S. RM. AR. S. SP. Sathappa Chettiar

Vs

S. RM. AR. RM. Ramanathan Chettiar

Civil Appeal No. 203 of 1956

(N. H. Bhagwati, B. P. Sinha, Syed Jafar Imam, J. L. Kapur, P. B. Gajendragadkar JJ)

28.11.1957

JUDGMENT

GAJENDRAGADKAR J. -

This is a plaintiff's appeal by special leave against the order passed by a Division Bench of the Madras High Court on January 25, 1955, calling upon him to pay court fees on the valuation of Rs. 15,00,000 both on his plaint and on his memorandum of appeal and it raises some interesting questions of law under the provisions of the Court Fees Act (which will be described hereafter as the Act).

The appellant had filed Civil Suit No. 311 of 1951 on the Original Side of the Madras High Court. In this suit he had claimed partition of the joint family properties and an account in respect of the joint family assets managed by the respondent. The appellant is the son of Subbiah Chettiar. His case was that Subbiah had been adopted by Lakshmi Achi in 1922. Lakshmi Achi was the widow of the undivided paternal uncle of the respondent. As a result of his adoption Subbiah became a coparcener in his adoptive family and, as Subbiah's son, the appellant claimed to have a share in the joint family properties and in the assets of the joint family and that was the basis on which a claim for partition and accounts was made by the appellant in his suit. In the plaint it had been alleged that Subbiah had filed a suit for partition of his share and had obtained a decree in the trial court. The respondent had taken an appeal against the said decree in the High Court. Pending the appeal the dispute was settled amicably between the parties and in consideration of payment of a specified sum and delivery of possession of certain sites Subbiah agreed to release all his claims and those of his son, the present appellant, in respect of the properties then in suit. According to the appellant, this compromise transaction did not bind the appellant and so he claimed to recover his share ignoring the said transaction between his father and the respondent. The plaint filed by the appellant valued the claim for accounts at Rs. 1,000 under s. 7(iv)(f) of the Act and a court fee of Rs. 112-7-0 was paid on the said amount on an valorem basis. In regard to the relief for partition the fixed court fee of Rs. 100 was paid by the appellant under Art. 17-B (Madras) of Schedule II of the Act. For the purposes of Jurisdiction, however, the appellant gave Rs. 15,00,000 as the value of his share.

It appears that the Registry, on examining the plaint, was inclined to take the view that the plaint should have borne court fee under s. 7(v) in respect of the claim for partition. Since the appellant did not accept this view the matter was referred to the Master of the Court who was the taxing officer under the Madras High Court Fees Rules, 1933. The Master felt that the issue raised by the Registry was of some importance and so, in his turn, he referred the dispute to the Judge sitting on the Original Side under s. 5 of the Act. This reference was decided by the Chamber Judge Krishnaswamy Naidu J. on October 18, 1951. The learned judge held that the appellant was not

bound to set aside the prior compromise decree between his father and the respondent and that the plaint was governed by Art. 17-B of Schedule II. Accordingly the court fee paid by the appellant in respect of his claim for partition was held to be in order.

In due course the respondent was served and he filed a written statement raising several contentions against the appellant's claim for partition and accounts. One of the points raised by the respondent was that the compromise and the release deed executed by the appellant's father and the decree that was subsequently passed between, the parties were fair and bona fide transactions and, since they amounted to a settlement of the disputed claim by the appellant's father, the plaintiff was bound by them.

Ramaswamy Gounder J. who heard the suit tried the respondent's contention about the binding character of the compromise decree as a preliminary issue. The learned judge held that there was a fair and bona fide settlement of the dispute by the appellant's father acting as the manager of his branch and so the appellant was bound by the compromise decree. In the result, the appellant's suit was dismissed on September 22, 1953.

