(1979) 03 AP CK 0010

In the Andhra Pradesh High Court

Case No : C.R.P. No. 2513 of 1977

Indian Leaf Tobacco Development Company Limited, and another — APPELLANT

Vs

Agricultural Market Committee, Kandukur — RESPONDENT

Date of Decision : 17-03-1979

Acts Referred:
Andhra Pradesh Court Fees and Suits Valuation Act, 1956 — Section 11, 11(1)(a), 16, 20, 23(1)b

Citation : (1979) 03 AP CK 0010

Hon'ble Judges : Seetharam Reddy, J

Bench : Single Bench

Advocate : M. Chandrasekhra Rao, for the Appellant; D.V. Reddy Pantulu, for the Respondent

Final Decision : Dismissed

Judgement

Mr. Seetharam Reddy, J.—"Plaintiffs are the revision petitioners, They filed the suit in a representative capacity, inter alia for a declaration that the defendant (Agricultural Market Committee, Kandukur) is not entitled to levy or collect and fee or penalty under Sections 12 and 13 of the A.P. Agricultural Produce, and Livestock Markets Act and under Bye-law 24 of the defendant Committee, from the plaintiffs and other traders of tobacco and for consequential relief of permanent injunction. The suit was filed at a time when the Defendant started serving demand notices on the plaintiffs and other tobacco traders for furnishing returns of purchases for the purpose of collecting market-fee at the rate of 20 paise per hundred rupees proposed to be levied as per section 12(1) of the Act. The suit is, therefore, valued at Rs. 15,500/- and a court-fee of Rs. 1,146/- was paid u/s 24 (d) and Section 20 of the A.P- Court Fees & Suits Valuation Act. Thereafter, the check-slip was issued on the ground that the suit is filed in a representative capacity to avert the loss that would be sustained on account of the proposed levy and collection of fees by the defendant and that the reliefs claimed by the plaintiffs and other traders are different from one another and the suit is filed to avert the payment of fee proposed to be collected from each of the traders basing on the returns to be submitted by them. The lower Court passed an order on the check-slip in O.S. No. 31 of 1975 as under:-

"It is true that the relief claimed by the plaintiffs for themselves and on behalf of the other traders are distinct subject matters as the fee proposed to be collected from each one of them will be basing on the quantum of purchases of tobacco made, which will vary from trader to trader. It is also-true that the suit is filed to avert the payment of fee proposed to be collected by the defendant market committee basing on the return to be submitted by the tobacco traders. If the tobacco traders have already submitted their returns and notices demanding payment of fee have been issued to them. There would have been no difficulty to hold that they have to pay court-fee with reference to the amounts demanded.

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As the suit is filed at the stage of serving notices demanding submission of returns for levy and collection of tee and as notices demanding payment of fees were not actually issued by the tune of the hung of the suit, it is contended by the learned counsel for the plaintiffs that the tee payable is not determined by the defendant committee by the time of tiling of the suit and the relief is not for any specified amount of the market fee and the suit is filed challenging the right of the defendant to collect the market-fee and the plaintiff are therefore entitled to give notional valuation of the relief.".

2. The Lower Court held that the plaintiffs would be correct in their submission if the market-lee payable, or the loss sought to be averted is incapable of determination and that in effect and substance the relief claimed in the suit is to avoid the payment of market-lee though the suit is filed somewhat earner than the notices demanding payment of market-fee are served on the plaintiffs but that does not make any difference. The lower Court further held.

"In this suit, as seen from the demand notice filed, the returns asked to be filed in regard to the purchases of tobacco made from the year 1971-72 till time of the notice dated 15-9-1975. The plaintiffs are the accounting parties who nave got the date regarding the purchases made. The fee sought to be levied and collected is also definite, namely, at the rate of twenty paise per bundled rupees in respect of the tobacco sales. The tobacco traders are licenced dealers and the tobacco dealers within the area of the defendant market committee can be easily ascertained and on the basis of the sales effected or the tobacco purchased the fee payable according to the plaintiffs and other traders can be easily ascertained. It is not proper that the court-fee should be paid with reference to the total purchases made during the period. The check slip is accordingly upheld and the plaintiffs are directed to pay court-fee after ascertaining the turnover of the plaintiffs and other traders whom the plaintiffs represent for the period mentioned in the notice."

