

(2013) 07 P&H CK 0579
In the Punjab And Haryana At Chandigarh
Case No : CR No. 6776 of 2012 (O and M)

Lokender Kumar Saini

APPELLANT

Vs

Swami Sarva Nand Chela Nitya Nand and Others

RESPONDENT

Date of Decision : 16-07-2013

Acts Referred:

Citation : (2013) 172 PLR 207

Hon'ble Judges : K. Kannan, J

Bench : Single Bench

Advocate : J.S. Chahal, for the Appellant; Rakesh Dhiman, for the Respondent

Final Decision : Disposed Off

Judgement

K. Kannan, J.—The revision is against the direction of the trial court to pay the court fee on tentative valuation made by the plaintiff for causing removal and destroying the trees alleged to have been grown and nurtured by the plaintiff. The plaintiff would detail in extenso the nature of the fruits yielding trees, flowers and his ornamental plants and would also refer to the visit of the officials of the Horticulture Department making an audit of the existence of the trees and the valuation thereof. The petitioner has at two places made valuation and would state that the value of the ornamental plants would be worth Rs. 1.5 lacs and state else where in the plaint that his business has been completely wiped out and the income which he was earning has been put to loss to the tune of about Rs. 20 lacs, which, according to him, is still required to be properly ascertained. The plaintiff has averred in the plaint that he would pay court fee on the amount to be assessed by the court at appropriate time. This itself justified, according to him, the valuation of the suit at Rs. 250 and paying court fee of Rs. 25/-. The respondents took an objection that when the petitioner himself has made tentative valuation of all the amount, then he should be directed to pay ad-valorem court fee on such valuation. He relies on certain judgments of this court where valuation had been made, the plaintiff shall be directed to pay court fee on the same. The parties rely on two divergent views expressed by this court at

different times. Counsel for the petitioner would rely on the judgment of this Court in Subhash Chander Goel Vs. Harvind Sagar, wherein in a suit for defamation, the plaintiff affixed court fee of Rs. 50/- and the Court observed, while referring to the view expressed contra, that where in the very nature of things there was no objection regarding jurisdiction of the court and the court itself could not have pre-determined the amount, the valuation, as stated by the plaintiff, must be accepted and no objection could be taken. Another view was expressed by later judgment of this Court in Man Singh and Another Vs. Sumer Singh and Others, where the court held in a claim for damages to property, namely, tractor, motor-cycle etc. and when the plaintiff claiming that damages were to the tune of Rs. 20 lacs, that the plaintiff's own valuation must be taken and the court fee shall be paid on the amount as stated by the plaintiff.

2. In this case, although the plaintiff has averred in the plaint that it was an unliquidated sum and that he would pay court fee when the amount is duly assessed, this ought not be taken as a liberty to a suitor to make arbitrary valuation and evade the duty to pay the court fee, which is required to be paid. The court fee is a tax payable to the government for entertaining an action before the court. It ought to be in some way reasonable to the claim made in the suit. While a suit for defamation is purely subjective in the sense that the court makes assessment as to how much the aspect of self estimation of a person is defamed and allow for an elastic approach from zero to an indeterminate sum as damages for the assessment to be made, it cannot be so uncertain in cases where damage to the property is referred to in the plaint and the plaintiff also states that he is prepared to pay additional court fee when damages are likely to be enhanced. Already I have observed in the case that the plaintiff has clearly stated that the valuation of the trees cut were uncertain and the value of ornamental plants, which were cut, was to the tune of Rs. 1.5 lacs and there were other trees as well. The plaintiffs inability to assess the exact value of damage caused should not come in his way. It is yet to come in evidence as to what was likely to be the loss of income, what were the likely value of proceeds of sale and how much damages resulted by the defendants' acts. Even here, it cannot be merely left to imagination that the damage was wholly uncertain. A suit for accounting may stand wholly on different footing for the court fee and invariably stated that it could be tentatively valued and the court would be justified in allowing the court fee to be paid on the valuation made by the plaintiff and the require deficit to be paid at the time when the court may make assessment and before a decree is prepared. In this case, certainty obtains to amount is not less than Rs. 1.5 lacs, as estimated by the plaintiff himself.

3. Counsel for the respondent anxiously points out that damages may be more. The case is that hard labour of the plaintiff has been trampled by the defendants' unauthorized trespassing and wilful damages. It will probably be tested in the course of trial, whether such contention is true or not and the defendants cannot create so bigger obstruction for the plaintiff to claim his genuine loss on account of damages caused by the defendants. The defendants

cannot take advantage of the inability of the plaintiff to pay court fee. This would literally amount to giving a shot in the arm to a person against whom very serious allegations are made in the plaint. I will, therefore, not allow any objection to prevail at the instance of the defendant. The issue with regard to court fee is basically between the court and the suitor, unless an objection is raised by the defendant relating to jurisdiction of the court. In this case, the civil court of first instance is a court of unlimited jurisdiction and therefore, whether the court fee is payable at Re. 1 or crores will have no bearing on the jurisdiction of the court.

4. Under the circumstances, I would modify the order passed by the court already and give a direction that the tentative valuation given by the plaintiff as damages at Rs. 1.5 lacs and direct payment of court fee ad-valorem thereon within a period of four weeks from the date of receipt a copy of this order. If the court fee is not paid as directed, the procedure prescribed under Order 7 Rule 11 of C.P.C. shall be followed by the court. Compliance of the direction shall be made before the trial court. The order of the court below is modified and Civil Revision is disposed of with the above direction.