

(1994) 06 KAR CK 0016

In the Karnataka High Court

Case No : Regular First Appeal (F.R.) No. 31 of 1994

Canara Bank, Ankali

APPELLANT

Vs

M/s. Krishna Tubewells, Ankali and others

RESPONDENT

Date of Decision : 10-06-1994

Acts Referred:

Mysore Court-fees and Suits Valuation Act, 1958 — Section 49

Citation : AIR 1995 Kar 107 : (1994) 2 KarLJ 664

Hon'ble Judges : N.D. Bhat, J

Bench : Single Bench

Advocate : C.S. Ramadas, for the Appellant;

Judgement

1. Orders on office objection regarding the payment of Court-fee payable on the appeal memo:-

In this appeal, the office objection is to the effect that Court-fee on the appeal memo is required to be paid according to the rates prescribed by Schedule-I of the Karnataka Court-fees and Suits Valuation Act, 1958, as it stood before the amendment, since according to the office the plaint in the suit out of which this appeal has arisen was presented at a time when Schedule-1 was unamended. It is necessary to point out here that Schedule-1 is amended by Act No. 2 of 1993 (Karnataka Court-fees and Suits Valuation (Amendment) Act, 1-992) which was published in the Karnataka Gazette extraordinary on the 29th day of January, 1993. There is no dispute that the plaint was presented on 25-7-1992. There is also no dispute that the appeal in this case is filed on 7-1-1994, that is to say, admittedly after the coming into force of Act No. 2/1993. There is also no dispute that the valuation in the instant suit is Rs. 2,59,394-93.

2. The office has raised objection saying that the Court-fee is required to be paid ad valorem at the rate of Rs. 10% according to the rates prescribed in Schedule 1 as it stood as on the date of the presentation of the plaint.

3. The learned Counsel for the appellant however took the stand that having

regard to the amendment of the schedule particularly with reference to the dates, the Court-fee required to be paid is as per the rates brought into being by way of amendment, since, the appeal is admittedly filed after the coming into force of the said amendment.

4. It was noticed that the office has raised similar objection with reference to this aspect in quite a good number of cases. In fact, a similar objection was raised in RFA (FR) 609/1994, RFA (FR) 107/1994, RFA (FR) 3482/1993 and RFA 159/1994. I am told at the bar that similar objections are raised in some other appeals also, which have yet to come before the Court.

5. Having regard to the fact that the matter is of general importance, the learned Counsel appearing in the aforesaid appeals are also heard on this aspect. The learned High Court Government Pleader Sri Muralidhar, was also directed to take notice and to assist the Court in hearing and deciding the point relating to the office objection.

6. I have heard Sri Ramdas, the learned Counsel appearing for the appellant, as also the learned Counsel appearing in the different appeals referred to immediately hereinabove and Sri Muralidhar, the learned High Court Government Pleader.

7. In the context of the submissions made at the bar, the precise point for consideration is as to what is the Court-fee payable on the appeal memo presented after the coming into force of the Karnataka Act No. 2/1993 (hereinafter referred to as the Amendment Act).

8. The learned Counsel representing the appellants in the aforesaid appeals including Sri Ramdas, the learned Counsel appearing in this appeal contended that having regard to the language reflected in Section 49 of the Karnataka Court-fees and Suit Valuation Act, 1958, (hereinafter referred to as the Act) there should not be any difficulty in reaching a conclusion with reference to the point raised by the office. Dilating on this aspect, the learned Counsel pointed out that the word used in Section 49 of the Act is "payable" and the natural meaning flowing from the same will have to be given to the said expression. It is also pointed out by the learned Counsel with reference to certain decisions that when a particular provision is substituted, then what required to be read is the substituted provision without reference to the provision as it existed next before the amendment. In this connection, reliance is placed on the decision in *Shamarao V. Parulekar Vs. The District Magistrate, Thana, Bombay and Others*, and the decision in *Vijayakumar Shankarayya Sardar Vs. State of Karnataka*, Reliance is also placed on the decision in *Sant Ram Vs. Rajinder Lal and Others*, in support of the contention that if and when any doubt exists as regards the Court-fee payable, the benefit of doubt should go to him, who says that the lesser Court-fee alone be paid. It is also pointed out that the legislative amendment to Schedule 1 was introduced on account of the decision of the Supreme Court in *P.M. Ashwathanarayana Setty and Others Vs. State of*