3. Sri Chaudrasekbara Rao, learned counsel for the petitioners contends that the order under revision is erroneous on the fact of it. No sum or figure can be determined at that stage when only notices demanding the return to be submitted have been served. The whole process of determining the turnover and then how much fee will have to be levied, has to be gone through. Firstly the turnover for the entire period will have to be ascertained and then the levy will have to be made. It is only thereafter that the sum could be determined for the valuation of the suit and, therefore, till then, it is only the notional value that could be made for the purpose of court-fee. Learned Counsel further submitted that the Court-fee paid is legal and therefore, the same should be accepted. In support of his contention he relied on the following decisions.

4. In The Vishnu Pratap Sugar Works (P) Ltd. Vs. The Chief Inspector of Stamps, U.P., it is observed in para (4);

It is true that for purposes of the Court-Fees Act, it is the substance and not the form which has to be considered while deciding which particular provision of the Act applies. It cannot, however, be gain-said that the actual relief prayed for in the plaintiff was an injunction restraining the State and its authorities to realise from the appellant company the aforesaid cess and purchase tax. It is clear from the plaint when read as a whole that though the appellant-company alleged that the acts were viewed and therefore non est for the reasons set out therein, it did not seek any declaration that they were void. The plaint proceeds on the tooting that the said Acts were void and that therefore rte State of U.F. or its authorities had no power to realise the said tax and the said cess. It may be that while deciding whether to grant the injunction or not, the court might have to consider the question as to the validity or otherwise of the said Acts. But that must happen in almost every case where an injunction is prayed for.

If for the mere reason that the Court might have to go into such a question, a prater for injunction were to be treated as one for a declaratory decree of which the consequential relief is injunction all suits where injunction relief is prayed for would have to be treated as falling under CI (a) of sub Sec. (iv) of S. J in that view C1 (b) of Sub-sec (iv-B) of S.7 would be superfluous."

5. In Turlapati Venkateswara Rao Vs. Municipal Council, Masulipatam and Others, the facts were that the petitioners filed a suit in a representatives capacity on behalf of the citizens and rate-payers of the Musulipatnam Municipality for a declaration that a resolution passed by the Municipal Counsil and all that was done in pursuance thereof were illegal, ultra vires and void. In that context, the court held that,

"The subject-matter of the suit was the resolution whose validity was being impeached. No doubt the resolution related to the market, but that would not make it the subject-matter of the suit. The petitioner has paid sufficient court-fee viz., Rs. 100/-under Article 17-B of Schedule II of Court-fees Act, which as already mentioned applies."

6. In Thirugnana Sambanda Pandara Sannadhigal Vs. The State of Madras, a suit was filed for a declaration that the villages mentioned in the schedule were not estates under the Madras Estates Land Act and that the lands were pannai lands and not ryoti lands, and also for an injunctton. In those circumstances, Rajamannar, C. J., held.

"A case like this would appropriately fall within Article 17-B which provides for suits where it is not possible to estimate at a money value the subject matter in dispute."

7. The next decision relied on by the learned Counsel is Neelakantam vs. State of Andhra Pradesh 1960 (1) An. WR, 106 where in it was held that a suit for declaration that a particular village is not an State within the meaning of section 3 (2) (d) of Madras Estates Land Act and that the provisions of the Madras Estates (Reduction of Rent) Act do not apply, falls u/s 24 (d) and do not apply, falls under and not under Article 17 (vi) of Schedule II of the Andhra Court-fees & Suits Valuation Act. While so holding, it was further observed that the language of Section 24(d) is quite clear and it provides in unequivocal terms that the court has jurisdiction to value the relief where it feels that the relief as valued by the plaintiffs is low and that in that case the proper value of the relief would be ten times the rent which they were collecting minus the rent fixed by the Government under the provisions of the Rent Reduction Act. It was also observed that it cannot be called held that until rules are framed u/s 77 of the Court-fees Act it is not open to the Court to value the relief when such power is specifically conferred under clause (d). The learned counsel also placed before me a Division Bench decision of this Court in A.P. S. E. Board V. K Ramachandra Reddy 1977 (I) APLJ., 154 wherein Sections 24 (d) and 26 (c) of the Andhra Pradesh Court fees and Suits valuation Act fell for construction. There, the suit was for a perpetual injunction restraining the defendant- Board from disconnecting the electricity service of the plaintiff, and also for a declaration that the notice issued by the Assistant Engineer of the defendant-Board is illegal for a consequential injunction restraining the defendant-Board from disconnecting the supply of service. Though contentions were raised in the written statement that the court-fee paid was not proper, the plaintiff in each case valued the relief for injunction or declaration as the case may be, at a notional value of Rs. 203/- in all the suits and Rs. 500/- in one suit and paid court-fee on that amount. After discussing the catena of decisions, the Bench held,

