

Nasiruddin Mallick and Others Vs Abdul Aziz Mallick and Others

Court: Calcutta High Court

Date of Decision: Nov. 28, 1986

Acts Referred: Suits Valuation Act, 1887 " Section 8
 West Bengal Court Fees Act, 1970 " Section 11, 12, 16, 7(iv), 7(iv)(b)

Citation: 91 CWN 837

Hon'ble Judges: N.K. Mitra, J

Bench: Single Bench

Advocate: B.C. Ghose Roy and S. Parmar, for the Appellant; Haradhan Banerjee for Opposite Party No. 1, for the Respondent

Judgement

N.K. Mitra, J.

The opposite party no. 1 filed Title Suit No. 78 of 1976 renumbered as Title Suit No. 112 of 1980 in the 1st Court of the

learned Additional Munsif, Howrah against the petitioners and other opposite parties for declaration of title over the suit property as a Mutwalli

and for recovery of possession and injunction and valued the suit at Rs. 100/-. The defendant/petitioners in their written statement inter alia,

disputed the valuation of the suit and alleged that the value of the suit property being more than rupees 4 lakhs, advalorem court fees should have

been paid on it and the learned Munsif had no pecuniary jurisdiction to try the suit. The petitioners subsequently filed an application on 10th

September, 1982 for deciding the valuation matter first and the learned Munsif by his order date 25th March, 1983 accepted the valuation given

by the plaintiff and dismissed the said application of the defendant no. holding inter alia, that the principal relief claimed in the suit being declaration

of title as mutwalli, the valuation of the suit should be according to provisions of 7(iv)(c) of the West Bengal Court Fees Act, 1970. The learned

Munsif relief upon the decision reported in Mahammad Eshaque Vs. Mahammad Amin and Others ; Hafiz Md. Fateh Nasib Vs. Haji Abdur Rub

and Others, and Hafiz Md. Fateh Nasib Vs. Haji Abdur Rub and Others, . Mr. Ghose Ray, learned advocate appearing on behalf of the

petitioners contended before me that since the principal relief prayed by the plaintiff in the suit was for recovery of possession the provisions of

Section 7(v) of the West Bengal Court Fees Act, 1970 would be attracted and in support of his contention referred to the decisions in Manick

Chand Mondal & Anr. v. Sudhir Kumar Mondal reported in 64 CWN page 80, Sisir Kumar Dutta & Ors. v. Sushil Kumar Dutta, reported in 65

CWN page 1 (Special Bench); Sm. Belarani Bhattacharyya and Others Vs. Khondkar Asadar Rahaman and Others, Narayangunj Central Co-

operative Sale and Supply Society Ltd. v. Maulvi Mafizuddin Ahmed & Anr., reported in 38 CWN 589 (Full Bench); Taramoni Chandra & Ors.

v. Md. Ali Haider, reported in 80 CWN 1082, and Sambhu Nath Singh and Others Vs. Sankarananda Banerjee, .

2. Mr. Haradhan Banerjee, learned Advocate appearing on behalf of the opposite party, however, has submitted that since the principal relief in

the suit is for declaration of the Mutwalli right over the suit property, the suit falls u/s 7(iv)(b) read with 7(iv)(c) and not u/s 7(v) of the West Bengal

Court Fees Act, 1970 and that the question of Court fees on plaint is primarily the question between the plaintiff and the court and the defendant

can have no grievances in the matter and also has no right to challenge the finding of the court on that issue in revision. In support of his contentions

Mr. Banerjee relied upon the decisions in Hafiz Md. Fateh Nasib Vs. Haji Abdur Rub and Others, . Mohammad Eshaque Vs. Mohammad Amin

and Others and also Sri Ratnavaramaraja Vs. Smt. Vimla, ,

3. I am unable to accept this submission of the learned advocate for the opposite party that in view of the Supreme Court decision in the case of Sri

Rathnavarmarja v. Smt. Vimla (Supra) this revisional application against the trial court's determination of the valuation matter is not maintainable.

4. The plaintiff of this instant suit has purported to pay court fees upon his plaint in terms of Section 7(iv)(b) of the West Bengal Court Fees Act,

1970. According to Section 8 of the Suits Valuation Act value as determinable for computation of Court fees and the value for the purposes of the

jurisdiction shall be the same. In other words a decision upon the sufficiency or otherwise of the court fees paid upon the plaint of the instant case

will effect the question of pecuniary jurisdiction of the Court of First instance to try the suit....Therefore, in the instant case, the decision of the trial

court complained of does not relate only to a 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. In this

regard I respectfully agree with the views on this point expressed by B. N. Moitra, J. in the case of Sambhu Singh & Ors. v. Sankarananda

Banerjee (Supra). Mookerjee, J., as he then was, in Taramoni Chandra v. Ad. Ali Haider (Supra) relying upon the Supreme Court decision in

Nemai Chand v. Edward Mills Co., AIR 1952 SC 28. had also explained the scope of Section 12 of the Court Fees Act, 1970 (corresponding to

Section 16 of West Bengal Court Fees Act, 1970): If a decision as to the sufficiency of court fees paid does not possess or without observing the

prescribed formalities, the order would be, revisable by the High Court in its revisional jurisdiction.