Karnataka and Others, In this connection, Sri S. P. Shankar, The learned Counsel appearing for one of the appellants, invited my attention to paras 35, 37 and 122. Sri Tarakaram, the learned Senior Counsel appearing for one of the appellants in the aforesaid appeals pointed out that when the language of a particular Section (submission is with reference 10 Section 49) is clear, the natural meaning flowing from the same will have to be given and if that meaning can be given to that Section without any violence to the language, any other interpretation is not permissible. Making their submissions on these lines, the learned Counsel appearing for the appellants in the different appeals alluded to earlier contended that the Court-fee payable on the appeal memo is at the rate prescribed by the schedule as on the date on which the appeal is presented before the Court.

9. On the other hand, Sri Muralidhar. the learned High Court Government Pleader submitted that appeal is a continuation of the suit and that therefore the fee that is required to be paid is the fee. which is required to be paid on the plaint when it was presented. Dilating on this aspect, the learned High Court Government Pleader argued that the Amendment Act is not retrospective, but is only prospective and that therefore it has no application to those appeals, which has arisen out of a suit in which the plaint was presented next before the Amendment Act came into force. In support of this contention, the learned High Court Government Pleader relied on the decision of this Court in Thimmareddy K. A. Krishnamurthy, reported in (1980) 1 Kar LJ 340 . Making a reference to the decision in Papabai Vs. Assistant Commissioner, the learned High Court Government Pleader argued that the Amendment Act is not retrospective but is only prospective. Making his submissions on these lines, the learned High Court Government Pleader contended that the fee payable on the appeal memo is the fee payable on the plaint in the suit, out of which the appeal has arisen and with reference to the date on which the plaint was presented.

10. By way of reply, the learned Counsel appearing for the different appellants also invited the attention of this Court to a decision of this Court in C.R.P. No. 199/1974 decided on 19-3-1976 (Narasappa Payappa Teral and others v. State of Karnataka).

11. I have given my anxious consideration to the submissions made on either side. At the out set it is necessary to remember that the question of the amount of Court-fee payable either on a plaint or on an appeal memo would depend upon two factors. The first one is the amount of valuation in the plaint. The second one is the rate of fee prescribed on such amount of valuation. It is necessary to remember that valuation or to be more precise computation of fee payable is referable to Chapters IV. VI and VIM. The rate of fee that is in to be paid can be seen in Schedules I and II appended to the Act. The different provisions referred to in Chapters IV, VI and VIII are related mainly to valuation. At this juncture, it would be indeed convenient to refer to Section 20 of the Act in Chapter IV. It reads as under :

"The fee payable under this Act shall be determined or computed in accordance with the provisions of this chapter, Chapter VI. Chapter VIII and Schedules I and II."

The provisions from Section 21 onwards relate to the question as to how the valuation should be arrived at with reference to the suits. It is necessary at this juncture to emphasise that the valuation that is referred to in the Court-fees Act is a valuation with reference to the suit. It is exactly for this reason that Section 49 was required to be enacted. Section 49 reads as under :

"Appeal save as provided in Section 48, 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."

12. A careful perusal of the different provisions of the Court-fees Act leading to Section 49 therein would unmistakably indicate that the emphasis of Section 49 is more on the subject-matter of the appeal rather than as regards the rate of Court-fee. The rate of Court-fee should not present any difficulty since the rate is separately prescribed by the schedule. It is significant to notice at this juncture that while prescribing the rate in the schedule the legislature has taken care to refer not only to the plaint but also to the appeal. Article I of Schedule I commences as under :

"Plaint, written statement, pleading a set-off or counter-claim or memorandum of appeal presented to any Court."

