
(2000) 07 AP CK 0019

Andhra Pradesh High Court

Case No: CRP No. 1140 of 2000

V. Rajeshwar Rao

APPELLANT

Vs

N. Yadagiri Reddy and others

RESPONDENT

Date of Decision: July 11, 2000

Acts Referred:

- Andhra Pradesh Court Fees and Suits Valuation Act, 1956 - Section 24, 26, 6(2)
- Civil Procedure Code, 1908 (CPC) - Order 11 Rule 6

Citation: (2000) 5 ALD 102 : (2000) 4 ALT 366

Hon'ble Judges: B. Prakash Rao, J

Bench: Single Bench

Advocate: Mr. Venkata Raghu Ramulu, for the Appellant; Mr. K. Mahipathy Rao, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

1. This revision at the instance of the plaintiff is filed against the orders calling upon him to pay Court fee u/s 24 of the Andhra Pradesh Court Fees and Suits Valuation Act, 1956 (for short "the Act") by filing the market value certificate of the properties in view of the subsequent amendments adding the prayers for recovery of possession and mandatory injunction to demolish the constructions made. Initially, the petitioner filed the suit in OS No.48 of 1990 on 29-1-1990 seeking perpetual injunction against the respondents herein from interfering with his possession over the suit land. Pending the suit, the petitioner sought interim injunction in IANo.102 of 1990 which was dismissed after hearing both the sides. However, the appeal filed by the petitioner was allowed in CMA No.27 of 1990 on 10-4-1991 granting injunction as sought for. These orders were confirmed by this Court in CRP No.2007 of 1991 by orders dated 2-9-1993. In another parallel suit in OS No.64 of 1987, on the file of the Principal Subordinate Judge, Ranga Reddy District, the petitioner also obtained an order for police aid in IANo.58 of 1990. Later on in the same suit, on the

appointment of a Commissioner as per orders in IA No.57 of 1990, a report was filed on 31-8-1996 which is to the effect that the respondents herein have made constructions and built a complex. The case of the petitioner was that in spite of the injunction order, the constructions were made and accordingly the petitioner had moved an application in IA No.3371 of 1998 seeking amendment of the plaint by adding two prayers viz., for recovery of possession of second schedule and for mandatory injunction to demolish the constructions, which was allowed as per orders dated 17-11-1998. As a consequence to this amendment and addition of the two prayers, the Court below directed the petitioner to pay the Court fee in accordance with Section 24 of the Act by filing the necessary market value certificates of the properties against which the reliefs were claimed.

2. Sri Venkata Raghu Ramulu, Counsel appearing for the petitioner, contended that the suit as initially filed is one of injunction and it is only due to the subsequent acts of the respondents herein in making constructions contrary to the injunction orders in the said suit, it necessitated for addition of the prayers of possession and mandatory injunction and, therefore, these prayers which are added subsequently are only ancillary and incidental reliefs but not the main relief and, therefore, u/s 6 of the Act, the Court fee having already been paid for the main relief of permanent injunction, there is no necessity to pay any Court fee for the added reliefs.

3. Sri K, Mahipcahy Rao, Counsel appearing for the respondents, contended that admittedly the suit was one for injunction and later on substantive reliefs of possession and mandatory injunction were added and, therefore, the initial relief of injunction transforms into a consequential relief to the reliefs which have been added and the plaintiff has to pay the Court fee on the main reliefs as added.

4. In this view of the matter, the question which falls for consideration in this revision is: consequent to the addition of prayers of possession and mandatory injunction in a suit for bare injunction, which of the reliefs partakes of the character of the main relief and whether it attracts any payment of additional Court fee?

5. Admittedly, the suit was filed initially for perpetual injunction against the respondents and pending the suit, the petitioner had ultimately got interim injunction in his favour and during this interregnum and in violation of the said injunction order, the petitioner alleges, the respondents have encroached upon the suit land and made substantial construction even though there was police aid in another suit. On the appointment of the Commissioner and the report filed by him, it was evident that constructions have already come up and ultimately the petitioner had to seek the amendment of the plaint in this suit by adding the reliefs of possession and mandatory injunction.

