

(1964) 09 KL CK 0009
In the High Court Of Kerala
Case No : C.R.P. No. 670 of 1962
In re: Varkey Thomi

Date of Decision : 24-09-1964

Acts Referred:

Kerala Court Fees and Suits Valuation Act, 1959 — Section 2(2), 69

Citation : (1964) 09 KL CK 0009

Hon'ble Judges : M. S. Menon, C.J.; P. Govindan Nair, J.; M. Madhavan Nair, J

Bench : Full Bench

Advocate : C. K. Sivasankara Panicker, for the Appellant; K. A. Mohammed) for State, for the Respondent

Final Decision : Dismissed

Judgement

Govindan Nair, J.—The Revision Petitioner claimed half the court fee that he paid on an application moved in accordance with the provisions of sections 11(2) and (3) of the Kerala Agriculturists Debt Relief Act, 1958. He claimed refund because the parties compromised and the application was dismissed. The prayer for refund has been refused by the court below. The question for decision is whether the petitioner is entitled to refund. Reliance has been placed exclusively on Section 69 of the Kerala Court Fees and Suits Valuation Act, 1959 in support of this claim for refund. That section is in these terms:

69. Refund in cases of compromise or when suit is decided on the admission of parties. When a suit or appeal is compromised or when a suit is decided solely on the admission of the parties without any investigation, one-half of the court fee paid on the plaint or memorandum of appeal shall be ordered by the Court to be refunded to the parties by whom the same have been paid respectively.

2. It is contended that by virtue of the provision in section 11(3) of the Kerala Agriculturists Debt Relief Act, we must take it that the court fee had been paid on a plaint. Section 11(3), the relevant part of it, reads as follows:

(3). Along with the application made under sub-section (2) the mortgagor shall pay court fees as for a suit for redemption on the balance of the mortgage

amount...

3. It is the submission of counsel on behalf of the Revision Petitioner that this provision has introduced a legal fiction and the necessary consequence of that legal fiction is to treat the application as a plaint. Reliance was placed on the Full Bench decision of this Court reported in Parvathi Amma Easwari Amma v Kunju Kunchamma Meenakshi Amma (1963 KLT 920=1963 K.L.J. 1034). It is no doubt true that a legal fiction must be carried to its logical conclusion. But we are unable to discern any legal fiction introduced by Section 11 (3) by which the application moved u/s 11 has to be understood as a plaint. All that is said is that there must be payment of court fee "as for a suit for redemption." This we understand to mean that the calculation of the court fee must be on the basis of the calculation to be adopted in the case of a suit for redemption. The section does not say that the application shall be deemed to be a plaint in a suit for redemption and court fee shall be paid on that basis. The decision has no application.

4. Our attention has also been invited to section 2(2) of the Kerala Court Fees and Suits Valuation Act, 1959 which enacts:

(2). Where any other law contains provisions relating to the levy of fee in respect of proceedings under such other law, the provisions of this Act relating to the levy of fee in respect of such proceedings shall apply subject to the said provisions of such other law.

5. This only introduces the normal rule that when there is a special provision that provision shall govern notwithstanding the general provision. The general provisions are contained in the Court Fees Act and the special provisions, in the special law. The latter is to prevail wherever provision has been made in that behalf in the special law. Apart from that, the section only deals with the levy of court fees and we do not think that by virtue of that section, Section 69 of the Kerala Court Fees and Suits Valuation Act, 1959 will be attracted.

6. Notice was issued to the Advocate-General. Mr. K. A. Mohammed, Government Pleader, appeared on behalf of the Advocate-General. We appreciate the assistance rendered by him. This Civil Revision Petition fails and is dismissed; but without costs.