

RAJASTHAN HIGH COURT

AnandPrakashGarg

Vs.

Madan Mohan Garg

D.B. Civil Spl. Appeal No. 36 of 1999
(Rajesh Balia and O.P. Bishnoi, JJ.)

05.04.2004

JUDGEMENT

Rajesh Balia and O. P. Bishnoi, JJ.

1. This appeal is directed against the judgment passed by the learned single Judge on 27-7-1999 whereby the learned single Judge has held that the appellant was liable to pay ad valorem court-fee on the relief claimed by him which he has not disclosed in his appeal. Therefore, three weeks time was given to appellant to disclose the difference of amount which he claims to be enhanced by way of filing the present appeal and disclose valuation of appeal on which the ad valorem court-fee is payable. Thereafter, the office was to calculate ad valorem court-fee on the difference amount claimed by the appellant in the present appeal treating it the valuation of the appeal to be paid by the appellant.
2. The case of the appellant is that he is entitled to prefer this appeal on a fixed court-fee of Rs. 200/- as was paid by him in the suit filed by him in the trial Court in terms of Section 15 of the Rajasthan Court-fees Act.
3. The facts of the case are that the appellant filed the suit for partition and separate possession of joint family property claiming himself in joint possession of such property. Since, the plaintiff has valued his share in the property in excess of Rs. 10,000/-, he paid Rs. 200/- as court-fees in terms of sub-section (2) of Section 35 of the Rajasthan Court-fees and Suit Valuation Act, 1961.
4. As per preliminary decree, the plaintiff's share was determined as 2/9 in the property in question. This is not subject-matter of this appeal.
5. At the time of passing the final decree, it was opined by the trial Judge that the

property is incapable of partition and delivery of separate possession to the plaintiff or other share-holders. He valued partible property at Rs. 7,55,062/- and the share of the plaintiff was found to be Rs. 1,67,792/- . Consequently, a decree of Rs. 1,67,792/- was passed in favor of the plaintiff in lieu of his share in the joint property.

6. Aggrieved with the aforesaid judgment and decree dated 22-10-97 passed by the Additional District Judge No. 2, Sriganaganagar, the present appellant preferred S. B. Civil Regular First Appeal No. 47/1998 on court-fee of Rs. 200/- as was paid in trial Court. In this appeal, the findings about incapability of property in question to be partitioned by metes and bounds is not in challenge. Nor the share of appellant-plaintiff is in challenge. Only challenge is to valuation of property in which the appellant claimed his share and consequent enhancement of value of his share by increasing in the decretal amount.

7. The learned single Judge has noticed above fact and held that the appellant was liable to pay court-fee on the enhanced amount of his share by increasing the valuation of the property claimed by him in the appeal. Since, the appellant has not disclosed the additional value of share claimed by him, he should disclose the amount and on that basis ad valorem court-fee be paid by him.

8. Learned counsel for the appellant invited our attention to Section 15 of the Rajasthan Court-fees and Suit Valuation Act, 1961 contending that court- fee on appeal cannot differ from what was paid in the suit in the trial Court out of which the appeal has arisen. Section 15 only provides for application of Sections 10 to 13 relating to principle governing determination and levy of fee on plaints in suits which shall apply mutatis mutandis to the determination and levy of fee in respect of memorandum of appeal, cross- objection or other proceedings in second appeal on in an appeal from the judgment of the single Judge of the High Court of Rajasthan under any law for the time being in force. In other words, the principles for determining the court-fees payable on appeal shall be the same as are applicable in determining the valuation and court-fee of the suit in the first instance. However, Section 47 of the Rajasthan Court-fees and Suits Valuation Act, 1961 governs the determination of court-fee in appeal which reads as under :-

"Appeals.- The fee payable in an appeal shall be the same as the fee that would be payable in the Court of first instance on the subject-matter of the appeal :

Provided that, in levying fee on a memorandum of appeal against a final decree by a person whose appeal against a final decree by a person whose appeal

against the preliminary decree passed by the Court of first instance or by the Court of appeal is pending, credit shall be given for the fee paid by such person in the appeal against the preliminary decree."

Explanation: - (1), (2), (3)

Explanation :- (4) Where the relief prayed for in the appeal is different from the relief prayed for or refused in the Court of first instance, the fee payable in the appeal shall be the fee that would be payable in the Court of first instance on the relief prayed for in the appeal.

Explanation :- (5)

9. The aforesaid provision shows that while accepting the principles in general that the fee payable in appeal shall be the same as the fee, that would be payable in the Court of first instance on the subject-matter of the appeal by applying five explanations. The question in determining valuation of appeal is with reference to subject-matter of appeal and not with reference to Court-fee paid in suit. Therefore, the principle governing court-fee payable on appeal is firstly to find out the subject-matter of appeal. Then to consider it for that subject-matter, a suit was to be filed in first instance, how much court-fee will be payable.

10. Section 47 does not envisage that Court-fee on appeal is ipso facto. No is same as in the Court of first instance. Court-fee in appeal has direct nexus to subject-matter of appeal itself and not to subject-matter of suit.

11. Explanation 4 is relevant for the present purpose. Explanation 4 shows that where the relief prayed for in the appeal is different from the relief prayed for or refused in the Court of first instance, the fee payable in the appeal shall be the fee that would be payable in the Court of first instance on the relief prayed for in the appeal. This takes us to look at the reliefs claimed in the Court of first instance by the plaintiff in the suit. We have noticed above the reliefs claimed in the suit was to partition and separate possession of joint family property of which plaintiff claimed to be in joint possession.