Against this decree the appellant presented his memorandum of appeal on December 1, 1953. This memorandum bore the same court fees as the plaint. On examining the memorandum of appeal the Registry again raised the question about the sufficiency of fees paid by the appellant. The Registry took the view that the appellant should have paid court fees under s. 7(v) of the Act in respect of his claim for partition as the appellant's claim in substance was a claim for recovery of possession based on title within the meaning of s. 7(v). The matter was then referred to the Master; but, in his turn, the Master again made a reference to the Taxation Judge under s. 12(2) of the Act. Thereupon the learned Chief Justice constituted a Bench of two judges to deal with this reference.

The learned judges who heard the reference did not think it necessary to consider whether s. 12 of the Act was applicable to the present appeal. They dealt with the reference as made under s. 5 of the Act. The appellant urged before the Division Bench that the order passed by Krishnaswami Naidu J. was final since it was an order passed under s. 5 of the Act. The learned judges did not accept this contention. They held that the record did not show that Krishnaswamy Naidu J. had been nominated by the Chief Justice to hear the reference under s. 5 either by a general or a special order and so no finality could be claimed for the said order under s. 5 of the Act. On the merits the learned judges agreed with the view taken by Krishnaswamy Naidu., and held that s. 7(v) of the Act was not applicable to the appellant's claim for partition. According to the learned judges, neither was Art. 17-B of Schedule II applicable. They held that the provisions of s. 7(iv)(b) of the Act applied. That is why the appellant was directed to mention his value for the relief of partition under the said section. It may be mentioned at this stage that this order became necessary because in the plaint the plaintiff had not specifically mentioned the value for the relief of partition claimed by him. He had merely stated that for the relief of partition claimed by him he was paying a court fee of Rs. 100 in accordance with Schedule II, Art. 17-B. All that he had done in the plaint was to value his total claim for jurisdiction at Rs. 15,00,000.

In compliance with this order the appellant valued his relief to enforce his right to share in the joint family properties in suit at Rs. 50,000, paid the deficit court fee Rs. 1,662-7-0 and re-presented his memorandum of appeal in court on May 7, 1954.

That, however, was not the end of the present dispute in respect of court fees. The Registry raised another objection this time. According the Registry, since the appellant had valued his relief in the

suit for purposes of jurisdiction at Rs. 15,00,000, it was not open to him to value his relief on the memorandum of appeal under s. 7(iv)(b) without an amendment of the valuation made in the plaint. Since the appellant did not accept this view of the Registry, the matter was again placed before the court for orders. The appellant then offered to file an application for formal amendment of his plaint by substituting Rs. 50,000, in place of Rs. 15,00,000, for the jurisdictional value of his relief. Accordingly the appellant made an application on October 18, 1954. This application was opposed both by the respondent and the Assistant Government Pleader on behalf of the State. The learned judges who heard this application took the view that if the appellant had given the value in the first instance for purposes of jurisdiction he was precluded from giving a different value at a later stage. Accordingly it was held that Rs. 15,00,000, which had been mentioned in the plaint as the value of the appellant's claim for jurisdictional purposes should be treated as the value given by the appellant also for the purposes of court fees under s. 7(iv)(b) of the Act. The result was that the application made by the appellant for a formal amendment of the valuation made in the plaint was rejected. The learned judges also purported to exercise their jurisdiction under s. 12(2) of the Act and directed that the appellant should pay deficit court fees on the basis of Rs. 15,00,000 not only on his memorandum of appeal but also on his plaint. It is this order which has given rise to the present appeal.

