

(2007) 12 AHC CK 0086

In the Allahabad High Court

Case No : First Appeal From Order No. 280 of 2007

Her Highness Maharani Rewa

APPELLANT

Vs

Sangam Upnivesh Awas and Nirman Sahakari Samiti Ltd.and
Ors.

RESPONDENT

Date of Decision : 13-12-2007

Acts Referred:

Suits Valuation Act, 1887 — Section 8

Uttar Pradesh Court Fees Act, 1870 — Article 17, 7(ivA)

Citation : (2007) 12 AHC CK 0086

Hon'ble Judges : Amitava Lala, J and Shishir Kumar, J

Final Decision : Disposed Of

Judgement

Amitava Lala, J.—This appeal arises out of an order passed by the Additional Civil Judge (Senior Division) Allahabad on 23rd December, 2006 . enhancing the amount of Courtfees, on the basis of market value of the property, to the tune of rupees twenty five Crores.

2. Since the parties arrived at a consensus for hearing the matter on informal papers, as all materials are available on record and the dispute is confined to Courtfees only, we have heard the appeal on contest at the admission stage.

3. Fact remains that the plaintiff/appellant instituted a suit for injunction upon payment of appropriate Courtfees. An interim application was also made by the plaintiff/appellant to that extent. However, upon issuance of notice, the defendants/respondents appeared and filed an objection to such application annexing allegedly forged and fabricated documents i. e. agreement for sale, power of attorney and sale deed etc. which were not executed by the plaintiff/appellant. At that stage, the plaintiff/appellant was compelled to make an application for amendment of the plaint to make an additional prayer, which was allowed. Such additional prayer was made regarding cancellation of the sale deed etc. which is by nature declaratory relief. Naturally, a question arose the Court below whether the Courtfees initially paid by the plaintiff/appellant is sufficient or

further Courtfees will be paid. Ultimately the dispute poised down to a finding and the aforesaid order was passed by enhancing the Courtfees on the basis of the market value of the property. Being aggrieved thereby and dissatisfied with such order, the plaintiff/appellant preferred this appeal.

4. Both the contesting senior Counsel being Mr. H. R. Misra appearing for the plaintiff/appellant and Mr. Shashi Nandan appearing for the defendant/respondents, brought into notice of this Court certain facts and circumstances as well as the laws applicable herein.

5. Mr. Misra, contended this Court that under Section 7 (ivA) of the Court Fees Act, 1870, (hereinafter referred to as "the Act"), the State of U. P. has power to assess the valuation of the property but if the dispute is of such nature which does not fall within the fore corners of Section 7 (ivA) of the Act, the only applicable section herein is Article 17 of the Act, hence the decision in respect of fixing the Courtfees by the Court below is wrongful. Therefore, let us quote Section 7 (ivA) of the Act being the State amendment of U. P. , hereunder:

"(ivA). For cancellation or adjudging void instruments and decree. In suits for or involving cancellation of or adjudging void or voidable a decree for money or other property having a marketvalue, or an instrument securing money or other property having such value;

(1) where the plaintiff or his predecessorintitle was a party to the decree or the instrument, according to the value of the subjectmatter, and

(2) where he or his predecessorintitle was not a party to the decree or instrument, according to onefifth of the value of the subjectmatter, and such value shall be deemed to be

if the whole decree or instrument is involved in the suit, the amount for which or value of the property in respect of which the decree was passed of the instrument executed, and

if only a part of the decree or instrument is involved in the suit, the amount or value of the property to which such part relates.

Explanation. The value of the property for the purposes of this subsection, shall be the marketvalue, which in the case of immovable property shall be deemed to be the value as computed in accordance with subsection (v), (vA) or (vB), as the case may be. "

6. In support of his submission, Mr. Misra cited a Division Bench judgment of this Court reported in AIR 1992 All 254, Smt. ShefaliRoyv. Hero Jaswant Dass and others, in which three Judges Bench judgement of the Supreme Court reported in AIR 1971 SC 87, State of U. P. v. Ramkrishan Burman (deceased) and others, was considered at length. In Ramkrishan Burman (supra) the Supreme Court categorically considered the issue, as available from paragraph 22 of the judgment of the Division Bench of this High Court quoted herein below:

"22. The payment of Courtfees depends upon the averments of the plaint and the relief claimed and not on the averments of the written statement. A suit for mere declaration that the plaintiff is owner of the property in suit as claimed by the plaintiff in the instant case and incidentally claiming a declaration that the alleged sale deed be declared null and void, does not fall within the ambit of Section 7 (ivA) (State of U. P. Amendment). See State of U. P. v. Ram Krishan Burman, AIR 1971 SC 87:1971 All LJ 1, wherein considering this State of U. P. Amendment their Lordships of the Apex Court ruled that in a suit for mere declaration that the plaintiff is owner of certain properties, this U. P. Amendment is not attracted for the purposes of payment of Courtfees. According to their Lordships this U. P. Amendment relates to a decree for recovery of money or other property. It however, does not include a decree concerning title to money or other property, and hence where mere declaration is involved, the payment of Courtfees is governed under Art. 17, Schedule II of the Courtfees Act. In view of the decision in Ram krishan Burman's case (supra), we are of the opinion that the plaintiff has paid proper Courtfees. "

7. Therefore, in a case of consequential relief the Courtfees cannot be fixed in the way as held by the Court below, hence the impugned judgment and order is liable to be set aside.

