

(1956) 06 KL CK 0009
In the High Court Of Kerala
Case No : C.M.P. No. 1219 of 1955

Lekshmi Amma Madhavi Amma

APPELLANT

Vs

Godaru Nambooripad

RESPONDENT

Date of Decision : 22-06-1956

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 2 Rule 3, Order 2 Rule 3(2)
Court Fees Act, 1870 — Section 11

Citation : (1956) 06 KL CK 0009

Hon'ble Judges : K. Sankaran, J; Joseph Vithayathil, J

Bench : Division Bench

Advocate : M. Madhavan Nair, for the Appellant; K.P. Abraham and K.T. Ninan, for the Respondent

Judgement

Joseph Vithayathil, J.—This petition is by the Respondent in A.S. No. 822 of 1951 for amendment of the decree regarding" the table of costs. The appeal related to three distinct claims valued at Rs. 2582-15-9, Rs. 371-11-9 and Rs. 780-5-9 respectively. The third claim was made alternatively to the first. The first claim being of a higher value than the third claim no separate court fees was paid on the third claim.

Court-fee of Rs. 155/- was paid on that first claim and Rs. 28-8-0 on the second claim, the total fee paid being Rs. 183-8-0. By the judgment in the appeal the Appellant was ordered to pay the costs of the Respondent in this Court. In preparing the decree a sum of Rs. 172-11-2 was included in the table of costs as advocate's fee payable to the Respondent by the Appellant. According to the Respondent, advocate's fee due to him is Rs. 181-14-9.

What the office did was to calculate advocate's fee on the total value of the claims made in the appeal. According to tire Respondent, advocate's fee has to be calculated on each of the different claim; If so calculated, advocate's fee payable on the first claim will be Rs. 154-1-7 and that on the second claim Rs. 27-13-2, the total fee being Rs. 181-14-9. The question for consideration is

which is the correct method of calculating advocate's fee in suits in which there are more than one claim.

2. Rule 7 of the Rules passed under the Bar Councils Act relating to advocate's fee only says that advocate's fee should be calculated on the amount or value of the claim. Rule 7A (o) further provided that maximum fee chargeable in a suit cannot exceed Rs. 3,000. The question for decision is whether, in a suit in which there are more than one claim, the words, "amount or value of the claim" mentioned in the Rule should be interpreted as amount or value of all the claims taken together or as amount or value of each of the claims taken separately.

Notice of the petition was given to the Advocate General and to the President of the Bar Council.

3. It was argued by learned Advocate General that Rule 22 of the Rules goes to show that it is the total amount or value of all the claims taken together and not the amount or value of each of the claims that should be taken into account in calculating advocate's fee under Rule 7. Rule 22 reads as follows:

When the amount or value of the claim in the appeal exceeds of Rs. 2000/- an additional fee calculated at one-third of the fee leviable under Rule 16 shall be payable to a junior practitioner, provided that the junior was on the record at least from the date fixed for the appearance of the Respondent:

Provided further that in any case when the, junior's fee is payable under this rule, the court shall have a discretion to fix that fee at half the senior's fee instead of one-third.

We do not think that the wording of this Rule gives any clue as to the meaning conveyed by the "words "amount or value of the claim"" in Rule 7.

4. So far as Court-fee is concerned, the position was made clear by Section 11 of the Court-fees Act (relating to "Multifarious suits"). Section 11(i) provides:

Where a suit or appeal embraces two or more distinct subjects, the plaint or memorandum of PM shall be chargeable with the aggregate amount of fees to which the plaints or memoranda of appeal embracing separately each of such subject would be liable under this Act.

Similar provision is not contained in the rules relating to Advocate's fee. But, it was argued by learned counsel underlying the fee also. The principle is that when the two or more distinct subjects or claims run in a suit should be regarded as two or more separated together as one suit for purpose of convivial Order II, Rule 3, of the CPC allows a Plaintiff to unite in the same suit several causes of action against the same Defendant. Sub-rule (2) of the Rule provides that where causes of action are so united the jurisdiction of the court as regards the suit shall depend on the amount or value of the aggregate subject-matters at the date of instituting the suit.

If each subject-matter or claim in a "Multifarious" suit is to be regarded as the

subject-matter or claim of a separate suit, it is only reasonable to construe the expression "amount or value of the claim"" in Rule 7 of the Rules relating to advocate's fee as referring to the amount or value-of each separate claim in the suit and not to the amount or value of" all the claims taken together.

In the absence of anything in the Rules to show a different intention, we think that the proper course to adopt is to follow the principle underlying Section 11 of the Court-Fees Act and to calculate advocate's fee" on each claim separately and not on the aggregate value of all the claims, in the suit. We, therefore, allow the petition for amendment of the decree. The table of costs in the decree will be amended in the manner stated above.