The first point which Shri Krishnaswamy Ayyangar has raised before us on behalf of the appellant is that the order passed by the learned Chamber Judge on October 18, 1951, is final under s. 5 of the Act. By this order the learned Chamber Judge had held that the plaint filed in the present suit did not attract the provisions of s. 7(v) of the Act and that the proper court fee to be paid was determined by Art. 17-B of Schedule II of the Act. Since the appellant had paid the fixed court fee of Rs. 100, under this latter provision, no objection could be taken on the ground that sufficient court fee had not been paid. If this order had really been passed under s. 5 of the Act it would undoubtedly be final. Section 5 of the Act provides for procedure in case of difference as to necessity of court fee. In cases where a difference arises between an officer whose duty it is to see that any fee is paid under Chapter III and a suitor as to the necessity of paying the fee or the amount thereof, it has to be referred to the taxing officer whose decision thereon shall be final. This section further provides that if the taxing officer, to whom such difference is referred by the office, is of opinion that the point raised is one of general importance, he can refer the said point to the final decision of the Chief Justice of the High Court or such judge of the High Court as the Chief Justice shall appoint either generally or specially in this behalf; and it is clear that if the Chief Justice or any other judge appointed in that behalf by the Chief Justice decides the matter in question, his decision shall be final. Unfortunately, however, in the present case it has been found by the Division Bench that dealt with this matter subsequently that a search of the record did not show any general or special order which would have justified the exercise of jurisdiction under s. 5 by Krishnaswamy Naidu J. No doubt Shri Krishnaswamy Ayyangar stated before us that the practice in the Madras High Court always was to refer disputes as to proper court fees arising between suitors on the Original Side and the Registry to the Chamber Judge and it was always assumed, says Shri Ayyangar, that the Chamber Judge on the Original Side was appointed generally to deal with such disputes. It is difficult for us to make any such assumption in dealing with the present suit. Unless we are satisfied from the record that Krishnaswamy Naidu J., had, at the material time, been appointed either generally or specially to act under s. 5, it would be difficult to accede to the argument that the order passed by him in the present proceedings is final. It is frankly conceded that the record does not show any general or special order as contemplated by s. 5. That is why we must hold that the learned judges of the Division Bench were right in refusing to attach finality of the order passed by Krishnaswamy Naidu J.

It is then urged by Shri Krishnaswamy Ayyangar that the learned judges were in error in purporting to exercise their jurisdiction under s. 12(2) of the Act when they directed the appellant to pay additional court fees on the plaint on the basis of the valuation of Rs. 15,00,000. His contention is that s. 12 does not apply to the appeals arising from judgments and decrees passed in suits on the Original Side of the Madras High Court. It is perfectly true that the question about the levy of fees in High Courts on their Original Sides is governed by s. 3 of the Act and, if the matter had to be decided solely by reference to the Act, it would not be possible to apply any of the provisions contained in Chapter III of the Act either to the suits filed on the Original Side of the Madras High Court or to the appeals arising from judgments and decrees in such suits. But it is common ground that, on the plaints filed on the Original Side of the Madras High Court, court fees are leviable under the relevant provisions contained in Chapter III of the Act and the levy of these fees is authorised by O. II, r. 1 of the High Court Fees Rules, 1933. It is, therefore, necessary to inquire what provisions of the Act have been extended to the suits filed on the Original Side. The authority and jurisdiction of the Madras High Court in enacting r. 1 of O. II are not in dispute. What is in dispute before us is the effect of the said rule. The appellant's case is that the said rule merely contemplates the levy of certain specified court fees as indicated in the provisions of the Act which are expressly made applicable to the Original Side. No other provision of the Act, according to the appellant, can be said to have been extended and so the learned judges were in error in purporting to exercise their jurisdiction under s. 12(2). We are not satisfied that this argument is well-founded. Order II, r. 1 reads thus :

"O. II, r. 1 of Madras High Court Fees Rules, 1933 :-

Order II.

1. The fees and commissions set out in Appendix II hereto shall be charged by the Registrar, Sheriff, The Reserve Bank of India and the Imperial Bank of India, as the case may be, upon the several documents, matters and transactions therein specified as chargeable. The commission chargeable to Government shall be charged by the Reserve Bank of India and credited to Government. [Added by R.O.C. No. 2219 of 1949."] (To other documents including Memoranda of appeals the Registrar shall apply so far as may be the law for the time being in force relating to court-fees, as regards the scale of such fees, the manner of levy of such fees, the refund of such fees and in every other respect, in the manner and to the extent that it is applicable to similar documents filed in original proceedings in a District Court and in appeals from decrees and orders of a District Court).

