.

(2) The provisions of sub-s. (1) shall apply to original decrees and order of Subordinate Judge's Court passed after the commencement of the Kerala Civil Courts (Amendment) Act, 1959, notwithstanding the fact that the suits in respect of which such decrees and orders have been passed were instituted before such commencement.

The amount or value of the subject matter of the suit in this case, does not exceed Rs. 10,000/-, and therefore, the appeal lies to the District Court. Merely because the final decree has been passed for an amount of over Rs. 10,000/- a right of appeal to this Court is not attracted. We may refer to S. 53 of the Kerala Court Fees Act, which provides:

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.

2. The matter has come up for consideration in connection with practically similar provisions of the statutes in some of the other States. A full Bench decision of the Madras High Court in [Putta Kannayya Chetti and Others Vs. Rudrabhatla Venkata Narasayya](#), : [Putta Kannayya Chetti and Others Vs. Rudrabhatla Venkata Narasayya](#), has been treated as the leading authority on the point. It was held that in such cases the right of appeal is determined by the valuation of the subject matter of the suit and not by the amount decreed at the final decree stage. The relevant authorities have been noticed, and the position considered, in a Division Bench ruling of the Jammu and Kashmir High Court in [Ahad Mir Vs. Mahda Bhat](#) . In agreement with the principle of these decisions we find that the appeal is not maintainable in this Court. We accordingly direct that the papers will be returned immediately, to the counsel for the appellant, for presentation to the proper court.

The memorandum of cross-objection filed by the respondent will also be returned for presentation to the proper court.