

(1948) 11 AHC CK 0003
In the Allahabad High Court

Chief Inspector of Stamps

APPELLANT

Vs

Sewa Sunder Lal

RESPONDENT

Date of Decision : 09-11-1948

Acts Referred:

Court Fees Act, 1870 — Section 6B

Citation : AIR 1949 All 560

Hon'ble Judges : Wanchoo, J

Bench : Division Bench

Judgement

Wanchoo, J.—This is a revision by the Chief Inspector of Stamps, United Provinces u/s 6B, Court-fees Act against the order of the First Civil Judge, Kanpur in a court-fees matter.

2. The facts of this case are these. A suit was brought by the plaintiff opposite-party with the following prayers:

(a) That the order, dated 18th January 1946, a certified copy of which is attached herewith, requiring the plaintiff to vacate rooms Nos. 7 and 8 passed by the T.R.O. be declared ultra vires, null and void.

(b) That the defendant be restrained by perpetual injunction from interfering with the peaceful possession of the plaintiff over the entire portion of the shop including rooms Nos. 7 and 8 in pursuance of the orders above noted, so long as the tenancy continues and is not legally determined.

The suit was valued at Rs. 6720 which was said to be the market-value of the portions occupied by rooms Nos. 7 and 8 and at Rs. 200 for the purposes of declaration. Court-fee was paid on one-tenth of Rs. 6720 so far as the prayer for injunction was concerned and a fixed court-fee was paid on the prayer for declaration.

3. An objection was raised by the Inspector of Stamps to the effect that the court-fee in this case should be paid u/s 7 (iv) (a), Court-fees Act and, as such, it

should have been paid on the entire amount, namely, Rs. 6720 and not on one-tenth of that amount. The Court below accepted the contention of the Inspector of Stamps that the suit was covered by Section 7 (iv) (a), Court-fees Act, as it was a suit for declaratory relief with a consequential relief in the shape of an injunction. It was further held that as the consequential relief in this suit was for injunction the suit should be properly valued according to Section 7 (iv-B) of the Act. The Court below therefore valued the property as required by the proviso to Section 7 (iv-B) at Rs. 28,800 and then ordered the opposite-party to pay court-fee on one-tenth of that amount. The present revision has been filed against this order of the Court below.

4. We are of opinion that as the suit rightly fell u/s 7 (iv) (a), Court-fees Act, the Court below was not right in valuing the consequential relief according to Section 7 (iv-B) as that provision, applies to suits for injunction only and not to suits for a declaration with consequential relief. The consequential relief, therefore, should be valued in the manner provided u/s 7 (iv) (a). It is provided therein that the court-fee will be paid on the relief sought according as it is valued in the plaint. The proviso, however, makes it clear that:

where the relief sought is with reference to any immovable property, such amount shall be the value of the consequential relief and if such relief is incapable of valuation, then the value of the immovable property computed in accordance with Sub-section (V), (V-A) or (V-B) of this section as the case may be.

It is obvious that in this case, the consequential relief is incapable of valuation because the relief sought is with reference to the right of the plaintiff opposite-party to remain in possession of these two rooms not as proprietors but as tenants. Therefore, the valuation has to be in accordance with the value to be put on the immovable property, namely, the tenancy right in these two rooms and that has to be computed in accordance with the principles laid down in Sub-section (V), (v-a) or (v-b) of Section 7. Section 7 (v) gives the principle on which suits for possession of lands, buildings or gardens have to be valued. These suits are obviously those in which a party is claiming the proprietary possession of lands, buildings or gardens and, therefore, would not apply to the present case, where the suit is with reference to the tenancy rights of the plaintiff opposite party. Section 7 (V-a) applies to certain specific classes of suits relating to superior proprietary rights or under-proprietary or sub-proprietary rights in land and is clearly inapplicable to the present suit. Section 7 (V-B) applies to suits for possession of land between rival tenants and by tenants against trespassers. It values the rights of tenants according as a tenant is a permanent tenure-holder, a fixed rate tenant, an expropriary tenant or occupancy tenant or any other tenant. There is no doubt that strictly speaking Section 7 (V-B) does not apply to a case of the present nature in the sense that it is not a case relating to land in the Collector's register. But the principle that is clear from a perusal of Section 7 (V-B) is that in cases of tenants holding at favourable rates of rent, the value is

greater than that in the case of tenants holding land at ordinary rates of rent. In the case of those tenants who hold at ordinary rates of rent the value of the tenant's right is one year's rent. It seems to us, therefore, that in a case of the kind before us, there is no reason why we should not accept this salient principle that the value of the tenant's right should be at one year's rental. It is not suggested that, in this particular case, the tenant is holding the land at any favourable rate of rent. We may, by way of analogy, refer to Section 7(XI), Court-fees Act. That provides for suits between landlords and tenants and where a landlord sues for ejectment of tenants, the valuation is only one year's rent. The present case may, in a sense, be called the converse of a case where the landlord sues for ejectment of a tenant and it seems to us that the principle deducible from Section 7 (V.B), namely one year's rent, should be applied for determining the value of immovable property in such a case. We may point out that the difficulty has arisen because the suits of this particular nature were not contemplated when the Court-fees Act was amended, as this suit is obviously the result of the new law relating to control of houses and house rents. It seems to us, therefore, on a consideration of Section 7 (iv) (a), 7 (v-B) and 7(XI) that the court-fee in such a suit for a consequential relief of injunction should be on one year's rent. The judgment of the Court below shows that the monthly rent of the two portions in dispute was Rs. 150. The annual rent, therefore, comes to Rs. 1,800 and the court-fee should have been paid on this amount. The lower Court has already ordered the plaintiff opposite, party to pay court-fee on one-tenth of Rs. 28,800. Under these circumstances, the court-fee in any case, has been overpaid.

5. The revision is, hereby, dismissed with costs to the opposite party.