"The Court is no doubt entitled to value the relief if it is not satisfied with the valuation put by the plaintiff. But essentially the question of court-fee has to be considered only on the allegations made in the plaint. Even so, in each of these cases we find that on the allegations in the plaint the relief has to be valued on the basis of the entire demand in case of electricity consumption charges, and half the provisional estimate in the case of pilferage.

It was also observed,

''''It is seen from a consideration of all these decisions that the test to be applied by the Court in valuing the relief either under Sec. 24 (d) or Sec. 26 (c) is to find out the advantage which is sought to be gained by the plaintiffs or the loss sought to be avoided."

In C. C. Reddy vs. K. C. Reddy 1963 (2) An. WR. 616 a Full Bench of this Court held,

"Coming to the second question we have already referred to the inherent difficulty of estimating the value of the relief in a suit for accounts. There is bound to be an element of speculation and an element of uncertainty. But there must be a genuine effort to estimate. The estimate should not be deliberate-under-estimation it should not be a pretended estimate or an indifferent estimate. It should be a real estimate acceptable to a prudent and reasonable man.

The court has the power to amend the valuation if the estimate one which is not acceptable to a prudent and reasonable man, This is our answer to the first part of the second question. The second part of the second question in the form in which it is put capable of any easy answer. The investigation must be necessarily extent beyond the averments in the plaint. To begin with the decision of the Court u/s 11 (1) (a) is to be based not only on the allegations in the plaint but also on the matreials furnished by the plaintiff. Next the defendant is given a right to question the valuation and the Court-fees. This right will have no substance if the investigation is to be confined to the allegations in the plaint. There is then a provision for an enquiry u/s 16 of the Act. But the more difficult question is what is the scope of the investigation? Surely, the investigation cannot extent to a preliminary taking of accounts. If at the very thresh old of the suit the Court is to embark upon an investigation of the accounts, then practically the entire suit will have to be decided. (Emphasis was made by the learned Counsel for the petitioners). If the investigation does not extend so far, to what does it extent? It certainly extends to all materials furnished by the plaintiff all admissions wherever and whenever made by the plaintiff including admissions made interlocutory matters in the suit, all documents produced by the plaintiff or to which reference is made in the plaint, all undisputed facts brought to the Court''s notice by the defendant, and all the other facts which may be established without going into the main controversy between the parties".

8. In Ambati Vaikunta Narayanamurthy vs. Caltex India Limited 1975 (1) APLJ., 204 Vaidya, J., held,

"The contention of the petitioner is that it cannot be said that the plaintiff would remain In service till the date of retirement and therefore that standard cannot be adopted for purpose of valuation of the plaint,. There is some force in this contention, but at the same time the value given by the plaintiff also is very low. According to the provisions of Section 24 (d), the relief claimed can be valued by a Court. In a case of this nature, the reasonable value of the relief will be one year''s salary. The plaintiff is directed to value the plaint on this basis and pay the Court- fee."

Sambasiva Rao, J., (as he then was) held in C. R. P. No. 1167 of 1969 dated 27-12-1969,

"The plaintiffs can pay court fee only on the basis of the averments made in the plaint. At that stage they are not concerned with possible deferences or contentions that may be raised by the defendants. As long as the plaintiffs persist in putting forward the case of tenancy between themselves and the defendants, and seek relief on that basis, they have the right to value the relief on that basis and if the case of 1st defendent that the tenancy was validly terminated and that adverse possession had started in their favour was established, than the suit as framed would fail,. Bur the Court fee payable is decided by the nature of the suit and the pleas raised could be considered only at the time of the final disposal of the suit."