8. A further judgment of Division Bench of this High Court reported in 2006(3) ARC 56, Ajay Tiwari v. Hirday Ram Tiwari and others, has been referred by Mr. Misra himself in his usual fairness, although it goes against him. However, we find that the Supreme Court judgment in Ramkrishan Burman (supra) is only referred therein unlike Smt. Shefali Roy (supra) where it is thoroughly discussed.

9. Mr. Shashi Nandan, learned senior Counsel appearing on behalf of the defendants/respondents on the other hand, relied upon a judgment of Full Bench of this Court reported in 1967A. L. J. 612, Smt. Bibbi and another v. Sagun Chandra and others, saying that this question has been categorically considered in such judgment and it has been held that a sale deed "assures" in the most effective manner the divesting of the title of the transferor in a property and the vesting of that title in the transferee and where the sale of a property can take place only by means of a deed, it is the sale deed alone that "assures" the extinction of the transferor's interest and the acquisition of that interest by the transferee. Therefore, in the opinion of the Full Bench of this Court a sale deed is "an instrument securing property" within the meaning of Section 7 (ivA) of the Act.

10. However, the Division Bench in Ajay Tiwari (supra), considered the judgment of Smt. Bibbi (supra) by saying it clearly lays down that suit for declaring the sale deed unauthorised, void, illegal and ineffective falls within the ambit of Section 7 (ivA) of the Act, and, therefore, Article 17 (iii) of Schedule II does not apply. However, the Division Bench distinguished the judgment of Supreme Court in Ramkrishan Burman (supra) factually.

11. In an earlier judgment reported in AIR 1970 All 488, Chief Inspector of Stamps, Uttar Pradesh v. Mahanth Lakshmi Narain and others, it was held that the enactment is intended to provide revenue to the State. It has also been held that this is a fiscal statute and like identical legislations its provisions and connotations must be construed in its strict sense.

12. According to us, The Court Fees Act, 1870 is enabling provision but not debarring provision. It only debars unscrupulous litigants. Therefore, the Court has to see that a litigant can come forward by paying decent Courtfees for the purpose of administration of justice. However, it should also be remembered that the payment of Courtfees cannot be the earning of the State. In a judgment of Supreme Court reported in (1996) 1 SCC 345, Secretary to Govt. of Madras v. PR. Sriramulu, it was held as follows :

"However, the administration of justice is a service which the State is under an obligation to render to its subject. The amount raised from the suitors by way of fee should not normally exceed the cost of the administration of justice because, possibly there could be no justification with the State to enrich itself from High Court fees or to secure revenue for general administration. The total receipts from the Court fees should be such as by and large can cover the cost of administration of justice. There should also be some measure of uniformity in the scales of Court fees throughout the country as there appears to be a vast difference in the scales of Court fees in various States of the country. The feasibility of a fixed maximum chargeable fee also deserves serious consideration. "

13. Against this background of law now we have to verify what would be the appropriate Courtfees in this case after incorporating the amendment. It is to be remembered that after amendment when both the prayers are inserted in the plaint then whether one is earlier and the other is later lost its significance. Suit would be governed by the primary relief. We have to see what is the primary relief. If it is a suit for injunction, the primary relief is injunction and therefore, the Courtfees is to be paid on the relief for injunction alone. But as soon as any relief in the nature of declaration about any document or its existability is questioned the Court, the relief in the nature of injunction obviously, becomes the consequential to such relief because question of title comes first with regard to any property, then it follows any relief of injunction with regard thereto. On the other hand, the declaratory relief as prayed for coupled with injunction, cannot be a declaratory relief simpliciter so that it can be attracted under Article 17 (iii) of the Act and fixed Courtfees will be directed to be paid. Such Article 17 is made for the fixed Courtfees, but as soon as it merges with other reliefs, the scope of fixed Courtfees evaporates and premise stands occupied by advalorem Courtfees. Such advalorem Courtfees is based on certain facts and figures.

14. Therefore, we have to ascertain facts and figures to ascertain appropriate Courtfees. However, as soon as, we come back to the moot question, we find it is a border line case. After introduction of the U. P. amendment, it is very difficult

to get rid of such statutory provision relating to determination of advalorem Courtfees in this State.

15. We find from the last paragraph of the plaint that a correction has been made and valuation of the suit is made rupees twenty five Crores. We are aware that as per Section 8 of the Suits Valuation Act, 1887, Courtfees value and jurisdictional value has to be the same in certain suits. However, the Court has to ascertain whether it is wrong valuation or wrong statement of valuation, as per the ratio of judgment reported in (1984) 1 C. L. J. 172, Nishit Chandra Ghosh v. Vidhu Bhushan Ghosh and others. However, no such argument has been advanced this Court save and except a statement that how by way of correction, rupees twenty five Crores has been incorporated, is not known to the plaintiff.

16. In any event, improvised submission of Mr. Misra in reply helps a lot to the Court to come to a definite finding in this case. Mr. Misra contended that even if it is to be construed that in U. P. in case of advalorem Courtfees in a dispute like above, no body could avoid the provision of Section 7(ivA), yet they cannot be directed to pay the Courtfees on the full amount of the property as mentioned in the plaint. He further contended that if the defendants/respondents rely upon subsection (1) of Section 7 (ivA) of the Act, they can also be able to rely upon subsection (2) regarding the 1/5th of the value of the property on the strength of such subsection.

17. Against this background we have to hold and say that the Court below should reassess the valuation of the suit and Courtfees payable by the plaintiff/appellant. Hence, the impugned order of the Court below stands set aside, "the plaintiff/appellant is directed to get an assessment and pay the Courtfees as per decision of this Court within a period of 3 months from the date of communication of this order. Thus, the appeal stands disposed of on contest on the aforesaid point.

18. However, no order is passed as to costs.