
(1950) 04 OHC CK 0013

In the Orissa High Court

Case No : First Appeal No's. 45 to 48 of 1948

Haribansha Singh Deo

APPELLANT

Vs

Sudhanshu Sekhar Singh Deo and Others

RESPONDENT

Date of Decision : 25-04-1950

Acts Referred:

Court Fees Act, 1870 — Article 1, 28, 5, 7

Citation : AIR 1951 Ori 150 : (1950) 16 CLT 158

Hon'ble Judges : Jagannadha Das, J

Bench : Single Bench

Advocate : P. Misra, in Nos. 45 and 46 and L.K. Das Gupta, in Nos. 47 and 48, for the Appellant; S.N. Sen Gupta, for the Respondent

Judgement

Jagannadha Das, J.—These matters come up before me as the Taxing Judge as a result of the decision of the Bench in these appeals that it has no jurisdiction to deal with the matter. Acting on the suggestion made in the order of the Bench and with a view to avoid any further delay in this long pending matter, I propose to treat the reference by the Registrar as a reference by the Taxing Officer to me, the Registrar himself being under the rules of this Court, also the Taxing Officer. These four appeals arise out of three suits which along with four other suits were filed in the Court of the Subordinate Judge of Sambalpur by various rival claimants to the Barpalli Zamindary which were all tried analogously and were disposed of by a common judgment of the Subordinate Judge. Appeal No. 45 is by the plaintiff in T. S. No. 11/49. Appeal No. 48 is by the plaintiff in T. S. No. 8/39. Both these suits were filed as mere declaratory suits and court-fee on the two appeals therefrom was filed on the footing of mere declaration. Appeals Nos. 46 and 47 are against the decree in T. S. No. 10/39 by two of the defendants therein who are respectively the plaintiffs in T. S. Nos. 11 and 8 of 1939. T. S. No. 10 of 39 was filed as a suit for declaration and possession and treating this as a prayer for declaration and consequential relief, "ad valorem" court-fee was paid in the trial Court on the plaint in that suit. When it came to a question of appeal against it in this Court, the appellant in F. A. No. 46 paid the "ad valorem"

court-fee while the appellant in F. A. No. 47, treating the prayer for possession in the Plaint in O. Schedule 0 of 39 as mere surplusage, in the circumstances to be set out later, paid on his appeal memorandum only the declaratory Court-fee.

2. The court-fee originally paid on the appeal memoranda in F. A. Nos. 45, 46 and 48 was considered as sufficient by the Stamp Reporter and on his reports the three appeals were admitted by the Registrar by his order dated 8-3-49. In Appeal No. 47 however, the Stamp Reporter noticing the fact that on the plaint in the suit out of which that appeal arose "ad valorem" court-fee was paid, was of the opinion that in the appeal also "ad valorem court-fee was payable and not merely a declaratory court-fee, which was all that was" paid by the appellant. He accordingly placed the matter before the Registrar for orders. When the matter came up before the Registrar on 9-5-49, he directed that it should be posted before him along with F. A. Nos. 45, 46 and 48 relating to the matter of court-fees (though he had already admitted those three by his prior order dated 8-3-49). As appears from his subsequent orders he adopted this course presumably because he had the impression that the valuation of the suit-property given in all these four appeals was abnormally low. It may be mentioned that in the trial Court, the valuation of the suit-property for purposes of jurisdiction and court-fee was fixed at Rs. 25,000/- by the learned Subordinate Judge by his order in T. S. No. 19 of '39 which is one of the batch of suits. That valuation has been adopted for all the suits. The appellants in these four appeals have also adopted that valuation for their appeal memoranda. It may also be noticed that in the trial Court, the actual valuation did not matter so far as the suits in which only a declaratory relief was prayed for, but even in the appeals against those suits, the correct valuation is of some consequence since by virtue of the Orissa Court-fees Act, V (5) of 1939 which came into force subsequent to the institution of the suits, a court-fee is payable in respect of declaratory relief, dependant on valuation and based on the slab system. In view of the fresh importance which the valuation of the suit-property has thus acquired, the Taxing Officer called upon the appellants in the four appeals by his order dated 10-9-1949 to furnish statements showing (a) market value of the property in dispute; (b) annual net profits thereof in the year next preceding the institution of the suit. These statements not having been filed within the time -granted by the Registrar, all the four appeals were placed before the Bench for orders. The statements were filed on 23-11-49 and a Bench of this Court by its order dated 28-11-49, in all these four appeals, remitted the matter back to the office directing the office to ascertain the market value on the basis of those statements. The appeals thereupon went back to the Stamp Reporter who on 29-11-1949 made a report that the value of the suit property is Rs. 48,000/-, calculating the same at eight times the net annual profits of Rs. 6,000/- as shown by the statements filed on 23-11-49 and that court-fee in all the appeals was payable on the basis of the revised valuation. The matter came up again before the Registrar, who while accepting the statements filed, relating to the net annual profits did not accept the valuation reported by the Stamp Reporter. He

