
AIR 1971 AP 142

Andhra Pradesh High Court

Case No: C.R.P. No. 42 of 1970

Nooney Kondiah

APPELLANT

Vs

Nayudu Ramanareddy

RESPONDENT

Date of Decision: July 1, 1970

Citation: AIR 1971 AP 142

Hon'ble Judges: Parthasarathy, J

Bench: Single Bench

Advocate: K.B. Krishna Murthy, for the Appellant; N. Subba Reddy, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

1. The question raised in this revision petition relates to the valuation of the suit and the court-fee payable by the plaintiff.
2. The suit was laid for the grant of an injunction. The question whether the plaintiff has properly valued the suit and the adequacy of the court-fee paid by him, came up for consideration before the District Munsif on the basis of a check slip placed before the Court. The learned District Munsif came to the conclusion that there is a denial off the title by the defendant and consequently the suit has to be valued under clause (a) of Section 26 of the Andhra Court-Fees and Suits Valuation Act (hereinafter referred to as the Act) on the half of the market value of the property. The learned District Munsif observed inter alia that "in the light of the above allegations in the written statement it is clear that the plaintiff's title to the suit property is clearly denied by the defendant. the relief sought by the plaintiff relates too immovable property. I therefore, hold that the provisions of Section 26(a) of the Andhra Pradesh Court-Fees and Suits Valuation Act applies to the facts of the instant case."
3. In this revision petition the contention of the learned counsel for the petition is that the question whether the plaintiff's title to the property is denied should not be decided on the basis of the allegations made in the written statement. The question whether a dispute as

to title arises must be considered solely with reference to the averments in the plaint. I think this contention is well founded.

4. My attention has been drawn to a decision of Rajagopala Ayyangar, J. in Ponnuswami Gounder v. Sinnan Goundar. (1956) 2 MLJ 323 : (AIR 1956 Mad 52). The learned Judge had to construe the terms of a notification the provisions of clause (a) of Section 26(a) of the Andhra Pradesh Act. The learned Judge observed that two conditions are to be satisfied before a plaint could be held to fall within the scope of the notification; the first is that the suit should be one for an injunction in relation to immovable property restraining the defendant from disturbing the plaintiff's possession or enjoyment. The second condition is that it must be possible to the ground on which the defendant is seeking to disturb the plaintiff's possession is on foot of a denial of the plaintiff's title.

5. The observations made by the learned Judge in construing the notification made under the Madras Court-Fees Act are apposite in the present case. Unless it can be postulated on the construction of the averments in the plaint that a denial of the plaintiff's title by the defendant is made the basis of the suit, the case does not attract the operation of clause (a) of Section 26(a) of the Act. The learned District Munsif is clearly in error in regarding the averments in the written statement as material for determining whether the condition to the denial of the title is made out. If the averments in the written statement are excluded from consideration and the matter is decided with reference to what the plaintiff sets out in the plaint, there can be little doubt that there is no allegation of any denial of title. The suit is in essence one for injunction and it has to succeed or fail on proof of possession. The questions in regard to the title are extraneous and did not fall for consideration. It therefore follows that the case does not attract the operation of clause (a) of Section 26(a) of the Act

6. The learned counsel for the respondent drew my attention to the observations of the Full Bench in C.C. Reddy v. K.C. Reddy 1968 2 AWR 626. I am unable to see how the observations are helpful in the determination of the question raised in this revision petition. It is no doubt true that the learned Judges referred to three stages where the question of court-fee may possibly be considered by a Court. The observations refer to the wide jurisdiction which the Court had in reviewing the question to court-fee although at an earlier stage there has been a pronouncement about the adequacy of the court-fee paid. But these observations are made in regard to a case where the facts are wholly different. At page 631 the following observation occurs:-

"It certainly extends to all materials furnished by the plaintiff, all admissions wherever and whenever, made by the plaintiff including admissions made in interlocutory matters in the suit, all documents produced by the plaintiff or to which reference is made in the plaint, all undisputed facts brought to the Court's notice by the defendant, and all the other facts which may be established without going into the main controversy between the parties."

It is clear from the passage extracted above from the decision of the Full Bench that the decision in regard to court-fee must depend primarily on the averments in the plaint and on the undisputed evidentiary material and the documents placed before the Court by the plaintiff. The conclusion therefore must be that a disputed fact that is asserted as into account for determining cannot be taken into account for determining the court-fee payable under Clause (a) of Section 26 of the Act.

7. Learned counsel for the respondent has submitted that the language of clause (a) of Section 26(a) is wide enough to include within its ambit even a dispute as to title which arises by reason of defence urged in the written statement. According to him the expression, "the plaintiff's title to the property is denied" must be construed to include a denial of plaintiff's title in the written statement also. This construction ignores the fundamental principle recognized by the Full Bench in the observations cited above that the decision as to court-fee payable by a plaintiff must depend primarily on the averments in the plaint itself. That apart even if the language of the Section is capable of being construed in the manner suggested by Mr. Subba Reddy, I must decline to accept the construction placed by him because where there is an ambiguity in a fiscal enactment, the leaning of the Court must be to uphold a construction that is in favour of the subject.

This principle has been accorded approval in the decision of another Full Bench of this Court in [Kumarika Subarna Rekha Mani Devi and Others Vs. Ramakrishna Deo and Others](#), . The learned judges pointed out in the latter case that if there is an anomaly in the law of court-fees, or an omission, the party charged can take advantage of it. It is clear to my mind that even if on a strained construction a denial of title emanating from the written statement is also to be included within the purview of Section 26(a) such construction cannot be countenanced as it is repugnant to the canons of construction that ought to govern the interpretation of fiscal enactments. I am therefore unable to accept the submission of the learned counsel for the respondent on Section 26(a) of the Act.

8. It was lastly urged that the case comes under clause (c) of Section 26(a) of the Act. The lower Court has not rested its decision on clause (c) and there is no reason why I should find a basis not acted upon by the lower court for upholding the order made by it especially when the relevant date for considering the question in relation to clause (c) had not been placed before the court. There is no need therefore to consider whether clause (c) of Section 26(a) of the Act is applicable to the case on hand.

9. The result is that the revision petition is allowed. The costs of this revision shall abide the result of the suit.

10. Petition allowed.