

(2013) 09 MAD CK 0107

In the Madras High Court

Case No : C.R.P. No. 2500 of 2001 and C.M.P. No. 13280 of 2001

G. Chitti Babu

APPELLANT

Vs

S. Sundaramurthy and Others

RESPONDENT

Date of Decision : 12-09-2013

Acts Referred:

Citation : (2013) 5 CTC 844 : (2014) 1 LW 398 : (2014) 1 MLJ 235

Hon'ble Judges : B. Rajendran, J

Bench : Single Bench

Advocate : A. Muthukumar, for the Appellant;

Final Decision : Partly Allowed

Judgement

B. Rajendran, J.—The sole defendant in O.S. No. 74 of 1997 on the file of the learned Additional Subordinate Judge, Mayiladuthurai has

come forward with this revision petition. The respondents/plaintiffs herein have filed the suit in O.S. No. 74 of 1997 praying to direct the

defendant/revision petitioner herein to pay a sum of Rs. 2,00,000/- towards damages for the death of the wife of the first plaintiff due to a wall

collapse. Before filing the suit, the plaintiffs/respondents herein have filed I.A. No. 34 of 1997 to permit them to file the suit as in forma pauperis.

The said application was allowed and the suit was taken on file. After contest, the suit was decreed directing the defendant/revision petitioner

herein to pay a sum of Rs. 50,000/- to the first plaintiff towards damages and also directed the defendant/revision petitioner to pay the court fee for

the entire suit claim namely Rs. 2,00,000/-. Aggrieved by the same, the defendant/revision petitioner herein has filed I.A. No. 295 of 1998 in O.S.

No. 74 of 1997 under Order 41 Rule 1 and Section 114 of CPC praying to review

the decree passed in the suit on the ground that the defendant/revision petitioner ought not to have been directed to pay the court fee for the entire suit claim and if at all, the defendant/revision petitioner shall be directed to pay the court fee to the extent to which the suit was decreed. The trial court, by the order dated 06.07.2000 refused to review the decree passed in the suit on the ground that there is no error apparent on the face of the record and dismissed the I.A. No. 295 of 1998. It is this order which is challenged in this Civil Revision Petition.

2. Pending this revision petition, the first respondent died and his legal heirs, who are respondents 2 to 10, were recorded as legal heirs of the deceased first respondent.

3. The learned counsel appearing for the petitioner would contend that the trial court ought not to have directed the defendant/revision petitioner to pay court fee for the disallowed portion of the decree. According to the learned counsel for the defendant/revision petitioner, the suit was filed claiming damages for Rs. 2,00,000/- and after contest, the suit was decreed only for Rs. 50,000/-. While so, the court below is not justified in directing the defendant/revision petitioner to pay the court fee for the entire suit claim.

4. Even though notice was served, there is no representation for the respondents. I heard the learned counsel for the petitioner.

5. The only question arise for consideration in this revision petition is whether the trial court is legally justified in directing the defendant/revision petitioner to pay the court fee for the entire suit claim of Rs. 2,00,000/-, in a suit filed by the plaintiffs/respondents as in forma pauperis especially when the suit was decreed only to the extent of Rs. 50,000/.

6. The plaintiffs/respondents have filed the suit claiming damages for the death of the wife of the first respondent herein due to a wall collapse. After contest, the suit was decreed, but the trial court decreed the suit by only directing the defendant/revision petitioner herein to pay Rs. 50,000/- as damages as against the suit claim of Rs. 2,00,000/-. However, the trial court directed the defendant/revision petitioner to pay the court fee for the entire suit claim. As against the decree, the defendant/revision petitioner has filed an application to review the decree, but it was dismissed on 06.07.2000. As against this order, the present revision petition is filed.

7. The issue involved in this civil revision petition was already answered by a Division Bench of this Court in the decision reported in Meera

Nireshwalia Vs. Sukumar Nireshwalia, wherein the Division Bench of this Court has held that the defendant cannot be directed to pay the court fee

on the entire suit claim and the defendant has to pay court fee only to the extent to which the suit was decreed.

8. In identical circumstances the question as to whether the defendant is liable to pay the court fee on the entire suit claim or not came up for

consideration before me. In the order passed by me reported in Ameer Ali Vs. Tajudeen, Rashida, Nagis and Taseema Parveen all Sons and

Daughters of Ameer Ali rep by their mother and natural guardian Noorjahan , I followed the decision of the Division Bench of this Court in

(Yanati) Rami Reddi and Another Vs. Tanati Chenchu Polamma, as well as the Division Bench decision mentioned supra reported in Meera

Nireshwalia Vs. Sukumar Nireshwalia, to hold that the Defendant is liable to pay the court fee only to the extent to which the suit was decreed. In

para-7 of the order passed by me in Ameer Ali's case, I held as follows:-

7. In the second decision of the Division Bench reported in (Yanati) Rami Reddi and Another Vs. Tanati Chenchu Polamma, question arose in

regard to payment of Court-fee by the defendant and it was held as follows:-:-

3. Defendant 1 has been directed to pay the Court-fee of Rs. 1,004-15-0 to the Government that being the sum which the plaintiff would have to

pay to Government, she having been allowed to bring the suit as a pauper. Defendant 1's contention is that he should be ordered to pay court-fee

only on the amount the plaintiff has succeeded in getting under the decree and that would amount to Rs. 247. In support of this contention S.