13. It is therefore clear that the legislature has separately referred to the appeal memo also while prescribing the rate in the schedule. It therefore appears to me that the rate of fee will have to be gathered from the schedule and the valuation of the appeal will have to be gathered with reference to the plaint in the context of the language of Section 49. As pointed out earlier, reliance was placed by the learned High Court Government Pleader on the decision in Thimmareddy's case (1980) 1 Kar LJ 340. The facts of the said case relevant in the context of the determination of Court-fee are as under :

That was a case where there was a suit for recovery of Rs. 5,000/- against the revision petitioner before the High Court and the second respondent. They took the plea that they being debtors within the meaning of Karnataka Debt Relief Act the debt should discharge. The trial Court recorded a finding that the petitioner and second respondent (in the said case) were not debtors within the meaning of the Act and decreed the suit. Petitioner and second respondent filed an appeal against the decree valuing the appeal at less than Rs. 5,000/- u/s 47 read with Section 49 of the Court-fees Act, on the ground that they were aggrieved by the finding as to their being debtors under the Debt Relief Act and paid the Court-fee of Rs. 20/-. The office raised the objection that the fee payable by the petitioners should be on the same amount, on which fee was paid before the lower Court. In that context, this Court held that it is not a case in which the relief relating to the correctness of the finding on issue No. 3 can be separated from the decree

passed by the trial Court and if the finding on issue No. 3 has to be set aside, the entire decree will have to be set aside. After having so observed, the Court proceeded to hold that the subject-matter of the appeal was the entire decree and as such it cannot be said that the appeal is confined to a finding on issue No. 3 only. In that view of the matter, the Court directed that the Court-fee is required to be paid on the entire subject-matter of the appeal.

14. A careful perusal of the said decision would indeed go to show that the emphasis in the said case was with reference to the subject-matter of the appeal. As pointed out earlier, this Court was considering the question as to what should be the proper valuation in the facts and circumstances of the appeal before the appellate Court. In the facts and circumstances of the case, this Court took the view that the valuation for the purpose of Court-fee should be the same as in the original Court since the subject-matter of the appeal and the subject-matter of the suit were one and the same. It is therefore clear that this Court did not have any occasion in the said case to consider the point like the one in this set of appeals. The point that has arisen for consideration in these appeals is as regards the rate to be paid and not as regards the valuation of the appeal.

15. At this juncture, it is necessary to point out even at the risk of repetition that the Amendment Act came into force on 29-1-1993. The amendment relevant for consideration is the amendment of Schedule I. I may point out here that it is only Schedule I that stood amended for the said Amendment Act and nothing more. However, it is Schedule I which prescribes the rates for plaints and for other type of proceedings referred to in the first part of Article 1 of Schedule I. Section 2 of the Amendment Act reads as under:

"2. Amendment of Schedule I: In Schedule I of the Karnataka Court-fees and Suits Valuation Act, 1958 (Karnataka Act 16 of 1958) in Article 1 for clauses (i) and (ii) and the entries relating thereto, the following shall be substituted, namely:--

....."

16. A perusal of the schedule would go to show that it prescribes the Court-fee payable for the plaint, for the appeal memo as also for certain other types of applications or proceedings. It is needless to say that the liability to pay fees would arise on the date on which the particular type of proceeding is initiated before the Court. The liability to pay Court-fee in a suit would arise on the date on which the plaint is presented. Similarly, the liability to pay Court-fee on the appeal memo would arise on the date on which the appeal memo is presented before the Court. It is true as rightly pointed out by Sri Muralidhar, the learned High Court Government Pleader that the appeal is a continuation of the suit. However, it is necessary to remember that appeal is a continuation of the suit in the sense that all the issues which have arisen for consideration in a suit stand reopened for consideration of the appellate Court. It is also necessary to remember that the appeal is a complaint to a higher Court to the effect that the

judgment delivered by the lower Court is not sound. However, the fact that the appeal is a continuation of the suit in theory will not mean that the same logic can be stretched to the payment of the Court-fee. As pointed out earlier, the liability to pay Court-fee on the plaint and the liability to pay Court-fee on the appeal memo arises on different dates. A rate at which the Court-fee is required to be paid with reference to the plaint or the appeal memo will have to be adopted with reference to the rates available on the date on which the plaint was presented or for that matter on the date on which the appeal is presented. As pointed out earlier, the learned High Court Government Pleader relied on Section 49 of the Act to contend that the Court-fee that is required to be paid on the appeal memo is the same as was paid on the plaint. In order to appreciate the submission made by the learned High Court Government Pleader from a proper perspective, it is necessary to cull out Section 49, which reads as under:

"49. Appeals.-- Save as provided in Section 48, 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."

