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Sadarali Biswas Vs Wazed Ali Mondal

C.O. No. 543 of 2012

Court: Calcutta High Court

Date of Decision: Dec. 17, 2012

Acts Referred:
Civil Procedure Code, 1908 (CPC) â€" Order 7 Rule 11#West Bengal Court Fees Act, 1970 â€" Section 11, 7(iv), 7(iv)(b), 7(iv)(c), 7(vi)

Citation: (2013) 2 CHN 481

Hon'ble Judges: Soumen Sen, J

Bench: Single Bench

Advocate: Hiranmoy Bhattacharya and Sounak Mukherjee, for the Appellant;

Judgement

Soumen Sen, J.
The instant revisional application is arising out of an order passed by the Civil Judge (Junior Division), 3rd Court,

Krishnagar, Nadia in rejecting an application filed by the defendant/petitioner on 18th May, 2011 raising an application as to the pecuniary

jurisdiction of the Trial Court to receive, try and determine the suit. The plaintiff filed a suit for declaration, injunction and recovery of session of

immoveable property. The plaintiff for declaration valued the suit at Rs. 150/- and possession Rs. 50/- and filed the suit before the learned Civil

Judge (Junior Division), 3rd Court, Krishnanagar. The plaintiffs valued the suit on the basis of its assertion that the defendants are trespassers and

paid the Court-fees on the basis of the reliefs prayed for in the plaint.

2. The defendant filed an application on 18th May, 2011 raising a preliminary objection as to the pecuniary jurisdiction of the Trial Court. The

learned Court below refused to entertain the said application on the ground that the said application was filed at a belated stage. The suit is fixed

for peremptory hearing and the evidence was about to commence. The suit was filed in the year 2007 and the plaint was subsequently amended.

The defendants entered appearance and filed their written statement but did not raise any objection with regard to the valuation of the suit.

3. Mr. Hiranmoy Bhattacharya, learned Counsel appearing on behalf of the petitioners submits that the suit has been undervalued. It is submitted

that the suit should have been valued u/s 7(VI) and not u/s 7(IV) of the Court-fees Act, 1970. In order to appreciate such argument reference may

be made to section 7(IV)(b) and 7(VI)(a) which are reproduced hereinbelow:--

7. Computation of fees payable in certain suits.--The amount of fee payable under this Act in the suits next hereinafter mentioned shall be

computed as follows:--

(iv) In suits--

(b) to obtain a declaratory decree or order, where consequential relief is prayed,

(v) In a suit for recovery of possession of immovable property from--

(a) a trespasser, where no declaration of title to property is either prayed for or necessary for dismissal of the suit - according to the amount at

which the relief sought is valued in the plaint subject to the provisions of section 11.

4. In a suit for recovery of possession of an immoveable property against a trespasser where no relief for declaration of title is either prayed for or

necessary for disposal of the suit the Court-fee is required to be calculated according to the amount at which the relief sought is valued in the plaint.

The suit may be valued by applying the objective standard. Section 7(vi)(a) and 11 of the West Bengal Court-fees Act of 1970 are to be read

together. Section 11 of the Court-fees Act empowers the Court to make an enquiry as to the valuation of any suit if it is of opinion that the subject-

matter of the suit has been wrongly valued. The Court is required to find out what is the ""relief sought"". If the ""relief sought"" comes within the

meaning of section 7(vi)(a) is recovery of possession of the suit property together with structures from the defendant, the Court is required to find

out on an enquiry being invited to ascertain if on objective standard of valuation it can be said that the suit has been properly valued.

5. The learned Counsel has relied upon a decision reported in Miss Ila Choudhury Vs. Smt. Maya Bose and Others, The following paragraphs are

reproduced hereinbelow:--

5. It appears that the learned Court below after dwelling at length with the respective contention of the parties went on to reject the defendant No.

1''s petition by observing, inter alia as follows:

.....Upon considering the materials on record and also considering the facts and circumstances of the case, I am of the considered view that the

decisions of the Hon''ble Court, as reported are referred to as above can be made applicable in favour of the plaintiff of the suit specifically when

evidence is required prior to deal with the matters.

It may be placed on record that the Id. Advocate appearing on behalf of the defendant No. 1, contended that in suit to depose a right to pre-

emption the suit is required to be valued according to the market value of the land, building or garden in respect of which right is claimed.

To substantiate the said contention he has also referred to a decision of the Hon''ble Court reported in Subodh Gopal Basu Vs. Sri Sri Ishwar

Sridhar Thakur Jiu and Mst. Mohd Banu Begam Vs. Mst. Sultani and Another . But so far as the factual matrix of the present case and the facts

and circumstances of the present case is concerned the decisions of the Hon''ble Court as arose cited on behalf of the defendant No. 1 is to be

distinguishable the instant matter is to be considered at the time of final hearing of the suit by framing an issue in this regard. Therefore, the petition

as filed on behalf of the defendant No. 1 on 02 January, 1998 is liable to be rejected.