It cannot be disputed that as a result of this rule, s. 7(iv)(a), (b), (c), (d), (e), and (f) of the Act along with the proviso as well as Art. 17-B of Schedule II of the Act applied to suits filed on the Original Side of the High Court. The latter portion of the order which has been added in 1949 obviously makes applicable to the suits and appeals on the Original Side of the High Court provisions of the Act as regards the scale of fees, the manner of their levy and the refund of fees. It also makes the relevant provisions of the Act applicable in "every other respect". The words "in every other respect" in the context clearly indicate that s. 12 which confers upon the appellate court authority or jurisdiction to examine the question about the sufficiency or otherwise of the court fees paid not only on the memorandum of appeal but also on the plaint in the suit which comes before the court of appeal is obviously intended to apply. It would indeed be illogical to apply the relevant provisions of the Act for the levy of court fees on paints and memoranda of appeal and not to confer jurisdiction on the appropriate court to examine the sufficiency or otherwise of the court fees paid in that behalf. The power to entertain claims for refund of court fees has been specifically mentioned. A claim for refund can be validly made, for instance in a case where excess court fee has been paid.

That is why the provisions of ss. 13, 14 and 15 had to be applied in terms. If a litigant is entitled to make a claim for refund of court fees in cases governed by the relevant provisions of the Act, there appears to be no reason why it should not be open to the court to entertain the question about inadequate payment of court fees. Logically, if excess court fees paid should and can be refunded in these proceedings, inadequate or insufficient court fees paid can and should be dealt with on that footing and orders passed to pay the deficit court fees in such cases. It is matters of this kind that are clearly covered by the expression "in every other respect" to which we have just referred. We, therefore, hold that the learned judges below were justified in assuming jurisdiction under sub-ss. (1) and (2) of s. 12. Section 12 consists of two parts. Sub-section (1) provides that the question about the proper payment of court fees on the plaint or memorandum of appeal shall be decided by the court in which such plaint or memorandum of appeal is filed. It also lays down that such decision is final between the parties to the suit. Sub-section (2) confers upon the court of appeal, reference, or revision, jurisdiction to deal with the question of adequacy of court fee paid on the plaint whenever the suit in which such plaint has been filed comes before it and if the court is satisfied that proper court fees have not been paid then it can pass an order requiring the party to pay so much additional fee as would have been payable of the question had been rightly decided in the first instance. Since the decision of Krishnaswamy Naidu J. cannot attract the finality mentioned in s. 5 of the Act, it was open to the Division Bench to consider the correctness of the view taken by the learned Chamber Judge; and as they were satisfied that the plaint did not fall under Art. 17-B of Schedule II, they were entitled to pass appropriate orders under s. 12(1) and (2).

The appellant, however, contends that the learned judges were in error in directing him to pay court fees on the basis of the value of Rs. 15,00,000 both on his plaint and on his memorandum of appeal because he argues that this decision in inconsistent with the earlier order that the proper court fees to be paid on the memorandum of appeal had to be determined under s. 7(iv)(b) of the Act. This order has been passed by the Division Bench under s. 5 of the Act and it is final between the parties. This order gives the appellant leave to value his claim for the relief of partition and he exercised his option by valuing it at Rs. 50,000. The valuation thus made by the appellant in respect of the value of his relief of partition for the payment of court fees should and must be taken to be the valuation even for the purposes of jurisdiction and it is on this valuation alone that the appellant can be justly called upon to pay court fees both on the plaint and on the memorandum of appeal. The learned judges were, therefore, in error in not allowing the appellant leave to make amendment in the plaint so as to bring the plaint in conformity with the provisions of s. 7, sub-s. (iv) of the Act. That in brief is the appellant's case.

