

(1956) 08 MP CK 0002

In the Madhya Pradesh High Court

Case No : Civil Revision No. 1 of 1956

Gomati Bai and Another

APPELLANT

Vs

Ramdayal and Others

RESPONDENT

Date of Decision : 30-08-1956

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 151

Citation : AIR 1957 MP 136

Hon'ble Judges : Dixit, J

Bench : Single Bench

Advocate : Bhagwandas Gupta, for the Appellant; Shivdayal, Dy. Govt. Advocate, for the Respondent

Judgement

Dixit, J.—This is an application in revision against an order of the Civil Judge, First Class, Gwalior, rejecting the Applicant's prayer for refund of court-fees. The Applicants instituted a suit in the Court of District Judge, Gwalior, against Ramdayal for the dissolution of a partner-ship business and for the taking of partnership accounts. The suit was valued at Rs. 8000/-. A preliminary decree passed by the District Judge on 11th April 1945 was ultimately upheld by the Nyaya Sabha of Madhya Bharat on 13th July 1949, in the mean-time there was an alternation on 1st April 1949 in the pecuniary jurisdiction of Civil Courts in the State and according to the new limits of pecuniary jurisdiction, the Court of Civil Judge First Class was empowered to try suits upto the valuation of Rs. 10,000/-.

When the record of the case came back to the District Judge, the Applicants made an application on 7th November 1949 that according to a decree passed by the Jhansi Civil Court with regard to the accounts of a partnership shop of the parties at Dabra, a sum of Rs. 1,02,892/14/3 was payable to them and that they were entitled to get a decree for this amount, that the valuation of the suit was now Rs. 1,02,802/14/3 and accordingly a final decree could be passed only by the Court of District Judge and no other Court and that he was paying ad valorem court-fees on Rs. 1,02,892/14/3.

The Applicants pressed the District Judge to decide the question of the jurisdiction of the Court. Thereupon the learned District Judge held that the suit was instituted on the valuation of Rs. 8000/-, that it was now triable by the Civil Judge First Class & that the Civil Judge would be competent to pass a decree for the amount that may be found due to the Applicants even if it might be in excess of its pecuniary jurisdiction. The learned District Judge, therefore, sent the case to the Civil Judge, Gwalior for further proceedings.

During the course of final decree proceedings the Applicants then applied to the Civil Judge First Class for refund of the court-fees. This application was refused by an order dated 21st May 1951 which also embodied certain instructions to the receiver appointed for the partnership property. The Applicants did not challenge the order dated 21st May 1951 of the Civil Judge First Class either by way of an appeal or revision.

Nor did they take any objection to the rejection of their prayer for refund of court-fees when the non-Applicants filed an appeal No. 18 of 1951 in this Court against the order dated 21st May 1951 of the Civil Judge First Class Gwalior in so far as it related to the giving of certain instructions to the receiver. The dispute was then compromised between the parties and a final decree for Rs. 10,000/- was passed. Thereafter the Applicant again applied in 1955 to the Civil Judge First Class for refund of the Court-fees paid by them on the amount in excess of Rs. 10,000/-. This application was also rejected. The Applicants have now come up in revision to this Court.

2. I have heard Mr. Bhagwandas Gupta learned Counsel for the Applicants and in my opinion this application must be dismissed. It is now well settled that the Court can order a refund of Court-fees (1) where the Court-fees Act applies, (2) where there is an excess payment by a mistake or (3) where, on account of the mistake of the Court, a party has been compelled to pay court-fees either wholly or in part. In cases not covered by the Court-fees Act, the Court exercises the inherent jurisdiction u/s 151, CPC for ordering a refund of the Court-fees. See *In re In Re: Chidambaram Chettiar, ; Karfule Ltd. Vs. Arical Daniel Varghese, and Indu Bhusan Roy Choudhury Vs. Secy. of State,*

In the instant case the refund of court-fees is not claimed under any provision of the Court-fees Act but in the exercise of the Court's power u/s 151, Code of Civil Procedure. Learned Counsel for the Applicants argued that when the Applicants paid court-fees on Rs. 1,02,892/14/3 they were under no obligation to do so and that the payment of the courts fees on that amount was only an advance payment of court-fees on the amount that would be found due to the Petitioners after taking the accounts. I am unable to agree with this contention.

The Petitioners did not pay the court-fees on Rs. 1,02,892/14/3 on account of any mistake of their own or of the Court. They paid it deliberately to show (hat the valuation of their suit was Rs. 1,02,892/14/3 and for the purpose of bringing their suit as one within the jurisdiction of the Court of District Judge after the

alteration in the pecuniary jurisdiction of Civil Courts effected on 1st April 1949. It is not that their application dated 7th November 1949 was one for an amendment of the valuation of the suit.

If the application had been merely one for an amendment of the valuation of the suit, then no doubt it could be argued with some force that at that stage they were under no obligation to pay any court-fees on the amended valuation which they desired to be made. The Applicants without seeking leave of the Court for an amendment, attempted to show to the Court, by paying court-fees on Rs. 1,02,892/14/3 that their suit was in fact of that valuation.

If then the Applicants did not succeed in their efforts to have the suit restrained in the Court of District Judge and did not get a decree for the amount on which they paid the court-fees, they can-not say that they paid the court-fees on account of any mistake either on their part or of the Court. The position is substantially the same which would have been if the Applicants had originally valued their suit at Rs. 1,02,892/14/3 and succeeded in getting a decree for only Rs. 10,000/-. Surely in such a case the Applicants would not have been entitled to any refund of the court-fees.

The suggestion that the court-fee was paid as article advance payment is altogether untenable in the face of the statements made by the Applicants in their application dated 7th November 1949. There in the Applicants nowhere said that they were paying the court-fees simply as an advance payment of the court-fees that would be required to be paid by them on the amount that may be found due to them the payment of court-fees was for the sole purpose of inflating the valuation of the suit so that final decree proceedings should be before the District Judge. In these circumstances I do not think that the refund asked for can be granted.

3. Learned Counsel for the Applicants referred me to B.V. Gam, In re, In the matter of the Debts of B.V. Gam, Intestate, deceased, , and other cases dealing with the question of refund of court-fees. These cases have no applicability to the facts in the present case and the general principle deducible from all these cases is no different from that stated by me earlier in the order. This application must also be rejected on the ground that the Applicants made a prayer for the refund of court-fees first in 1951. This was rejected by the learned Civil Judge First class by his order dated 21st May 1951.

The Applicants took no steps in challenge this Order. In the presence of that order they were clearly not entitled to make another Application for the refund of court-fees. Learned Counsel for the Applicants argued that it was not necessary for the Petitioners to have the order dated 21st May 1951 set aside as final decree proceedings had not concluded. I fail to see how the termination of final decree proceedings had any bearing on the question of the refund of court-fees here when the pendency of the proceedings did not stand in the way of the Applicants claiming a prayer for the refund of court-fees in 1951.

4. For the above reasons this revision petition is ejected. There will be no order as to costs of this petition.