was of the view that both the valuation of Rs. 25,000/- as originally fixed by the trial Court as also the valuation of Rs. 48,000/- reported by the Stamp Reporter were low. He therefore fixed the valuation at Rs. 1,20,000/- being twenty times the net profits. He was of the opinion that the court-fee in all the four appeals has had to be paid on the basis of that valuation. He was further of the opinion that in respect of Appeal No. 47, the appellant was not entitled to treat the appeal as involving only a declaratory relief but should ask both declaration and possession and pay "ad valorem" court-fee on the value as fixed by him. It is in these circumstances that the matter comes to me for a decision on the question of the court-fee payable.

3. Questions of some importance relating to the practice in such matters have been raised: (1) It is said that so far as the Apps. Nos. 45, 46 and 48 are concerned, the court-fee originally paid thereon having been accepted as sufficient and the appeals having been filed and admitted, the Registrar as the Taxing Officer had no power to reopen the same. It has been pointed out that under the terms of Schedule , Court-fees Act, the Taxing Officer has the power to deal with such a matter only if any difference arises between the party concerned and the Stamp Reporter and not when the Stamp Reporter has accepted the court-fee paid as sufficient; (2) The second point that is raised is that the valuation of the suit-property having been fixed by the trial Court, the Taxing Officer cannot reopen the same and determine the value afresh, and thereby constitute himself into an appellate Court against the decision of the lower Court. (3) It is also urged that the Taxing Officer has no power to call for any fresh evidence for the ascertainment of the value, and (4) that in any case, the Taxing Officer has no power to fix the value over and above what the Stamp Reporter has fixed.

4. It would appear from R. 14, Chap. VII of the Rules of this High Court that the Stamp Reporter is an officer charged with the duty of examining whether the court-fee on the appeal memorandum is sufficient, and it appears to be arguable that the Taxing Officer's jurisdiction arises only when there is a difference between the Stamp Reporter and the party concerned as to the proper court-fee payable. In "Bhubaneswar Trigunait, In the goods of In Re: Bhubaneswur Trigunait and Others, Rankin J. seems to have been of the view that such a difference between the Stamp Reporter and the litigant is not necessary in order to give jurisdiction to the Taxing Officer. His Lordship was of the opinion that

"the jurisdiction of the Taxing Officer does not arise like the jurisdiction of an arbitrator upon the difference between a Court clerk and a suitor and on some sort of formal reference to decide that dispute and that the intention of Schedule is merely to ensure that the question should be raised before the Taxing Officer and that he should bring his mind to bear on it and decide it."

See contra per Jwala Prasad J., Krishna Mohan Sinha Vs. Raghunandan Pandey, .

It is unnecessary for me to express any final opinion on this matter because the

Taxing Officer in this case is the Registrar of the Court and there can be no doubt that the Registrar as the Head of the High Court Office by virtue of Schedule 8, Court-fees Act has the power to collect the proper court-fee in respect of an appeal memorandum which through mistake or inadvertence has been filed already and accepted as having been sufficiently stamped. Once the matter has been reopened by the Registrar under Schedule 8, the question very properly goes back to the Stamp Reporter and comes up again to him as the Taxing Officer and thence to the Taxing Judge on a proper reference. Further in the present case, it is the Stamp Reporter that has in fact reopened the valuation under orders of Court dated 28-11-49. The Stamp Reporter has been vested with the power to reopen the valuation under R. 18 of Chap. VII of the High Court Rules which apparently is auxiliary to the power vested in the Court under Schedule 8, Court-fees Act.

5. I am satisfied also that there is no substance in the contention that the Taxing Officer has no power to fix a valuation over and above what the Stamp Reporter reports to be the correct valuation. Under the terms of Schedule , the Taxing Officer is not in the nature of an appellate court against the decision of the Stamp Reporter so as to give room for any possible argument that his decision cannot go beyond what the Stamp Reporter has decided. Indeed it is to be noticed that under Schedule , the Stamp Reporter is not even called upon to give a decision but his duty is to refer the matter to the Taxing Officer when any difference arises between him and the party. Of course he may indicate his views for the guidance of the Taxing Officer, but that in no sense is a decision.