On the other hand, on behalf of the Intervener-Advocate-General of Madras as well as on behalf of the respondent, it was sought to be urged before us that both the plaint and the memorandum of appeal ought to be valued for the purposes of payment of court fees under s. 7(v) of the Act. It is conceded that the question of court fees must be considered in the light of the allegations made in the plaint and its decision cannot be influenced either by the pleas in the written statement or by the final decision of the suit on the merits. The argument, however, is that if all the material allegations contained in the plaint are fairly construed and taken as a whole it would appear that the plaintiff has been ousted from the enjoyment of the properties in suit and his claim for partition in substance is a claim for possession of the suit properties and as such falls within the provisions of s. 7, sub-s. (v) of the Act. The question about proper court fees leviable on plaints in which Hindu plaintiffs make claims for partition under varying circumstances has given rise to several conflicting decisions in the High Courts of India. We are, however, not called upon to consider the point as to whether s. 7(v) would apply to the present suit or whether the present suit would fall under s. 7(iv)(b). In our opinion, the decision of the Division Bench of the Madras High Court the memorandum of appeal

should be taxed for the purposes of court fee under s. 7(iv)(b) of the Act is final under the Provisions of s. 5 of the Act and it cannot be reopened at this stage. It may be that when the Division Bench of the Madras High Court considered this matter under reference made by the Master under s. 5, the respondent was not heard. Normally the dispute between the litigant and the Registry in respect of court fees arises at the initial stage of the presentation of the plaint or the appeal and the defendant or the respondent is usually not interested in such a dispute unless the question of payment of court fees involves also the question of jurisdiction of the court either to try the suit or to entertain the appeal. There is no doubt that the question about the adequacy of the court fees leviable on the appellant's memorandum of appeal was properly referred by the Master to the learned Chief Justice of the Madras High Court and has been decided by the Division Bench of the said High Court in pursuance of the requisite order made by the Chief Justice in that behalf. In such a case, the decision reached by the Division Bench must be held to be final under s. 5 of the Act. That is why we have not allowed the merits of this order to be questioned in the present appeal. We must, therefore, deal with the appellant's contention on the basis that the court fees on his memorandum of appeal must be levied under s. 7(iv)(b) of the Act.

The question which still remains to be considered is whether the Division Bench was justified in directing the appellant to pay court fees both on the plaint and on the memorandum of appeal on the basis of the valuation for Rs. 15,00,000. In our opinion, the appellant is justified in contending that this order is erroneous in law. Section 7, sub-s. (iv)(b) deals with suits to enforce the right to share in any property on the ground that it is joint family property and the amount of fees payable on paints in such suits is "according to the amount at which the relief sought is valued in the plaint or memorandum of appeal." Section 7 further provides that in all suits falling under s. 7(iv) the plaintiff shall state the amount at which the value of the relief is sought. If the scheme laid down for the computation of fees payable in suits covered by the several sub-sections of s. 7 is considered, it would be clear that, in respect of suits falling under sub-s. (iv), a departure has been made and liberty has been given to the plaintiff to value his claim for the purposes of court fees. The theoretical basis of this provision appears to be that in cases in which the plaintiff is given the option to value his claim, it is really difficult to value the claim with any precision or definiteness. Take for instance the claim for partition where the plaintiff seeks to enforce his right to share in any property on the ground that it is joint family property. The basis of the claim is that the property in respect of which a share is claimed is joint family property. In other words, it is property in which the plaintiff has an undivided share. What the plaintiff purports to do by making a claim for partition is to ask the court to give him certain specified properties separately and absolutely on his own account for his share in lieu of his undivided share in the whole property. Now it would be clear that the conversion of the plaintiff's alleged undivided share in the joint family property into his separate share cannot be easily valued in terms of rupees with any precision or definiteness. That is why legislature has left it to the option of the plaintiff to value his claim for the payment of court fees. It really means that in suits falling under s. 7(iv)(b) the amount stated by the plaintiff as the value of his claim for partition has ordinarily to be accepted by the court in computing the court fees payable in respect the said relief. In the circumstances of this case it is unnecessary to consider whether, under the provisions of this section, the plaintiff has been given an absolute right or option to place any valuation whatever on his relief.

