
(1982) 09 GAU CK 0010
In the Gauhati High Court
Case No : Civil Revision No. 142 of 1978

Industrial Co-operative Bank Ltd.

APPELLANT

Vs

Bhubaneswar Barthakur and Others

RESPONDENT

Date of Decision : 18-09-1982

Acts Referred:

Suits Valuation Act, 1887 — Section 8

Citation : AIR 1983 Guw 71

Hon'ble Judges : B.L. Hansaria, J

Bench : Single Bench

Advocate : P. Choudhuri and N. Chakraborty, for the Appellant; T.N. Phukan, for the Respondent

Final Decision : Allowed

Judgement

B.L. Hansaria, J.—A suit was filed by the opposite parties for a declaration that the reference of the dispute in question to the Registrar of Co-operative Societies, Assam, Gauhati and the appointment of the arbitrator in pursuance thereof was void and not binding on the plaintiff and that the subsequent orders passed thereon were without jurisdiction, and for permanent injunction restraining the defendants from proceeding with the Bakijai Case No. 5 of 1975-76 and not to execute the Co-operative Demand Certificate, which was to the tune of Rupees 2,18,187.12 P. This was stated in the cause title as well as in the prayer portion of the plaint. A point was taken as regards the pecuniary jurisdiction of the learned trial Court inasmuch as the plaintiffs had put the valuation at Rs. 200/- for the purpose of jurisdiction and a court fee of Rs. 20/- was paid and the permanent injunction was valued at Rs. 100/-. The learned trial Court has held that it had pecuniary jurisdiction. In coming to this conclusion the learned Court admitted that the value of the subject-matter of the suit was arbitrarily fixed. It was perhaps of the view that it could be so done. The further observation in the order is that the plaintiffs did nothing to make the demand certificate a subject-matter of the suit and they also did not challenge it. This,

however, is not correct on the face of what has been prayed in the plaint.

2. A reference of Section 8, Suits Valuation Act, 1887, shows that in case of suits other than those referred in paras (v), (vi), (ix) and (x) (d) of Section 7, Court-fees Act, 1870, the value as determinable for the computation of Court-fees and the value for the purpose of jurisdiction shall be the same. It has, therefore, to be seen as to what amount the plaintiffs must have valued their suits for the purpose of court-fees. If it be that para (iv) (c) or para (viii) of Section 7 Court-fees Act, is attracted in the present case, it is apparent that in view of Section 8, Suits Valuation Act, the value for court-fees shall also be the value for jurisdiction. Though Shri Choudhury has mentioned about Section 7 (viii) also, that does not seem to be directly attracted as the suit is not to set aside any attachment. It is a settled position that to determine the question of court-fees, the averments in the plaint have to be looked into. The main submission of Shri Choudhury is, however, that it is a case covered by Section 7(iv)(c), Court-fees Act, which deals with suits "for a declaratory decree and consequential relief". That the present is a suit of that nature, there is nothing to doubt, from what has been stated above about the nature of the plaint. The main question is whether the plaintiff could have valued the relief "arbitrarily" as put by the learned trial Court. Shri Phukan contends that this could have been so done as the legislature itself had left to the suitor to value his relief. A Division Bench of this Court in *A. B. Singh v. State Bank of India* AIR 1979 Gau 27, has upheld the contention that in a suit u/s 7(iv)(c) of the Act, the plaintiff is at liberty to value his suit at an amount at which he values the relief sought and the court has no power to interfere in the valuation of relief put by the plaintiff for the purposes of court-fees. This was the consensus view of the Division Bench.

3. Shri Choudhury has, however, referred to Section 7A inserted in the Court-fees Act, 1870, by the Assam Act XVIII of 1947. That section reads:--

"7A. If the court is of opinion that the subject-matter of any suit has been wrongly valued, it may revise the valuation and determine the correct valuation, and may hold such inquiry as it think fit for such purposes."

Subsequent Sections 7B, 7C and 7D deal with the mode of enquiry. This amendment is in line with the West Bengal Amendment introduced in the Court-fees Act by the Bengal Act I of 1936. The one which is material for our purpose is Section 7C whose language is the same as that of Section 7A of the Assam Act. By relying on the amendment of 1936, it was held in *Mahitosh v. Satyarajan* 53 CWN 340, that the Court is not bound by the valuation put by the plaintiff but it can make enquiry as visualised by that Bengal amendment.

4. According to me Section 7A as inserted by Assam Act XVIII of 1947 changes the complexion of Section 7(iv)(c) of the principal Act. Though Section 7(iv)(c) gives liberty to the plaintiff to value the relief as deemed fit by him, and in view of the decision in *A. B. Singh* AIR 1979 Gau 27 (*supra*), the Court cannot interfere with the same, but by Section 7A to which the attention of the Division

Bench was not drawn, which may be because it is a decision relating to the State of Manipur, the legislature did want that in cases where the subject-matter has been "wrongly valued", the same be revised by the Court who can determine the correct valuation. Shri Phukan contends by referring to the earlier decision of this Court in *Batuk, Chandra Patwari v. Kirit Ram Das* AIR 1972 Gau 69, that in case of Section 7(iv)(c), the Court has to accept the valuation put by the plaintiff. It is urged that in that case itself, the valuation of land was of about Rs. 23,600/- as stated by the defendants. Despite this, the plaintiff's valuation of the suit at Rs. 250/- was accepted. That was a suit for a declaration of plaintiff's title in respect of 2/3rd share of the land and for confirmation of possession. The main point urged before this Court was whether Court-fee was payable u/s 7(iv)(c) or 7(v) (b), Court-fees Act. The question of correctness of the valuation was not the point at issue. In any case from that judgment it does not appear if the attention of the Court was invited, to Section 7A.

5. In the present case even the learned trial Court has felt that the subject-matter was arbitrarily fixed at Rs. 200/-. In that view of the matter, it was within his jurisdiction in view of Section 7A, to revise the same and to determine the correct valuation. For the case at hand I do not propose to say as to what should be that correct valuation. It would be for the learned trial Court to apply its mind and to arrive at a decision as visualised by aforesaid Section 7A. It is, however, not correct, as has been stated, in the impugned order, that the bone of contention of the plaintiffs was only regarding reference of the dispute to the Registrar. No doubt, the plaintiffs had approached the Court challenging the jurisdiction of the Registrar, but much had happened after the reference had been made. This is indeed apparent from the plaint itself. Shri Phukan has referred me in this connection to Section 79 (2) of the Assam Cooperative Societies Act, 1949. Under that section the approach to the Civil Court is permitted only on the ground of jurisdiction. As such it may be that the suit was maintainable as the jurisdiction of the Registrar was questioned, but that alone cannot clinch the matter. So also the astuteness in drafting cannot be decisive as stated in *Shamsher Singh Vs. Rajinder Prashad and Others*,

6. In view of all the above, the impugned order is set aside and the learned trial Court is directed to make an enquiry relating to the proper valuation of the subject-matter of the suit and to determine the same as deemed fit and proper by him, keeping in view the requirements of Sections 7A and 7D of the aforesaid Assam Act.

7. In the result the petition is allowed as aforesaid.