

(1961) 11 KAR CK 0005
In the Karnataka High Court
Case No : Civil Revision Petition No. 829 of 1958

G. Parasmall

APPELLANT

Vs

M.P. Jayalakshmma and Others

RESPONDENT

Date of Decision : 02-11-1961

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 33 Rule 10, 35, 35 (2)

Citation : AIR 1962 Kar 201

Hon'ble Judges : A. Narayana Pai, J

Bench : Single Bench

Advocate : H. Venkateshamurthy, for the Appellant; C.N. Rajan, for the Respondent

Judgement

(1) The first respondent filed O. S. No. 54 of 1954 on the file of the Court of the District Judge, Bangalore, in which the petitioner as the third defendant was the principal contesting defendant. The suit was decided in favour of the plaintiff on 31-8-1956. The judgment concluded with the following terms regarding costs:

"The contesting defendant shall pay the costs of the plaintiff. The plaintiff shall pay the court-fee due to the Government and it shall be the first charge on the schedule properties".

(2) The suit was one filed in forma pauperis. The Court-fee payable on the plaint was Rs. 1312-7-0. The other costs actually incurred by the plaintiff amounted to only Rs. 17-3-0.

Pleader's fee was not included in the costs, because, no certificate appears to have been filed by the pleader certifying the receipt of fees from his client.

(3) The decree as drafted contained the following terms reading the costs :

"It is further ordered and decreed that the plaintiff do pay Rs. 1312-7-0 being the institution fee due to the Government and it shall be the first charge on the schedule properties and it is further ordered and decreed that the third

defendant do pay to the plaintiff Rs. 17-3-0 being the amount of costs incurred in this suit as per memorandum annexed with interest at 6 per cent per annum from this date to the date of realisation".

(4) In June 1957 the plaintiff filed J. A. III for amendment of the decree so far as the costs are concerned. This application was granted, --- with the result, for the sum of Rs. 17-3-0 expressed as costs payable to the plaintiff the sum of Rs. 329-10-0 was substituted, the difference between the two being the amount of court-fee payable on the plaint mentioned above.

(5) The order sheet does not disclose whether the above order was passed after notice to the third defendant and after hearing him or his counsel. The third defendant filed I. A. IV contending that the decree as originally drafted correctly represented the directions of the Court regarding the costs, that the amendment was opposed to the terms of the judgment and that therefore, the decree should be re-amended so as to bring it in accordance with the judgment. That application was rejected by the Court on 17th June 1958. The present revision petition by the 3rd defendant is directed against that order.

(6) That the decree should be in accordance with the judgment is not disputed. The petitioner argues that the decree as originally drafted, under which the plaintiff was shown to be entitled to recover only a sum of Rs. 17-3-0 from the contesting defendant, is one which is in accordance with the judgment. The Respondent Plaintiff contends that the decree as originally drafted did not express the directions contained in the judgment and that the order secured by him in I. A. III brought the decree in accordance with the judgment. That is the only question for consideration in this revision petition.

(7) If this suit had been an ordinary suit, there is no doubt, nor is it disputed, that the sentence in the judgment reading "the contesting defendant shall the costs of the plaintiff" would undoubtedly entitle the plaintiff to recover the Court-fee paid on the plaint as one of the items of costs. The only reason stated by the Petitioner why this result does not follow, is that the suit being one in forma pauperis in which the court, under Rule 10, Order 33 of the Code of Civil Procedure, is required to make a direction regarding the payment of court-fee payable to the Government, the direction actually made by the Court in this case, directing the plaintiff to pay court-fee due to the Government, prevents her from collecting the same from the defendant as part of her costs.

(8) u/s 35 of the Code of Civil Procedure, all costs of and incident to a suit are.

In the discretion of the Court and the Court has full power to order by whom and to what extent such costs are to be paid. Ules 10, 11, 11(a), 12 and 13 of Order 33, of the CPC contain special provisions applicable to court-fee payable in pauper suits. Under Rule 10, where the plaintiff succeeds in the suit, the Court shall calculate the amount of court-fees which would have been paid by the plaintiff if he had not been permitted to sue as pauper; such amount shall be recoverable by the State Government from any party ordered by the decree to

pay the same, and shall be a first charge on the subject-matter of the suit.

If the court omits to make any such direction the State Government has the right under Rule 12, at any time, to apply to the Court to make such a direction. Rule 13, further provides that all matters arising between the State Government and any party to the suit under Rule 10, Rule 11, or Rule 12 shall be deemed to be questions arising between the parties to the suit within the meaning of Section 47 of the Code of Civil Procedure.

(9) The general purpose underlying these rules is the protection of revenue. In the case of pauper suits, the plaintiff is not totally exempted from payment of court-fee payable on the plaint. But the payment thereof is postponed. With a view to ensure due collection of the court-fee after the termination of the suit and to secure the same the Code requires that the Court should make specific directions in regard thereto and makes recovery thereof a first charge on the subject-matter of the suit. These rules, therefore, do not in my opinion have any bearing upon the mutual liability of the parties to the suit in regard to costs.

(10) That matter is governed by S. 35 of the Code of Civil Procedure. Under that Section it is open to the Court to direct full payment of costs to the successful party by one or the other of the unsuccessful parties or to direct the payment of only a portion of the costs to the successful party depriving him of the rest of the costs. When the successful party is a plaintiff in a paper suit there is nothing preventing the Court from directing the defendant to pay by way of costs to the plaintiff all sums, including the court-fee payable on the plaint. It is no doubt true that the Court may under Rule 10 of Order 33, of the CPC make two separate directions, one directing the defendant to pay court-fee payable on the plaint direct to the Government and another directing him to pay the other costs of the plaintiff incurred by him.

(11) Under the provisions of Rule 10 of O. 33 of the Code of Civil Procedure, the Court-fee payable to the Government should be made a first charge on the subject-matter of the suit. In a case where the subject-matter of the suit is property to which the plaintiff becomes entitled by reason of the decree in his or her favour, it is not unreasonable for the Court to make a direction for payment of the court-fee by the Plaintiff on the charge of the suit property for purposes of Rule 10, Order 33 of the Code of Civil Procedure.

If, at the same time, the intention of the Court is that the plaintiff, as the successful party, should be entitled to receive full costs of the suit from the defeated defendant, the fact that a separate direction of the type mentioned above has been found necessary to be made in view of Order 33, Rule 10 of the Code of Civil Procedure, will not prevent the court from making a direction entitling the plaintiff to collect from the defendant or requiring the defendant to pay the full costs of the plaintiff including the court-fee payable on the plaint.

(12) The only question, therefore, is whether in this case the intention of the Court was to award to the plaintiff full costs of the suit including the court-fee

payable on the plaintiff or only other items of costs. Ordinarily costs must follow the event and according to Sub-section (2) of S. 35 of the Code of Civil Procedure, when the Court directs that any costs shall not follow the event, the Court shall state the reasons in writing. The plaintiff in this case has succeeded fully. The judgment does not contain statement of any reason why the Court thought that costs should not follow the event. There is, therefore, no reason, why the sentence e in the judgment reading "the contesting defendant shall pay the costs of the plaintiff" should not be assigned its natural meaning as entitling the plaintiff to recover from the defendant full costs of her suit, including the court-fee payable on the plaint.

(13) The revision petition fails and is dismissed with costs.

(14) Revision petition dismissed.