12. Section 35 of the Rajasthan Suit Valuation and Court-fees Act which deals with determination of Court-fees in suit for partition and separate possession reads as under :-

"Partition Suit.- (1) In a suit for partition and separate possession of a share in joint family property or of property owned, jointly or in common, by a plaintiff

who has been excluded from possession of such property, fee shall be computed on the market value of the plaintiff's share of the property.

(2) In a suit for partition and separate possession of joint family property or property owned, jointly or in common, by a plaintiff who is in joint possession of such property, fee shall be paid at the following rates namely:-

(i) Rupees thirty if the value of plaintiff's share is Rs. 5,000 or less;

(ii) Rupees one hundred if the value is above Rs. 5,000 but does not exceed Rs. 10,000; and

(iii) Rupees two hundred if such value exceeds Rs. 10,000.

(3) Where, in a suit falling under sub-section (1) or sub-section (2) a defendant claims partition and separate possession of his share of the property, fee shall be payable on his written statement computed on half the market value of his share or at half the rates specified in sub-section (2), according as such defendant has been excluded from possession or is in joint possession.

(4) Where, in a suit falling under sub-section (1) or sub-section (2), the plaintiff or the defendant seeks cancellation of decree or other document of the nature specified in Section 38, separate fee shall be payable on the relief of cancellation in the manner specified in that section."

13. A perusal of Section 35 reveals the scheme that where a plaintiff claims partition and separate possession of the property claimed to be joint, whether in the exclusive possession of the defendant or in the joint possession of the defendant and plaintiff, the suit is to be valued in terms of Section 35. Sub-section (1) of Section 35 envisage a suit for partition and separate possession of share in joint property by a plaintiff where he has been excluded from possession of such property. In that event, the fee is to be computed on market value of the plaintiff's share in the property. In other words, where the plaintiff does not claim to be in joint possession of the property and he wants a specific share in the property, the property is to be valued as per the market rate as on the date of the filing of the suit and on that basis share which the plaintiff claims in that property is to be valued for the purpose of valuation of the suit and ad valorem Court-fee thereon is payable.

Sub-section (2) deals with a case where in a suit for partition of the joint property, plaintiff claims to be in joint possession of property. In that event, the relief of the

plaintiff is for severation of his share from the joint property and he is to be put in exclusive possession of property falling in his share by excluding possession of others. In that event, the valuation of severation of the joint possession and converting it into the exclusive possession of the plaintiff, a fixed Court-fee has been prescribed depending on the scale envisaged under Section 35(2). When the value of plaintiff's share is Rs. 5,000 or less, Rs. 30 is to be Court-fee on it and the maximum Court-fee payable is Rs. 200 if such value exceeds to Rs. 10,000.

14. Likewise, the defendant who also claims his separate share on the partition, he too has to pay Court-fee on his claim depending whether his case falls under sub-section (1) or sub-section (2) by computing his share on half of the market value of his share or at half of the rates specified in sub-section (2). Apparently, the present suit filed by the appellant fell under sub-section (2) of Section 35.

15. As noticed by us that the plaintiff's suit of separate possession was not decreed but instead a money decree was passed in favor of the appellant for valuing his share in the property at Rs. 1,67,792/-.

16. In the appeal by the plaintiff, there is no dispute about the plaintiff's share in property nor the plaintiff has claimed contrary to the decree passed by the trial Court for separate possession of the joint property of which partition was claimed. Instead he has asked for enhancement of the value of his share in the property from Rs. 1,67,792 to some higher amount. Therefore, subject-matter of suit is money value claimed by the appellant in lieu of his 2/9th share in the property. If the plaintiff had in the first instance filed a suit for money value of his share in joint property, the suit would have to be valued at the money value of his share claimed by the plaintiff and ad valorem Court-fee would have been payable thereon. The subject-matter of appeal in the present case is clearly different from what has been claimed in the suit. So also the relief claimed in appeal is different from relief claimed in suit. In our opinion, apart from substantive provisions of sub-section (1) of Section 47, Explanation (4) clearly governs the case.

17. That being the position, the Court-fee payable on appeal is to be determined as if the plaintiffs were to file the suit for same relief in the Court of first instance. The appellant if were to file a suit in the first instance for specific amount in lieu of his share of joint property, he was required to pay ad valorem Court-fee on that amount for which he sought a decree as a value of share in property it would be a suit for money decree, right to which was traceable to his share in the joint family property.

18. That being the position, he is required to pay ad valorem Court-fee on the increased value of his share claimed by appellant over the amount decreed by trial Court.

19. For the aforesaid reasons, we are in agreement with the learned single Judge that the plaintiff's property must disclose the exact amount by which he seeks increase in the amount of the decree passed by the trial Court which shall be considered the value of subject-matter of appeal. On such value the appellant shall have to pay ad valorem Court-fee.

20. Accordingly, the special appeal fails and is hereby dismissed. The appellant is given two weeks' time to disclose the amount of valuation of appeal as discussed above.

21. On such disclosure, the Stamp Reporter shall determine the Court-fee on that amount and the petitioner shall pay the Court-fee payable on that amount as determined by the stamp reporter within a period of two weeks thereafter. There shall be no order as to costs.

Appeal dismissed.