5. I now proceed to consider whether in deciding the valuation matter the learned Munsif had committed any jurisdictional error. The plaintiff

claims to be a Mutwalli and all the items of property in suit were alleged to be belonging to a wakf. The plaint contains prayers for certain

declaratory reliefs and also for consequential relief by way of recovery of possession of immovable properties which a realleged to be wakf

properties. Court fees upon the plaint have been paid u/s 7(iv)(b) of the West Bengal Court Fees Act, 1970

6. For the purpose of deciding the question of valuation, the Court is to examine the nature of the suit and what is the principal relief therein in the

instant case the declaratory reliefs prayed by the plaintiff constitute the principal prayers and the prayer for recovery of possession of the suit

property is a consequential one i.e. ancillary to the main relief. Unless the plaintiff is granted the declaratory reliefs prayed for by him, he would not

be granted the said consequential relief by way of recovery of possession (reference may also be made to the observations of the Privy Council in

the case of *Rachappa Subao Jadav v. Shidippa* reported in L.R. 46 IndAp 24). Therefore, provisions of Section 7(iv) and not 7(v) of the West

Bengal Court- Fees Act would be attracted. It is settled law that u/s 7(iv)(b) or (c) of the West Bengal Court Fees Act, the plaintiff is entitled to

state the amount at which he values the relief sought for. In a large majority of cases such valuation of the consequential relief u/s 7(iv)(b) and (c) of

the Act sought for is upon subjective basis. Since no rules have been as yet framed u/s 11 of the West Bengal Court Fees Act (corresponding to

Section 8C of Court Fees Act, 1970) or u/s 8 of the Suits Valuation Act, the court would generally be unable to revise the said value of the

consequential relief given by the plaintiff. But when such value is palpably absurd, manifestly illogical or arithmetically wrong the court has power to

correct the same (vide Full Bench decision in *Narayangunj Central Co-operative Sale and Supply Society Ltd. v. Maulvi Mafizuddin Ahmed &*

Anr. reported in 38 CWN 589 = ILR 61 Cal 796 and also in the case of *Taramoni Chandra v. Md. Ali Haider* (Supra).

7. In this case the plaintiff has prayed by way of consequential relief recovery of possession of certain items of immovable property. I am unable to

apply straight away the ratio of decisions in the case of *Manik Chand Mondal and Another Vs. Sudhir Kumar Mondal and Another*, , *Sisir Kumar*

Dutta and Others Vs. Susil Kumar Dutta, . Because these cases were governed by Section 7(v) of the Court Fees Act, 1870 and the immovable

property whose recovery was prayed for was secular in nature. Those two reported decisions did not differ from the views expressed by me as

hereinbefore.

8. In matter of valuation of the relief for recovery of possession of immovable property this Court seems to have always drawn a distinction

between secular properties and wakf properties.

9. In the case of Md. Eshaque v. Md. Amin & Ors. (supra) B.K. Mukherjee and K.C. Chunder JJ. held inter alia, with reference to a suit by the

Mutwalli for declaration of title and recovery of possession of admitted wakf property that it is true that the suit being one for possession, ad

valorem court fees should not be paid on the market value of wakf of properties. The plaintiff was undoubtedly suing as Mutwalli and he wanted to

recover the 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.

The Court can certainly check this estimate and decide for itself on proper materials as to what the valuation should be.

10. In the case of Hafiz Md. Fateh Nasib v. Hazi Abdur Rub & An (Supra) Lahiri and Guha Roy, JJ. held inter alia, distinguishing the decisic in

Md. Eshaque v. Md. Amin (Supra) that in a suit brought by Mutwal to recover possession of wakf property alienated by a former Mutwall if the

principal relief is for declaration and the plaintiff's right of possession depends upon his being entitled to that declaration, the suit is legitimately

come u/s 7(iv) (c) of the Court Fees Act, 187. In such a case, the relief for possession may be regarded as a consequential relief. It has also been

held in the said decision that the subject matter in such a suit means the interest of the plaintiff in the land building or garden.

11. In the case of Smt. Belarani Bhattacharyee & Ors. v. Khandkai Ashadar Rahaman & Ors. (Supra) although it was held by M.M. Dutt J. that

in a suit for declaration that the disputed land was Pirottar property and for recovery of possession ad valorem court fees on value of the disputed

property is to be paid and not on the valuation given by the plaintiff, but in the said case none of the above decisions were cited at the Bar and as

such His Lordship had no occasion to discuss the aforesaid decisions.

12. But it ought to be made clear that the Court has power to enquire whether the valuation of the consequential relief in respect of wakf property

in a suit has been correctly made. In case, the value is absurd or illogical, the court may certainly revise the valuation made by the plaintiff and

demand payment of additional court fees and I respectfully agree with the view of this Court on this point in the case of Taramoni Chandra v. Md.

Ali Haider (Supra).

13. When a plaintiff comes to Court as a Mutwalli and his interest is to be valued, it is only reasonable to say that it is the market value of the

Mutwalli's interest which forms the basis but it cannot be said that in a suit filed by the Mutwalli for recovery of possession of wakf property

governed either by Section 7(iv)(b) of Section 7(v) of the West Bengal Court Fees Act, 1970, the valuation given in the plaint is final and the Court

is powerless to hold any enquiry to determine whether the suit has been correctly valued or not and whether the relief of recovery of possession of

wakf of property, sought for or the market value of the Mutwalli's interest in the wakf property has been correctly assessed or not. Therefore, the

Court below not having decided the correctness of the valuation of the present suit from proper legal stand point and also in not holding an enquiry

as to the market value of the plaintiff's interest as a Mutwalli in the suit properties, has committed a jurisdictional error and its decision is thus liable

to be set aside because the point regarding the Court fees is closely connected with the question of pecuniary jurisdiction of the court to entertain the

suit. Accordingly, the impugned order is set aside and the Rule is made absolute. The learned Munsif is directed to redetermine the issue regarding

valuation of the suit in accordance with the law and also in the light of my observations made above and thereafter to proceed with the suit. There

will be no order as to costs.

Let the records of the case go down immediately to the Court below.