6. As regards the argument that the Taxing Officer cannot constitute himself into a Court of appeal against the decision of the trial Court on the question of valuation and that he cannot call for any fresh evidence on that matter, I am unable to agree with the same. The power of the Taxing Officer under Schedule , Court-fees Act or of the Registrar as the Head of the High Court Office under Schedule 8, are vested in him for the purpose of the protection of the proper stamp-revenue payable to the Government and no limitations are indicated in the exercise of those powers. Section 12(ii), Court-fees Act indicates that though the decision of the lower Court on the question of court-fee is final as regards that Court, it is also liable to be corrected by the superior Court without there being a specific appeal against the decision on the particular issue. Though it may be, that the Taxing Officer in reopening the question of valuation already settled by the trial Court, pronounces indirectly against the correctness of the decision of the lower Court, he is not in any sense sitting in appeal against it because his decision is not for the purpose of collecting the deficit Court-fee of the lower Court, but only for the collection of the proper court-fee in the High Court itself which is exclusively within his jurisdiction. I have therefore no doubt that the Taxing Officer has the power to reopen the question of valuation determined by the lower Court if it is necessary for the determination of the proper court-fee payable on the appeal memorandum to the High Court. This view is supported by the decision of the Pull Bench in Krishna Mohan Sinha Vs. Raghunandan Pandey, .

While upholding the power of "the Taxing Officer in this behalf, I would only add by way of caution that the decision of the lower Courts regarding valuation should receive due weight and respect and should not be lightly departed from excepting where the lower Court appears to have committed a gross error and the interests of the Government in the matter of court-fees have seriously suffered thereby.

7. It cannot also be maintained that in exercising the power to reopen the question of valuation the Taxing Officer is confined to material already on record and available to the Court below. There is nothing in Schedule or Schedule 8, Court-fees Act to limit the power in any such way. I think that it is permissible to call for additional evidence . I find support also for this view in the judgment of the Full Bench in Krishna Mohan Sinha Vs. Raghunandan Pandey, where it has been stated by the learned Chief Justice as follows:

"Once it is determined that the power of the High Courts to decide the amount of the fee payable on the memorandum of appeal presented} in those Courts is delegated to the Taxing Officer and to the Taxing Judge under Schedule , those officers should always, if need be, require evidence to be produced before them and to hold an investigation as to the value of the subject matter for they would have all the powers incidental to the discharge of those duties which the High Court itself possesses."

Das J. who expressed the minority view held that the Taxing Officer had no such power. Of course, this power of the Taxing Officer to reopen the valuation and call for fresh evidence is one that ought to be exercised with moderation and caution, and should be used so as not to become a source of harrassment to the litigant. While undoubtedly the Court and its officers are charged with the duty of safeguarding the legitimate interests of the Government for the realisation of proper court-fees, the litigant is also reasonably entitled to expect that the decision of the Courts below on the question of valuation and court-fees would not be lightly ignored and reopened every time that a matter goes up to the higher Court. In this connection it must also be remembered that in cases falling under Schedule , Sub-section (4) Cl. (C), Court-fees Act, the Legislature gives the litigant choice to put his value on the relief. The ascertainment of the market value by the Court is only to prevent gross undervaluation and not to substitute its own valuation for that by the party. The normal principle should be that the party's valuation should not be interfered with unless it appears to be grossly low.

8. I, therefore, overrule all the above contentions raised on behalf of the appellants and now proceed to determine what is the correct court-fee payable in all the appeals. The proper court-fee depends in the present cases, on the valuation of the suit-property. The trial court in fixing the valuation at Rs. 25,000/- was largely influenced by the fact that the Barpalli Zamindary is held under a special kind of tenure under which the Zamindary descends to a single heir and is not alienable. The property not being theritable and alienable, the