9. Sri D. V. Reddi Pantulu, learned counsel for the respondent-Market-Committee, contended that the order under revision is justified that it does not require any investigation to ascertain the sum due towards the fee to believed, in as much as turnover for the period under the suit is already available and it is a matter of record, and that, therefore, at the rate of 20 paise per hundred rupees, which is only a mathematical calculation, the sum due could be ascertained. u/s 11 of the A.P. Court fees and Suit Valuation Act, the defendant also is entitled to point out that the Court-fee paid is not adequate and in this case, learned counsel submits, it has been rightly demurred, and the valuation which has been made by plaintiffs petitioners is definitely low. The petitioners, who filed the suit in a representative capacity, roped in all the tobacco traders in the area of the Market Committee whose turnover would be running into lakhs. It is a matter of record that it does not require any investigation for the parties to ascertain the turnover and therefore, the levy will have to be made in accordance with the turnover. So argued the learned Counsel for the respondent.

10. The learned Government Pleader also a while placing reliance on the Division Bench case as well as the Full Bench case of this Court cited supra, submits that in a case of this nature, though the demand noties were only with reference to the returns showing the turnover to be filed but the turnover cannot be a matter of dispute. It is a sum which is already determined with reference to various records filed by the plaintiffs themselves before various forums and it is only a matter of adding up the total and levying the fee under the Act for the purpose, of valuation of the suit, in fact, the Full Bench of this Court, has gone to the extent of observing that the investigation certainly extends to all materials by the plaintiff, all admissions wherever made by the plaintiff including admissions made in interlocutory matters in the suit, all documents produced by the plaintiff or to which reference is made in the plaint, and all undisputed facts- brought to the Court''s notice by the defendant, and all other facts which may be established without going into the main controversy between the parties. From

this, it is quite evident, the learned Government Pleader says, that the matter does not involve any detailed investigation so as to be said that it may give rise to a suit within a suit as alleged by the Counsel for the petitioners, I see sufficient force in the submissions of the learned Counsel for the respondent. Here, the petitioners are seeking to avoid the loss by obtaining declaration and injunction restraining the Market Committee from levying the fee. It is all a matter of record that the parties on whom demand notices have been served, can just make the turnover available. It is not a case that the returns do not exist or the turnover therein has not been specific and categorical. No equivocality exists in any of these cases. The petitioners are licenced dealers and they have submitted their returns showing the figures. So, it is matter of record, one deed not investigate into the matter or go into the accounts; and when it is an ascertained sum, all has to be done is to work out the levy at the rate of 20 paise per hundred rupees, which is very simple and than the value could be arrived at for the purpose of payment of court-fee. Section 24 (d) of the A.P. Court Fees and suits. Valuation Act is the relevant provision which reads.

"24. Suits for declaration :- In a suit for a declaration with or without consequential relief, not falling under Sec. 25-

(a) x x

(b) x x

(c) x x

(d) In other cases, whether the subject-matter of the suit is capable of valuation or not, fee shall be computed on the amount at which the relief sought is valued in the plaint or at which such relief is valued by the Court, whichever is'' higher."

It is quite manifest from the above provision that where the Court has been invested with a power to value the suit with reference to the relief that is sought for and if the plaintiff has under-valued the relief, then the Court certainly at liberty to fix the value of the relief at a rate higher than that if it can do so. In so far as the present case is concerned, it does not present much difficulty, in as much as, with reference to the records wherein and turnovers are declared, the quantum could be ascertained and then the fee at the rate of 20 paise per hundred rupees could be calculated and thereby the valuation could be made. It is not the case of the petitioners involves any complicated investigation so as to he tried as a suit within the suit The decisions cited by the learned counsel for the petitioners are with reference to cases where there is either ambiguity or equivocality with reference to the subject-matter of relief and, therefore, very rightly those decisions have laid down that some notional values could be arrived at. The said decisions are not of any avail to the case of the petitioners herein. In view of the foregoing discussion, I hold that the contentions of the learned counsel for the petitioners are untenable and devoid of substance and in the view I have taken, fid interference with the order under revision is warranted.

11. I am, however, strongly observe that the State Government should, u/s 77, make rules as early as possible to carry out the purpose of the Act i.e., for guiding courts as to the manner in which the relief should be valued u/s 23(1))b), 23 2(b), 24(c), and (d) 26(b) and (c) and 30 of the Act.

In the result, the Civil Revision Petition is dismissed. No Costs. I direct a copy of the judgment to be marked to the Chief Secretary Government of Andhra Pradesh, for necessary and expedition section, as it concerned very much the exchequer of the State.