What would be the value for the purpose of jurisdiction in such suits is another question which often arises for decision. This question has to be decided by reading s. 7(iv) of the Act along with s. 8 of the Suits Valuation Act. This letter section provides that, where in any suits other than those referred to in Court Fees Act s. 7 para. 5, 6 and 9 para. 10 cl. (d) court fees are payable ad valorem under the Act, the value determinable for the computation of court fees and the value for the purposes of

jurisdiction shall be the same. In other words, so far as suits falling under s. 7, sub-s. (iv) of the Act are concerned, s. 8 of the Suits Valuation Act provides that the value as determinable for the computation of court fees and the value for the purposes of jurisdiction shall be the same. There can be little doubt that the effect of the provisions of s. 8 is to make the value for the purpose of jurisdiction dependent upon the value as determinable for competition of court fees and that is natural enough. The computation of court fees in suits falling under s. 7(iv) of the Act depends upon the valuation that the plaintiff makes in respect of his claim. Once the plaintiff exercises his option and values his claim for the purpose of court fees, that determines the value for jurisdiction. The value for court fees and the value for jurisdiction must no doubt be the same in such cases; but it is the value for court fees stated by the plaintiff that is of primary importance. It is from this value that the value for Jurisdiction must be determined. The result is that it is the amount at which the plaintiff has valued the relief sought for the purposes of court fees that determines the value for jurisdiction in the suit and to vice versa. Incidentally we may point out that according to the appellant it was really not necessary in the present case to mention Rs. 15,00,000 as the valuation for the purposes of jurisdiction since on plaints filed on the Original Side of the Madras High Court prior to 1953 there was no need to make any jurisdictional valuation.

The plaintiff's failure to state the amount at which he values the relief sought is often due to the fact that in suits for partition the plaintiff attempts to obtain the benefit of Art. 17-B of Schedule II in the matter of payment of court fees. Where the plaintiff seeks to pay the fixed court fee as required by said article, he and his advisers are apt to take the view that it is unnecessary to state the amount for which relief is sought to be claimed for the purposes of court fees and the valuation for jurisdiction purposes alone is, therefore, mentioned. Often enough, it turns out that the plaint does not strictly attract the provisions of Art. 17-B of Schedule II and that the court fee has to be paid either under s. 7(iv)(b) or under s. 7(v) of the Act. If the court comes to the conclusion that the case falls under s. 7(iv)(b) or s. 7(iv)(c) ordinarily liberty should be given to the plaintiff to amend his plaint and set out specifically the amount at which he seeks to value his claim for the payment of court fees. It would not be reasonable or proper in such a case to hold the plaintiff bound by the valuation made by him for the purposes of jurisdiction and to infer that the said valuation should be also taken as the valuation for the payment of court fees. In this connection we may point out that this is the view taken by the Full Bench decision of the Lahore High Court in Karam Ilahi v. Muhammad Bashir [A.I.R. (1949) Lah. 116]. As we have already indicated s. 8 of the Suits Valuation Act postulates that the plaintiff should first value his claim for the purpose of court fee and it provides for the determination of the value for jurisdiction on the basis of such claim. In our opinion, therefore, the learned judges of the Madras High Court were in error in holding that the valuation for jurisdiction showed in the plaint should be taken to be the valuation for the payment of court fees on the plaint as well as the memorandum of appeal. In view of their prior decision that the present case fell under s. 7(iv)(b), they should have allowed the appellant to amend his valuation for the payment of court fees not only on the memorandum of appeal but also on the plaint.

We must accordingly set aside the order under appeal and direct that the plaintiff should be allowed to state the amount of Rs. 50,000 at which he values the relief sought by him for the purpose of s. 7(iv)(b) of the Act. Shri Krishnaswamy Ayyangar has orally requested us to give him liberty to make the appropriate amendment in his plaint and we have granted his request.

In the result the appeal would be allowed and the appellant directed to pay additional court fees on his plaint on the basis of the valuation of Rs. 50,000 within two months from today. Since the appellant has already paid adequate court fees on his memorandum of appeal, no further order need be passed in that behalf. There will be no order as to costs.

Appeal allowed.

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