

(1953) 04 CAL CK 0024

Calcutta High Court

Case No: Civil Revision Case No. 2889 of 1951

Hafiz Md. Fateh Nasib
Mutwali

APPELLANT

Vs

Haji Abdur Rub and
Others

RESPONDENT

Date of Decision: April 30, 1953

Acts Referred:

- Court Fees Act, 1870 - Section 12, 12(1), 7, 7(iv), 7(iv)(c)

Citation: 57 CWN 820

Hon'ble Judges: Lahiri, J; Guha Ray, J

Bench: Division Bench

Advocate: Manindra Nath Ghose and Sukumar Sen, for the Appellant; Mahendra Nath Mitter, for the Respondent

Judgement

Lahiri, J.

In this rule which has been obtained by the plaintiff the only question is what should be the Court fee payable by the plaintiff. The plaintiff instituted a suit for recovery of possession as Mutwali of certain properties described in the plaint. The plaintiff's case is that the subject matter of the suit formed part of a public Wakf created as far back as 1876 and 1880 and that certain persons while acting as Mutwallis illegally transferred certain properties, some of which form the subject matter of the suit, treating them as secular properties. The plaintiff seeks to recover possession of those properties as Mutwali on the ground that they are Wakf properties and that the alienations are unauthorized. In the plaint the plaintiff valued the relief at Rs.12,000 and paid Court-fees on that basis. At the hearing a preliminary issue was raised as to the sufficiency of the Court-fee and during the trial of this issue certain papers relating to the valuation of the property were filed from the office of the Corporation of Calcutta and the plaintiff also conceded that the market value of the properties would be Rs.40,000. the learned Subordinate Judge forthwith directed the plaintiff to pay ad valorem Court-fee upon that

amount and it is against this order that the present rule has been obtained.

2. Mr. Ghose appearing in support of the rule has contended in the first place that this suit is to be governed by Section 7, clause (iv) (c) of the Court Fees Act and the Court-fees should be paid upon the amount at which the plaintiff valued his relief in the plaint. We were at first very much impressed by the argument. On closer scrutiny, however, we find that this argument cannot be accepted. From an examination of the plaint it appears that the plaintiff did not make any prayer for declaration of his title and upon the facts stated in the plaint it was not necessary to make that declaration either. If the principal relief is for declaration and the plaintiff's right to possession depends upon his being entitled to that declaration this suit may legitimately come u/s 7 (iv) (c). In such a case the relief for possession may be regarded as a consequential relief, but where, as in the present case, there is no prayer for any declaration and the only prayer is for recovery of possession, we cannot hold that the case comes u/s 7(iv)(c). Mr. Ghose relied upon the decision of a Division Bench of this Court in the case of *Mahammad Eshaque v. Kazi Mahammad Amin* [ILR (1949) 1 Cal 333]. At page 349, Mukherjee, J., in delivering the judgment of the Court made the following observations:

"The plaintiff was undoubtedly suing as Mutwalli and he wanted to recover possession of properties, admitted by the defendant to be Wakf properties, solely in that capacity. The Mutwalli is not the owner and he can be called upon to value his suit in accordance with his estimate of what the value of his rights as Mutwalli of the properties would amount to".

3. There can be no doubt that his Lordship was assuming for the purpose of that case that the suit was governed by Section 7(iv)(c). From the opening paragraph of the judgment of that case it is clear that in that case the suit was for a declaration of title as a Mutwalli and for recovery of possession of the property in that capacity. In that case, therefore, there was a prayer for declaration and also a prayer for recovery of possession and that case could be treated as falling u/s 7(iv)(c). But in the case before us there is no prayer for declaration of the plaintiff's title as a Mutwalli of the Wakf estate and, as we have already stated upon the facts stated in the plaint it was not necessary for the plaintiff to make that prayer. We cannot, therefore, accept Mr. Ghose's argument that the suit should be governed by Section 7(iv)(c). Therefore we must hold that this case comes u/s 7(iv)(c) of the Court Fees Act.