14. In my opinion, based on the above observations of our High Court and taking into consideration the fact that the aspect of valuation goes to

the very root of the jurisdiction of the Court, it was not open to the learned Court below to simply keep the matter undecided and in abeyance till

final hearing of the suit. As observed hereinabove, the provisions of West Bengal Court-fees Act, 1970, which is a special statute, brought into

force by the state legislature for the purpose of amending and consolidating the law relating to levy of Court-fees within the State of West Bengal,

enjoins an obligatory duty upon a Court to ascertain the correct valuation of a suit. For this very purpose, the legislature, in its wisdom,

incorporated section 11 in the statute-book, which allows the Court to cause an enquiry as to valuation of a suit, if the Court is of the opinion that

the subject-matter of any suit has been wrongly valued. Valuation of a suit is a must and the obligatory duty of a Court to ascertain the same cannot

be kept suspended till the final hearing of a suit. The West Bengal Court-fees Act, 1970, being a special statute, is a complete Code in itself, which

provides, inter alia, for mechanism in order to ensure levy, recovery as well as refund of Court-fees by a Court.

6. In Nasiruddin Mallick and Others Vs. Abdul Aziz Mallick and Others, it has been held that a decision upon the sufficiency or otherwise of the

Court-fees paid on the plaint in the instant case will affect the question of pecuniary jurisdiction of the Court of first instance to try the suit.

Therefore, the decision of the Trial Court complained of does not relate only to fiscal matter. The defendant accordingly was entitled to move this

revisional application in effect contending that the real value of the consequential relief prayed in the plaint exceeded the pecuniary jurisdiction of

the learned Munsif. If a decision as to sufficiency of Court-fees paid is reached by assuming jurisdiction which the Court does not possess or

without observing the prescribed formalities, the order would be revisable by the High Court in its revisional jurisdiction.

7. In M/s. Bangshidar Agarwal vs. W.B.S.E.B. reported in 1988(1) CHN 286 it has been held that if on a reading of the plaint as a whole it

appears that permanent injunction as sought for by the petitioner is a consequential relief to the declaration asked for and the relief of permanent

injunction is not an independent relief and cannot be granted without making the declaration asked for, the computation in that case has to be made

in accordance with section 7(iv)(b) and not u/s 7(iv)(c) of the Act. The petitioner is liable to pay Court-fees according to the amount at which the

relief sought for are valued.

8. The words ""consequential relief"" imply that the other relief should be one which flows directly from the declaration which the plaintiff desires to

make. This means that the plaintiff should be entitled to the other relief only as a necessary consequence or a result of the granting of the

declaratory relief. The other relief must be so dependent upon the declaratory relief that it cannot be allowed if the principal relief is refused. (

Naba Kumar Das and Others Vs. Damodar Das,

9. The manner in which the relief is sought for and couched in the plaint shall not be the sole criterion for determination of Court-fees and the

provision of section 7(vi)(a) of the Court-fees Act shall not operate as a bar for revision of the valuation by the Court if the basis of such valuation

is provided in the plaint itself. (Smt. Nilima Bose Vs. Santosh Kumar Ghosh,

10. In a suit covered u/s 7(iv) the plaintiff has the sole discretion to fix valuation and the Court cannot determine whether the valuation given by the

plaintiff is fair and reasonable. Where a suit is governed by section 7(iv)(c) is filed the plaintiff has the right to put his own valuation on the relief

claimed and such valuation is to be accepted unless it is wholly arbitrary, unreasonable and without any rational basis, however, merely because

relief is not valued at market value it does not become arbitrary or unreasonable and if plaintiff can support the valuation on any rational basis, the

same has to be accepted. The plaintiff praying for relief u/s 7(iv)(c) may put his own valuation, but it is not binding on the Court and it may refuse

to accept the figure if the plaintiffs valuation is arbitrary or unreasonable, and it can exercise the powers under Order 7 Rule 11 of the Civil

Procedure Code.

11. The Court-fee payable will be determined on the nature of the suit as framed at the choice of the plaintiff, provided it is legally open to him to

frame the suit in that manner. If in a suit for declaration and possession, if declaration is the main relief and relief of possession is only consequential,

the suit would fall u/s 7(iv)(c) of the Court-fees Act and not otherwise. In the present case the plaintiffs are not in possession of the property for

which the relief of injunction is being sought for. Therefore, it cannot be held that the suit for declaration is not required to be claimed in the case. In

the circumstances the plaintiffs have to put the value of the suit for the purpose of Court-fees u/s 7(iv)(c). The plaintiffs pray for permanent

injunction restraining the defendants from constructing or otherwise alienating the property. Ad valorem Court-fee on the market value of the

property is payable. In the instant case, the defendant at a belated stage raised an objection with liberty to the pecuniary jurisdiction of the Trial

Judge on the basis of some documents which according to the defendant are the market value of properties in respect of the adjoining areas. This

objection as to the pecuniary jurisdiction on the basis of such alleged deeds cannot be decided as a preliminary issue. In my view, the learned Trial

Judge is justified in rejecting the said application for framing a preliminary issue as to the pecuniary jurisdiction of the Court. In fact, as it would

appear from the order impugned, the learned Trial Judge, while dismissing the said application, observed that the jurisdictional point is one of the

issues to be decided at the time of trial. In view thereof, the right of the petitioner is adequately protected. The revisional application, thus, failed.

However, there shall be no order as to costs.

Urgent xerox certified copy of this judgment, if applied for, be given to the parties on usual undertaking.