

(1997) 02 MAD CK 0039
In the Madras High Court

E.P. Subramanian

APPELLANT

Vs

G.K. Palaniswamy

RESPONDENT

Date of Decision : 21-02-1997

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 14 Rule 2, Order 14 Rule 2(1), Order 7 Rule 2, 35(1)

Tamil Nadu Court Fees and Suits Valuation Act, 1955 — Section 35(1)

Citation : (1997) 1 LW 683 : (1997) 1 MLJ 476

Hon'ble Judges : AR. Lakshmanan, J

Bench : Single Bench

Judgement

AR. Lakshmanan, J.—Though notice was served on the respondent, he has not entered appearance. He was called absent.

2. This revision is directed against the order of the Second Additional Sub Court, Erode, in LA. No. 152 of 1994 in O.S. No. 37 of 1993, dated

9.3.1994. The petitioner filed O.S. No. 37 of 1993 on the file of the Sub Court, Erode, contending inter alia that the respondent second defendant

G.K. Palanisamy, who is none other than his own son-in-law, taking advantage of the illiteracy of the petitioner induced him to invest his hard

earned money from his agricultural holdings in Star Fish Tube Well Firm and three other firms, that he is also involved in borrowing from banks for

purchase of machinery, etc. The respondent herein did not submit any correct and proper account in spite of repeated demands. Consequently,

difference of opinion arose in 1988 and on the petitioner's insistence, he was released from one of the firms. The petitioner further contended that

the second respondent was refusing to render correct and proper accounts, which had resulted in issue of notices for dissolution of all the firms,

etc. A registered notice dated 25.4.1992 was also sent demanding rendition of proper and correct account of profit and loss of the firm and for dissolution of the first defendant firm. As there was no response from the defendants, the suit was filed praying for a declaration that the first defendant firm was dissolved and the plaintiff was entitled to half share of all the assets and for a direction to the defendants to render proper accounts.

3. A written statement was filed by the respondent herein with reference to the court-fee paid on the plaint. A petition was taken that the plaintiff in his notice dated 25.4.1992 has estimated his share in the firm at Rs. 3,00,000 but had valued the suit only at Rs. 15,500 and therefore, the question of court-fee must be decided before any evidence was recorded in the suit. In the said petition, the petitioner herein contended that the issue cannot be determined as a preliminary issue, that the plaintiff can value the suit only according to his valuation on the date of suit, that since the respondent herein is an accounting party, the petitioner herein would not be in a position to correctly predicate the exact amount and he has to give his own approximate value. u/s 35(1) of Act XIV of 1955 and under Order 7, Rule 2, Code of Civil Procedure, the plaintiff has to estimate the suit and the suit being one for rendition of accounts, the actual fee payable could be decided at the time of final decree proceedings.

4. The learned Second Additional Subordinate Judge, however, by his order dated 9.3.1994, held that the petitioner/plaintiff has to pay court-fee on Rs. 3,00,000 and allowed LA. No. 152 of 1994 filed by the respondent herein. The petitioner was directed to pay the differential court-fee.

Aggrieved by that order, the present revision has been filed.

5. I have gone through the order and also the provisions of Section 35(1) of the Tamil Nadu Court-Fees and Suits Valuation Act and also the provisions of Order 7. Rule 2 of the Code of Civil Procedure. In my view, the lower court has erred in ignoring the fact, that the issue raised by the second defendant cannot have any bearing on the jurisdiction of the court inasmuch as the Subordinate Judge's Courts have unlimited jurisdiction and hence, he should have concluded that the issue will not fall within the ambit Order 14, Rule 2 of the CPC and that Order 14, Rule 2(1) of the CPC would be a bar on the court to take up the objection as a preliminary issue.

The learned Judge has ignored the fact that it was not for any of the parties to raise the question of valuation of suit and payment of correct court-fee as a preliminary issue, which is a matter between the court and the plaintiff and that in a suit for rendition of accounts, the collection of revenue is protected since the grant of final decree would be subject to the determination of the correct court-fee payable on the actual relief to be granted to the plaintiff, Hence, I am of the view, that the order of the learned Judge is liable to be reversed.

6. Section 35(1) of the Tamil Nadu Court-Fees and Suits Valuation Act, reads thus:

35. Suits for accounts : (1) In a suit for accounts, fee shall be computed on the amount sued for as estimated in the plaint.

(2) Where the amount payable to the plaintiff as ascertained in the suit is in excess of the amount as estimated in the plaint, no decree directing

payment of the amount as so ascertained shall be passed until the difference between the fee actually paid and the fee that would have been

payable had the suit comprised the whole of the amount so ascertained, is paid. If the additional fee is not paid within such time as the court may

fix, the decree shall be limited to the amount to which the fee paid extends.

(3) Where in any such suit it is found that any amount is payable to the defendant, no decree shall be passed in his favour until he pays the fee due

on the account.

7. Courts have held that in a suit for accounts, the plaintiff's quantification must be adequate and reasonable. In suit for accounts, the court-fee is

payable on the ascertainment of the actual amount payable. In a suit for accounts, fee shall be computed on the amount sued for as estimated in the

plaint. If the additional court-fee is not paid, within such time as the court may fix, the court may also limit the relief to the amount to which the fee

paid extends. If in any suit it is found that any amount is payable to the defendant, no decree shall be passed in his favour until he pays the fee due

on the amount. Order 7, Rule 2 of the CPC also provides that where the plaintiff seeks the recovery of money, the plaint shall state the precise

amount claimed; but where the plaintiff sues for accounts, or for an amount which will be found due to him on taking unsettled accounts between

him and the defendant, the plaint in such circumstances shall only state

approximately the amount or the value sued for. Since the suit itself is for rendition of accounts, the plaintiff in the instant case has rightly valued the suit and has stated approximately the amount sued for. When the plaintiff purports to make an estimate in regard to what he would get on the taking of an account, there would necessarily be an element of some guess of speculation. There is bound to be some kind of inaccuracy if one were to consider it in relation to the actual amount that would ultimately be found due. The result is, the valuation given by the plaintiff and the court-fee paid thereon should be taken as correct and the revision petition filed now should be allowed and the lower court directed to proceed with the trial, the suit on the basis of the plaint. Thus, it can be safely concluded that the amount of court-fee payable in suits for accounts is according to the amount at which the relief sought is valued in the plaint. The plaintiff is required to state the amount at which he values the relief he sought. In suits for accounts, it is not possible for the plaintiff to estimate correctly the amount which he may be entitled to for, as in the present case, when the plaintiff/petitioner asks for accounting regarding the management by the respondent herein, as the petitioner may not know the state of affairs of the respondent's management and the amount to which he would be entitled on accounting. While Section 35(1) of the Tamil Nadu Court-Fees and Suits Valuation Act permits the plaintiff to pay court-fee on the amount estimated by him, Sub-section (2) thereof safeguards against the loss of revenue, as it required that no decree for any amount in excess of amount as estimated in the plaint shall be passed unless the difference between the fee actually paid and the fees that would have been payable had the suit comprised the whole on the amount as ascertained, is paid.

8. On a consideration of the entire circumstances of the case, I am satisfied that the estimate of the relief as, given by the plaintiff/petitioner herein is

adequate and reasonable and not an under-estimate is alleged by the respondent.

9. In the result, I allow the revision and set aside the order of the lower court and direct the lower court to take up the suit for trial and disposal of

all the issues in the suit. No costs.

10. The Civil Miscellaneous Petition No. 10165 of 1994 is dismissed. Interim stay already granted is vacated.