4. Under the provisions of Section 7(iv), in suits for possession of land Court-fee has to be paid according to the value of the subject matter and such value shall be deemed fifteen times the net profits which have arisen from the land during the year next before the date of institution of the suit, or upon the market value, whichever is less. In this case having regard to the nature of the properties as described in the schedule to the plaint we have reached the conclusion that 15 times the net profits from the land during the year next before the date of institution of the suit will be higher than the market value of the properties, and this is not also seriously controverted by the parties before us. The Court-fee will have accordingly to be paid upon the market value of the properties.

5. The question is whether the learned Subordinate Judge was right in directing the plaintiff to pay Court-fee upon Rs.40,000. It is quite clear that the learned Subordinate Judge arrived at that figure upon the exhibits filed before him including certain Corporation papers. These Corporation papers must be the valuation papers for the purpose of assessment by the Corporation authorities. The valuation given in those documents evidently relates to the value of the properties treating them as secular properties. We are of the opinion that the learned Subordinate Judge has exercised his jurisdiction with material irregularity in holding that the value of the properties as secular properties will be the same as their value if they are treated as wakf properties. Upon the allegations in the plaint, we have no doubt that the plaintiff was claiming these properties as wakf properties and not a secular properties. We must, therefore, hold that the principle applied by the learned Subordinate Judge for determining the valuation of the properties is wrong.

6. The next question is whether we should send back the case on remand for determining the valuation of these properties treated as wakf properties. After giving the matter our best consideration we have reached the conclusion that it will be useless to send it back on remand for this purpose because no objective standard will be available for determining the market value of wakf properties. We must accordingly hold that the decision arrived at by the learned Subordinate Judge about the valuation of the properties in dispute is wrong.

7. Mr. Mitter appearing for the opposite parties has strongly contended that the expression "subject matter" in Section 7(iv)(c) of the Court Fees Act must mean the properties as secular properties, but we cannot accept this argument as correct. The subject matter of the suit, in our opinion, means the interest of the plaintiff in the land or building or garden and upon the allegations made in the plaint we have no doubt that the plaintiff was seeking the relief only as a Mutwalli. As a Mutwalli his interest in the disputed properties will be much narrower than the interest of a full owner. In these circumstances, we must hold that the interest claimed by the plaintiff as a Mutwalli cannot be valued at the same figure as his interest as a full owner.

8. Mr. Mitter has further contended that the decision of the trial Court on the question of Court-fees, is final under the provisions of Section 12(1) of the Act which provides that "every question relating to valuation for the purpose of determining the amount of any feeshall be decided by the Court in which such plaintis filed and such decision shall be final as between the parties to the suit". Mr. Mitter has also cited before us the decision of the Supreme Court in the case of Nemi Chand v. The Edward Mills Co. Ltd. [(1952) SCA 817], where the scope of Section 12 of the Court Fees Act has been examined in some detail and it has been pointed out that according to the decisions of the Calcutta High Court the finality declared by Section 12 is limited only to the question of valuation pure and simple and does not relate to the category under which a certain suit falls. At page 828 his Lordship Mahajan, J., makes the following observations :

"Section 12, when it says that such a decision shall be final between the parties, only makes the decision of the Court on a question of Court-fee non appealable and places it on the same footing as other interlocutory non-appealable orders under the Code and it does no more than that. If a decision u/s 12 is reached by assuming jurisdiction which the Court does not possess, or without observing the formalities which are prescribed for reaching a decision, the order obviously would be revisable by the High Court in the exercise of revisional powers."

9. In the case before us we have reached the conclusion that the decision of the Court below was arrived at by applying a wrong principle to the facts of this case and we accordingly hold that it exercised its jurisdiction with material irregularity in ordering the plaintiff to pay Court-fee upon the value of the properties treating them as secular properties although the plaintiff claimed recovery of possession of the properties as Wakf properties.

10. In these circumstances, we make this Rule absolute, set aside the order of the learned Subordinate Judge and direct that the valuation put by the plaintiff in the plaint should be accepted as correct, because we hold that valuation is neither unreasonable nor arbitrary.

11. In the circumstances of this case, we direct the parties to bear their own costs of this Court.