

Sri Ratnavaramaraja

Vs

Smt. Vimla

Civil Appeal No. 624 of 1960

(J. L. Kapur, J. C. Shah, M. Hidayatullah JJ)

27.02.1961

JUDGMENT

SHAH, J. -

Smt. Vimla - hereinafter referred to as the plaintiff - filed suit No. 73 of 1956 in the court of the Subordinate Judge, South Kanara, for a decree for possession of lands, buildings, house-sites described in sch. A and movable properties described in sch. B and for mesne profits in respect of properties described in sch. A and for a decree for possession and management and for account of the properties described in sch. C and institutions alleged to be the private family religious endowments in sch. D. The plaintiff claimed that on the death of her father Shri Dharmasthala Manjayya Heggade on August 31, 1955, she became entitled to the properties in suit but the defendant wrongfully possessed himself of those properties. The plaintiff valued the properties in schs. C and D under s. 28 of the Madras Court-fees and Suits Valuation Act, 1955 at Rs. 21,000/- and paid a court-fee of Rs. 275/-. She valued the lands in schedule A for purposes of jurisdiction at 30 times the assessment and separately valued the buildings and paid court-fee on that footing. On June 28, 1956, the Subordinate Judge ordered on an objection raised by his office that the amount of Rs. 34,577/- paid as court-fee by the plaintiff was adequate. Then followed a course of proceedings for which not many precedents may be found. On September 9, 1950, the defendant filed his written statement raising an objection inter alia to the valuation of the properties in suit and the court-fee exigible on the claim. The trial court then raised an issue about the adequacy of the court-fee, paid by the plaintiff. On February 13, 1957, the defendant applied for the appointment of a Commissioner to value the properties. The court dismissed the application and declared that the court-fee paid was adequate. In Revision Petition 272 of 1957 preferred by the defendant to the High Court of Judicature at Bangalore, the order passed by the Subordinate Judge was set aside and it was directed that the trial court do "ascertain the value of the properties for purposes of court-fee in accordance with law after giving full opportunity to the parties and if need be by appointing a Commissioner to ascertain the present market value of the suit Schedule properties and decide the issue afresh on merits." Pursuant to this direction, a Commissioner was appointed by the Subordinate Judge. The Commissioner submitted his report as to valuation of the properties. Objections were raised by the defendant to that report and a further report was submitted by the Commissioner. On the direction of the Subordinate Judge, a supplemental report was submitted by the Commissioner. After hearing the parties, the Subordinate Judge held that the properties described in sch. D were "extra commercium" and fixed court-fee was exigible in respect of the claim for possession thereof, that properties described in sch. D were "trust properties" and s. 28 of the Madras court-fees and Suits Valuation Act applied thereto as the dispute related to the right of management between persons claiming to be rival trustees, that the houses built on revenue paying lands had to be valued according to their market value and not at 30 times the land assessment and

that the lands in sch. A were worth Rs. 7,74,665/- and the house-sites were worth Rs. 27,625/-. The plaintiff paid the additional court-fee as directed by the court. Against the order passed by the Subordinate Judge, the plaintiff and the defendant applied by separate petitions in revision to the High Court of Mysore. The High Court heard the Advocate-General of the State and substantially confirmed the order passed by the Subordinate Judge except as to an institution described as "Nellyadi Beedu", in respect of which the High Court directed the trial court to determine whether the institution was "extra commercium" after giving an opportunity to both parties to put forth their contentions and to lead evidence in that behalf. Against that order of the High Court, this appeal has been preferred by the defendant with special leave under Art. 136 of the Constitution.

The Court-fees Act was enacted to collect revenue for the benefit of the State and not to arm a contesting party with a weapon of defence to obstruct the trial of an action. By recognising that the defendant was entitled to contest the valuation of the properties in dispute as if it were a matter in issue between him and the plaintiff and by entertaining petitions preferred by the defendant to the High Court in exercise of its revisional jurisdiction against the order adjudging court-fee payable on the plaint, all progress in the suit for the trial of the dispute on the merits has been effectively frustrated for nearly five years. We fail to appreciate what grievance the defendant can make by seeking to invoke the revisional jurisdiction of the High Court on the question whether the plaintiff has paid adequate court-fee on his plaint. Whether proper court-fee is paid on a plaint is primarily a question between the plaintiff and the State. How by an order relating to the adequacy of the court-fee paid by the plaintiff, the defendant may feel aggrieved, it is difficult to appreciate. Again, the jurisdiction in revision exercised by the High Court under s. 115 of the Code of Civil Procedure is strictly conditioned by cls. (a) to (c) thereof and may be invoked on the ground of refusal to exercise jurisdiction vested in the Subordinate Court or assumption of jurisdiction which the court does not possess or on the ground that the court has acted illegally or with material irregularity in the exercise of its jurisdiction. The defendant who may believe and even honestly that proper court-fee has not been paid by the plaintiff has still no right to move the superior court by appeal or in revision against the order adjudging payment of court-fee payable on the plaint. But counsel for the defendant says that by Act 14 of 1955 enacted by the Madras Legislature which applied to the suit in question, the defendant has been invested with a right not only to contest in the trial court the issue whether adequate court-fee has been paid by the plaintiff, but also to move the High Court in revision if an order contrary to his submission is passed by the Court. Reliance in support of that contention is placed upon sub-s. (2) of s. 12. That sub-section, in so far as it is material, provides :

"Any defendant may, by his written statement filed before the first hearing of the suit or before evidence is recorded on the merits of the claim.....plead that the subject-matter of the suit has not been properly valued or that the fee paid is not sufficient. All questions arising on such pleas shall be heard and decided before evidence is recorded affecting such defendant, on the merits of the claim. If the court decides that the subject-matter of the suit has not been properly valued or that the fee paid is not sufficient, the court shall fix a date before which the plaint shall be amended in accordance with the court's decision and the deficit fee shall be paid....."

But this section only enables the defendant to raise a contention as to the proper court-fee payable on a plaint and to assist the court in arriving at a just decision on that question. Our attention has not been invited to any provision of the Madras Court-fees Act or any other statute which enables the defendant to move the High Court in revision against the decision of the court of first instance on the matter of court-fee payable on a plaint. The Act, it is true by s. 19, provides that for the purpose of deciding whether the subject-matter of the suit or other proceedings has been properly valued or

whether the fee paid is sufficient, the court may hold such enquiry as it considers proper and issue a commission to any other person directing him to make such local or other investigation as may be necessary and report thereon. The anxiety of the Legislature to collect court-fee due from the litigant is manifest from the detailed provisions made in ch. III of the Act, but those provisions do not arm the defendant with a weapon of technicality to obstruct the progress of the suit by approaching the High Court in revision, against an order determining the court-fee payable. In our view, the High Court grievously erred in entertaining revision applications on questions of court-fee at the instance of the defendant, when no question of jurisdiction was involved.

The appeal therefore fails and is dismissed with costs.

Appeal dismissed.

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