

Sailendra Nath Mitra Vs Ram Chandra Pal and Others

Court: Calcutta High Court

Date of Decision: May 16, 1921

Judgement

Mookerjee, J.

This is a Reference under sec. 5 of the Court Fees Act, in an Appeal from Appellate Decree, which arises out of a suit for

specific performance of a contract to grant a lease. The suit which was instituted on the 27th August 1915 in the Court of the Subordinate Judge of

Midnapur was valued at Rs. 1,200 for the purpose of determining the jurisdiction and at Rs. 32 for the purpose of payment of Court-fees. The

claim was decreed in the Court of first instance and the first Defendant was directed to execute in favour of the Plaintiff's a lease for the disputed

land on a fixed rental of Rs. 32. On appeal to the District Judge, the decision of the primary Court, was reversed on the 17th January 1918 and the

suit was dismissed. On second appeal to this Court, the decree of the District Judge was set aside and the case was remanded for retrial. After

remand, the District Judge reheard the appeal and affirmed the decree of the Court of first instance. Against this decree a second appeal has been

preferred to this Court. The appeal has been valued at Rs. 32 which is the amount of rent annually payable for the contract of tenancy sought to be

specifically enforced. This valuation was based on sec. 7, sub-sec. (x), cl. (c) of the Court Fees Act. Objection was taken by the Stamp Reporter

to the valuation on the ground that under sec. 8 of the Suits Valuation Act, the Court-fee was payable on the value of the appeal as stated for

purposes of jurisdiction. As this view was controverted on behalf of the Appellant, the matter was placed before the Taxing Officer, who referred

the question to the Chief Justice, as it was in his opinion one of general importance. The determination of the point in controversy depends upon the

true construction of sec. 7, sub-sec. (x), cl. (c) of the Court Fees Act and sec. 8 of the Suits Valuation Act. Sec. 7, sub-sec. (x), cl. (c) of the

Court Fees Act provides that the amount of fee payable in a suit for specific performance of a contract of lease shall be computed according to the

aggregate amount of the fine or premium, if any, and of the rent agreed to be paid during the first year of the term. Sec. 8 of the Suits Valuation Act

provides that where in suits other than those referred to in the Court Fees Act, 1870, sec. 7, paras. V, VI, IX and para. X, cl. (d), Court-fees are

payable ad valorem under the Court Fees Act, 1870, the value as determinable for the computation of Court-fees and the value for purposes of

jurisdiction shall be the same. The view taken by the Stamp Reporter is that as the suit has been valued for purposes of jurisdiction at Rs. 1,200,

the value as determinable for the computation of Court-fees must also be deemed to be Rs. 1,200. I am of opinion that this position cannot be

supported as it ignores the provision in sec. 7 of the Court Fees Act, which is brought into conflict with the provision in sec. 8 of the Suits

Valuation Act. If the construction put upon sec. 8 of the Suits Valuation Act, namely, that the valuation for purposes of jurisdiction is to be

determined by the market value of the property and that valuation is to be taken for the purposes of payment of Court-fees, were correct, the

effect would be to nullify the provisions of sec. 7 of the Court Fees Act. The right construction of sec. 8 of the Suits Valuation Act is that the

valuation for the purposes of jurisdiction should, in the cases mentioned there, follow and be the same as valuation for Court fees. This view is

supported by the decision in Hari Sankar v. Kali Kumar I. L. R. 32 Cal. 734: s. c. 9 C. W. N. 690 (1905) which approved the earlier cases of

Bai Varunda Lakshmi v. Bai Manegavri I. L. R. 18 Bom. 207 (1893) and Velu Gounden v. Kumara Velu I. L. R. 20 Mad. 289 (1896). The

procedure to be adopted in cases of this character is obvious; first value the suit for payment of Court-fees in accordance with the rule embodied

in sec. 7, sub-sec. (x), cl. (c) of the Court Fees Act; then adopt the value so determined for the computation of Court-fees, as the value for

purposes of jurisdiction. There is a manifest danger of conflict between the provisions of the two statutes if the process is reversed ; in other words,

the substance of the matter is that the valuation for assessment of Court-fees controls the valuation for purposes of jurisdiction. I hold accordingly

that in the present case the value for the purpose of payment of Court-fees was correctly assessed at Rs. 32 under sec. 7 of the Court Fees Act

and that the value for the purpose of jurisdiction is consequently only Rs. 32 under sec. 8 of the Suits Valuation Act. This no doubt leads to the

conclusion that the suit was not instituted in the Court of the lowest grade competent to try it, in contravention of sec. 15 of the Civil Procedure

Code; but sec. 11 of the Suits Valuation Act affords the Plaintiffs adequate protection, see also Nidhi Lal v. Mazahar Hossein I. L. R. 7 All. 230

(1884) and Matra Mandal v. Hari Mohan ILR 17 Cal. 155 (1889). In my opinion, the memorandum of appeal bears the requisite amount of

Court-fees and must, if otherwise in order, be registered.