Srinivasa Ayyar and Another Vs. Lakshmi Ammal alias Yogambal Ammal and Others, is relied upon. There it was held that under Order 33, Rules

10 and 11, Civil P.c., it is not open to the Court to direct the defendants to pay court-fees exceeding the amount which payable on that portion of

the plaintiffs claim which is successful; and another case to the same effect is Ganga, Dayal Rai v. Mt. Gaura (1916) 38 All. 469. We think that the

order of the trial Judge directing defendant 1 to pay the court-fee in respect of the amount in excess of that recovered of the amount in excess of

that recovered in the suit under the decree by the plaintiff is wrong and we

accordingly modify that part of the decree and direct defendant 1 to pay court-fee on the amount the plaintiff has succeeded in getting. The plaintiff will pay the balance of court-fee payable to Government.

4. In the result the appeal, except as regards the question of the court-fee is dismissed and the cross appeal of the respondent allowed in part with costs. The respondent will get costs on the appeal to the extent the appellant is unsuccessful and the appellant will get costs to the extent he is successful in the appeal. In the cross-appeal the appellant will pay the respondent's cost to the extent the respondent is successful.

9. The crux of the issue is whether the Court below is right in directing the defendant to pay Court-fees on the entire amount for which the suit was instituted by the plaintiffs as in forma pauper or to the extent to which the suit was decreed. In this case, even though the suit was partly decreed granting only maintenance amount to the minor plaintiffs, the Court below directed the defendant/appellant to pay Court fees for the entire amount for which the suit was instituted..

10. It is evident from the decision of the Division Bench of this Court relied on by the learned counsel for the defendant/appellant mentioned above, it is not open to the Court to direct the defendant to pay Court-fees excepting the amount which is payable to that portion of the relief granted to the plaintiffs and that the balance Court-fee is not payable by the defendant. I am in respectfully bound by the decision of the Division Bench of this Court.

11. In the light of the above decisions, the contention urged on behalf of the revision petitioner that he need not be compelled to pay the court fee on the entire suit claim but only in so far as to the extent to which the suit is decreed is well founded. In other words, the defendant/revision petitioner shall pay the court fee on Rs. 50,000/- and in such event, the court fee on the balance amount has to be paid only by the plaintiffs/respondents herein.

12. In the present case, the incident of wall collapse took place during the year 1997 in which the wife of the first plaintiff died. The suit was instituted in the year 1997 by the plaintiffs as an in forma pauperis and presently, we are in the year 2013. Therefore, at this stage, this Court is not inclined to direct the plaintiffs/respondents herein to pay the court fee on the

disallowed portion of the suit namely Rs. 1,50,000/-. In this connection, it is worthwhile to refer to the decision of the Division Bench of this Court Meera Nireshwalia Vs. Sukumar Nireshwalia, wherein in para No. 25, it was held as follows:-

25. Since the suit was filed as an indigent person, the court below has directed the wife to pay the court fee for the abovesaid sum of Rs.

3,24,000/- which represents the disallowed portion of the claim for past maintenance. Thus, the plaintiff has to pay court fee, as per the decree of

the Family Court, Rs. 33,000/- to the Government. Likewise, she has to be directed in this appeal also to pay a similar sum as Court fee, no doubt

deducing the sum of Rs. 20/- paid by her, as court fee, treating originally this appeal as Civil Miscellaneous Appeal. By an earlier order, this Court

has allowed her to convert the civil miscellaneous appeal as a regular first appeal and an indigent person. Under Order 33 Rules 10 and 11,

C.P.C. we have to direct her to pay court fee on the disallowed portion of her claim. It is held in Chandrareka vs. Secretary of State (1981) ILR

14 Mad 163, The Secretary of State for India in Council Vs. Tirupura Sundarammal and Another, and S. Srinivasa Ayyar and Another Vs.

Lakshmi Ammal alias Yogambal Ammal and Others, that the plaintiff is bound to pay court fee for the disallowed part of the claim and it is not

open to the Court to direct the defendant to pay court fee exceeding the amount payable on that portion of the plaintiff's claim which is allowed.

But in the present case, the court fee payable would consume her maintenance amount for three years. In view of the peculiar facts of the case and

the pitiable condition of the plaintiff, we would earnestly recommend that the State Government should consider waiver or remission of the court

fee payable by her both on the plaint and the memorandum of appeal, particularly when it has not been proved that she has got any other assets or

income, and she is already aged about 63 years.

13. In the present case, the plaintiffs/respondents have filed the suit as an in forma pauperis claiming damages of a sum of Rs. 2,00,000/- out of

which the trial court decreed the suit only to the extent of Rs. 50,000/-. Pending the Civil Revision Petition, the first respondent, who is the

husband of the deceased died, and his legal heirs are recorded as respondents in this case. The respondents are also served but there is no

representation made on their behalf. Taking into consideration that the incident of wall collapse took place in the year 1997 and the fact that the trial court awarded only Rs. 50,000/- in favour of the plaintiffs 1 to 10/ respondents herein, following the Division Bench of this Court mentioned supra, this Court hereby recommend that the State Government shall consider waiver or remission of the court fee payable by the respondents/plaintiffs on the plaint taking note of their pitiable condition. In the result, the Civil Revision Petition is allowed to the extent indicated above. No costs. Consequently, connected miscellaneous petition is closed.