6. In respect of a suit for injunction, the provisions of Section 26 of the Act prescribe the payment of the Court fee in its three different clauses which include the situations where title to the property is denied and also other cases. Normally, in

these suits, the Court fee has to be paid on the one half of the market value of the property under sub-clause (a) and in other cases, on the amounts on which the reliefs were sought in the plaint as per clause (6) therein. Normally, in suits for injunction, the valuation is the discretion of the plaintiff without there being any gross under valuation. So far as multifarious suits are concerned, Section 6 of the Act governs the field, which reads as under:

"6. Multifarious suits :--(1) In any suit in which separate and distinct reliefs based on the same cause of action are sought, the plaint shall be chargeable with a fee on the aggregate value of the reliefs :

Provided that if a relief sought is only ancillary to the main relief, the plaint shall be chargeable only on the value of the main relief.

(2) Where more reliefs than one based on the same cause of action are sought in the alternative in any suit, the plaint shall be chargeable with the highest of the fees leviable on the reliefs.

(3)(a) Where a suit is based on two or more distinct and different causes of action and separate reliefs are sought in respect thereof, either alternative or cumulatively, the plaint shall be chargeable with the aggregate amount of fees that would be chargeable on the plaints under this Act if separate suits were instituted in respect of the several causes of action :

Provided that, where the causes of action in respect of reliefs claimed alternatively against the same person arise out of the same transaction, the plaint shall be chargeable only with the highest of fees chargeable on them.

(b) Nothing in this sub-section shall be deemed to affect any power conferred upon a Court by Rule 6 of Order 11 in the First Schedule to the Code of Civil Procedure, 1908 (Central Act V of 1908).

(4) The provisions of this section shall apply mutatis mutandis to memorandum of appeals, applications, petitions and written statements.

Explanation :--For the purposes of this section, a suit for possession of immovable property and for mesne profits, the relief shall be deemed to be based on the same cause of action."

7. Thus, the proviso contemplates that the plaint has to be valued on the main relief if the other reliefs are only ancillary to the main relief. Therefore, for applying the said provision, it has to be seen as to which of the reliefs constitute the main and ancillary. The expression "main relief takes in almost every relief for which the suit is solely laid for. However, the expression "ancillary relief has to be read in conjunction with the main relief i.e., it should be aiding or auxiliary to the main relief. An ancillary relief can in a given circumstance be the main relief but not vice versa. In a simpliciter suit for injunction, the relief of injunction comprises the main relief but

when a relief which is of a substantial nature viz., possession or declaration is added to it, the relief of injunction which was hitherto the main relief scales down to the position of a consequential relief. There are ample distinctive features in between main and ancillary reliefs. Apart from being essentially paramount and predominant, the main relief is a substantial in nature forging on substantive and vested rights. Possessory relief is the basis and any form of injunction - either mandatory or perpetual - springs from it. To see if a relief is subsidiary or main, the real test is to see whether one relief can be granted without the other. Here in this case in view of the very facts alleged, either of the reliefs of injunctions cannot be granted unless the petitioner seeks possession. Therefore, the possessory relief becomes dominant and constitutes as the main. Simply because initially the suit is filed for injunction and the other reliefs of declaration or possession have been added in view of changed circumstances or warranting circumstances on the appearance of the defendant, the relief of injunction does not remain as the main relief making the other reliefs of declaration or possession as ancillary thereto. In fact, in any given case, the reliefs of declaration and possession necessarily constitute the main reliefs and these reliefs would always go with the other incidental reliefs of injunction either perpetual or mandatory depending on the facts of each case. Subsequent addition of any such substantial relief would not make it ancillary to the relief already existing merely because such relief was the initial foundation for the suit. The petitioner-plaintiff having filed the suit initially for injunction and in view of the alleged subsequent acts of encroachment and construction, the reliefs of possession and mandatory injunction were added later on. These reliefs, even according to the plaintiff, are in fact based on the subsequent cause of action. In these circumstances, it has to be held that the relief of possession constitutes the main relief and any other reliefs of injunction either perpetual or mandatory fall behind the same and become ancillary to the same. Even if the suit is to be treated as a comprehensive one including the reliefs of injunction and possession, apart from basing upon different causes of action, it only calls for payment of the highest Court fee leviable on the reliefs as per Section 6(2) of the Act viz., possessory relief.

8. Accordingly, the lower Court is right in calling upon the plaintiff to pay the Court fee as per Section 24 of the Act on the substantiation of the market value by necessary certificates as contemplated.

9. In view of the aforesaid reasons. I do not find any merits in the revision and it is therefore, dismissed. No costs.