17. I have already pointed out that the emphasis in Section 49 is more on the subject-matter of the appeal and not on the rate at which the fee is required to be calculated. Even otherwise, a careful reading of the said provision would clearly go to show that what is required to be paid by way of Court-fee in appeal shall be the same as the fee that would be payable in the Court of the first instance on the subject-matter of the appeal. In other words, the only rational and reasonable construction that could be placed on Section 49, even assuming for the time being that it has got relevance relating to rate also is that the fee that would be payable on a plaint if it is presented today will be the fee that will have to be paid on the appeal memo also. In fact, the distinction between the expression "paid" and "payable" has been brought out in the decision of this Court in *Narasappa Payappa Terdal*'s case alluded to earlier. I hasten to add here that in the said case also, the emphasis was on valuation. Even otherwise, this Court in the said case has pointed out that the distinction between paid and payable is clear. Further, if the submission made by the learned High Court Government Pleader is carried to its logical conclusion, it would lead to absurd results. If the same Court-fee is to be paid on the appeal memo which was paid on the plaint, it would mean that whatever be the valuation of the appeal memo, the same Court-fee will have to be paid. I have pointed out earlier that in Section 49, the emphasis is more on subject-matter of the appeal and the rate of fee will have to be gathered only from Schedule I. The learned High Court Government Pleader is right in contending that the Amendment Act cannot be said to be retrospective. I hasten to add here that a Division Bench of this Court in *Papabai Vs. Assistant Commissioner*, has held among other things that the Amendment Act is not retrospective and is only prospective. There cannot be any dispute about the decision of the Division Bench of this Court. It is held that the Act is not retrospective, but is only prospective. In other words, it will apply only to those situations, which would arise for consideration after the Act came into

force. Had the appeal in question be filed next before the Act came into force, it is obvious that the said Act cannot be called in aid to contend that the fee will have to be recovered only at the rate prescribed by the Schedule as amended. That is what is meant when we say that the Act is not retrospective, but is only prospective. In fact, in the decision dealt with by the Division Bench, the Court with reference to an application filed in forma pauperis took the view that the fee that is required to be paid is the fee payable on the date on which the application was presented. It is obvious that the said decision has no application to the facts of the instant case and even if it is applicable, it would not run counter to the reason adumbrated hereinabove.

18. Once when an appeal is presented before the Court, what is required to be seen for the purpose of determination of the Court-fee is as to what is the valuation of the appeal. That will have to be determined with reference to the valuation of the suit and with reference to the various provisions of the Act reflected in Chapters IV, VI and VIII. Thereafter, the amount of Court-fee will have to be determined by adopting the rate available on that date. If the plaint is presented on a particular date, the rate that is prescribed with reference to the valuation as on that date will have to be adopted. If an appeal is presented on a particular date, the rate prescribed for the appeal in the context of the valuation will be the rate, which is available as on that date. In my opinion, in the context of the totality of the different provisions referred to herein-above including the intendment of the legislature, any other interpretation is not at all possible. The Supreme Court as pointed out earlier in *Lakshmi Ammal Vs. K.M. Madhavakrishnan and Others*, has pointed out that when there is a reasonable doubt as regards the Court-fee payable, the benefit of doubt should go to him, who says that the lesser Court-fee is required to be paid. I would say that there is no necessity in this case even to invoke the said observation since in my view, the totality of the language of the different provisions referred to hereinabove, will not leave any doubt as regards the fee that is payable on the appeal memo.

19. It is noticed that my learned brother (Murugod J.,) has in an order dated 4-4-1994 in R.F.A. (FR) 184/1994 has taken a similar view like the one I have taken. I respectfully agree with the view expressed therein for the reasons stated hereinabove.

20. For the reasons stated hereinabove, the Court-fee payable on the appeal memo in this appeal is at the rate prescribed in the schedule as per the Amendment Act (Act No. 2/1993). It is noticed that the appellant has paid the Court-fee as per the said Act and with reference to the amended schedule and in that view of the matter, the objection raised by the office is overruled.

21. The office is directed to register the appeal and post it for admission.

22. Order accordingly.