(1970) 08 PAT CK 0008

In the Patna High Court

Case No : Civil Revision No''s. 233 to 238 of 1969

Gauri Shankar Mansaria APPELLANT

Vs

Union of India(UOI) and Others RESPONDENT

Date of Decision : 29-08-1970

Acts Referred:

Court Fees Act, 1870 — Article 17
Suits Valuation Act, 1887 — Section 8

Citation : AIR 1971 Patna 362

Hon'ble Judges : Shambhu Prasad Singh, J;B.D. Singh, J

Bench : Division Bench

Advocate : Roy Paras Nath, J.N.P. Verma and Arun Kumar Sinha, for the Appellant; Tarkeshwar Prasad, Rameshwar Pd. No. II, Tara Kant Jha, Manindra Nath Verma and Surendra Pd. Sinha, No. II, for the Respondent

Final Decision : Dismissed

Judgement

1. These six applications u/s 115 of the CPC have been filed by the plaintiff. He was assessed to pay Income Tax for different assessment years by the Additional Income Tax Officer, Non-Company District 11 (1) Calcutta, hereinafter referred to as the ''income tax Officer''. For the realisation of the tax six certificates were issued against him by the Certificate Officer, Bhagalpur. There were appeals against the orders passed by the Certificate Officer to the Additional Collector of Bhagalpur, "which were also dismissed. Then the petitioner preferred revisions before the Commissioner. Bhagalpur Division, and after that before the Member. Board of Revenue. Bihar, Patna. Having failed there, he instituted the six suits in the court of the Subordinate Judge, Bhagalpur. The reliefs claimed in the suits were:

(a) A declaration that the petitioner was not an assessee and the assessment order of the Income Tax Officer was illegal, null and void and without jurisdiction;

(b) A declaration that the orders passed by the Certificate Officer. Bhagalpur, Additional Collector, Bhagalpur, Commissioner, Bhagalpur Division, and Member, Board of Revenue, were illegal, null and void, ultra vires and without jurisdiction;

(c) Permanent injunction against the defendants-opposite parties before this court restraining them from proceeding with certificate proceedings; and

(d) Costs.

In each of the six suits, the petitioner paid only a declaratory court-fee of Rs. 22.50. The peripatetic Stamp Reporter took objection to the amount of the court-fee paid by the petitioner in these suits and in his report he pointed out that the suits were for a declaration with consequential relief and thus covered by Section 7(iv)(c) of the Court-fees Act, hereinafter referred to as the Act. After hearing the petitioner, the court below has accepted the report of the peripatetic Stamp Reporter and held that ad valorem court-fee is payable on the total valuation given by the petitioner. It may be stated here that the petitioner has valued the suits at the amounts of tax for which he was assessed, and he has also valued the relief for injunction at Rs. 100-00 in each of the suits.

2. As the point arising for decision in each of the Civil Revision is the same, they have been heard together and are being disposed of by this common judgment.

3. Mr. Roy Paras Nath appearing on behalf of the petitioner has contended that the suits were governed by Article 17 (1) of Schedule II to the Act, and not by Section 7(iv)(c) of the Act. Article 17 (1) of Schedule II of the Act runs as follows:

"Plaint or memorandum of appeal in each of the following suits.

(i) To alter or set aside a summary decision or order of any of the Civil Courts not established by Letters Patent or of any Revenue Court"

In this State the amount of court-fee payable for such suits is Rs. 22.50. According to Mr. Roy Paras Nath, the suits are merely for setting aside a summary decision or order of Revenue Courts and therefore, fixed declaratory court-fee of Rs. 22.50 paid by the petitioner in each of the suits is sufficient. In our opinion, Mr, Roy Paras Nath is not correct in his submission. So far relief No, (b) is concerned no doubt, it is covered by Article 17 (1) to Schedule II of the Act, but the other reliefs claimed in the suits are not covered by that Article, under relief No. (a) the petitioner wants a declaration that he was not an assessee and the assessment order of the Income Tax Officer was illegal, null and void and without jurisdiction. It is now well settled that Income Tax Officer is not a Civil or Revenue Court. He was never considered as a Civil Court. The question whether he is Revenue Court or not stands set at rest by two decisions of the Supreme Court in Lalji Haridas Vs. State of Maharashtra and Another, and Balwant Singh and Another Vs. L.C. Bharupal, Income Tax Officer, New Delhi and Another, . Thus, a suit for a declaration that an assessment order of an Income Tax Officer is illegal, null and void and without jurisdiction cannot be covered by Article 17 (1) to Schedule II of the Act. It is also well settled that a relief for injunction is a consequential relief and, therefore, reliefs (a) and (c) together make the suits of the plaintiff; as suits for declaration with consequential relief.

Thus, these suits are also governed, so far as reliefs (a) and (c) are concerned, by Section 7(iv)(c) of the Act. In our opinion, the plaintiff is liable to pay ad valorem court-fee for reliefs (a) and (c) read together u/s 7(iv)(c) of the Act and fixed declaratory court-fee for relief (b) under Article 17 (1) to Schedule II of the Act.

4. It has next been contended by Mr. Roy Paras Nath that the court below is wrong in holding that the petitioner was liable to pay ad valorem court-fee on the total valuation of the suits. According to him, u/s 8 of the Suits Valuation Act, there could not be two valuations, one for the purpose of jurisdiction and another for the consequential relief. The valuation must be one and the same. He appears to be correct so far this submission is concerned. He has further submitted that the valuation for the entire suit in each of the suits should be only Rs. 100-00, the value of the consequential relief (Relief No. (c)). The petitioner has himself given two valuations in each of the suit, and in absence of sufficient materials at this stage, we are not in a position to say which of the two valuations should be accepted as the valuation of the suit.

The court below has not applied itself to this aspect of the matter. We leave this matter open with a direction to the court below that it should now decide the question what should be the proper valuation of the suits on which the petitioner is liable to pay ad valorem court-fee. It will also be open to the petitioner to amend the valuation given by him, if he is so advised.

5. Subject to the aforesaid observation, the applications are dismissed with costs with a consolidated hearing fee of Rs. 64/- only.