trial Court was of the view that its market value cannot be computed in the ordinary way and therefore fixed the value at Rs. 25,000/-. This however works out at only about four times the net annual profits, of Rs. 6,000/-. I agree therefore with the Taxing Officer that this is grossly inadequate. I am not however prepared to agree with the estimate of the Taxing Officer either when he fixes the valuation at 20 times the net profits. This would be a fair standard only if the estate was ordinary heritable and transferable property, which, as pointed out by the trial Court, it is not, on account of its special tenure. In the absence of any other satisfactory material, I would, in this case, adopt ten times the "Takoli" payable on the estate as a fair estimate of the value of the subject-matter of the suit. That is the standard adopted by the Court-fees Act itself with reference to cases that fall under Schedule , Cl 5, Court-fees Act in respect of temporarily settled Zamindaries, which I understand Barapalli Zamindary to be. No doubt the cases before me fall not under Cl. 5 of Schedule , but under Cl. 4 of the said section and it very often happens that the statutory valuation in Cl. 5 differs substantially from the market value in respect of ordinary property. But in view of the special circumstances and in the absence of any other material for guidance I consider that this would be only a fair method of disposing of this matter. I may also add that whenever there is any reasonable doubt or difficulty in ascertaining the valuation of immovable property, it is legitimate to apply the statutory valuation in Schedule , Cl 5 by way of analogy if it is applicable. See "Venkata Narasimha Raju v. Chandrayya AIR 1927 Mad 825: 105 I C 171 and P. K. Nainar Rowther v. Kuppai Pichai Rowther AIR 1929 Mad 609 : 120 I C 889. It appears from the finding of the trial Court on the question of valuation that the "Tokali" payable in respect of this estate is slightly less than Rs. 6,900/-. I would accordingly fix the value of the subject-matter of the appeal at Rs. 69,000/- for purposes of court-fees. Declaratory fee with reference to this valuation has to be paid in App. Nos. 45 and 48 and the deficit court-fee payable on that footing will have to be paid by the appellants in these two appeals.

9. As regards Apps. Nos. 46 and 47, a further point raised by the respective appellants therein has to be noticed. It may be recalled that these two appeals are against the decree against the appellants therein passed in T. S. No. 10 of 89 in which the plaint was for declaration and recovery of possession and a decree also was given to favour of the plaintiff in the suit for both the reliefs. The Taxing Officer is of the opinion that "ad valorem" court-fee is payable by the appellants in these appeals on the footing of declaration and consequential reliefs. Counsel for appellants do not dispute that according to the Patna practice, the court-fee payable would be "ad valorem" if they are driven to include the relief by way of possession in the appeal memorandum. But they contend that the plaintiff in T. S. No. 10 of 39 in asking for relief by way of possession has asked for an unnecessary relief and that therefore they could ignore it. It is admitted that when T. S. No. 10/39 and the other connected suits were filed the estate was in charge of the Court of Wards who were in possession of the same during the lifetime of the previous female owner and who happened to have continued in

charge under Schedule 3, Central Provinces Court of Wards Act. That section provides that the Court of Wards can retain its superintendence "until one of the claimants (to the succession) has established his claim in a competent civil Court". In view of this provision, I agree with the contention of the appellants in these two appeals that the plaintiff in TT. S. No. 10/39 need not have asked for relief by way of recovery of possession and that relief so far as the plaint therein is concerned is a surplusage. The position however may conceivably be different at the appellate stage since a relief for possession has been given in favour of the plaintiff therein. These appellants may have to get rid of it. It may be that if the appeal does not comprise that relief also the matter may become "res judicata" so far as that relief is concerned. The appeals if confined only to the declaratory reliefs may not be maintainable. See Narendra Nath Sen and Others Vs. Mahasay Ganesh Prasad Ray and Others, . This however is an objection to the maintainability of the appeals and is not a matter which determines the court-fee payable. The court-fee payable depends on the appeal memorandum as it is framed. The Court has no doubt power to insist on a plaint or an appeal memorandum being framed in a proper manner so as not to give room for any device to escape payment of proper court-fee. But in view of the fact that the relief by way of possession was a surplusage in the appeal without asking for relief to get rid of that relief in the appeal memorandum may be arguable, I see no objection to the court-fee being collected in respect of both these appeals (that is, Nos. 48 and 47 of 1948), on the footing of declaratory relief only if the respective appellants therein are prepared to take their risk at the final hearing as regards the maintainability of these appeals. They are therefore directed to pay D. C. F., if any, on the basis of the revised valuation on the footing of the declaratory relief. Appellant in F. A. No. 48 will have to amend his appeal memorandum accordingly.

10. The deficit court-fees in all these appeals will be payable by the appellants within two weeks of the reopening of the High Court after the summer recess.

11. The office will intimate to the appellants" counsel the actual deficit court-fee payable in pursuance of the above order before the Court closes for summer recess. If the appellants in F. A. Nos. 46 and 47 do not want to take the risk and want to pay court-fee on the footing of relief for possession also, they will be permitted to do so, but within the time above fixed after necessary amendments.

12. After the deficit court-fees in Apps. 46 and 47 are paid and the appeals are admitted, the question as to whether the respondent therein who is the plaintiff in T. S. No. 10/39 is to be called upon to pay deficit court-fee on his plaint and given an opportunity to prove the valuation will be considered by the Registrar in due course.