
(1991) 03 MP CK 0046
In the Madhya Pradesh High Court
Case No : C.R. No. 353 of 1990

Mahmooda Bi

APPELLANT

Vs

Sheikh Gafoor and Others

RESPONDENT

Date of Decision : 18-03-1991

Acts Referred:

Court Fees Act, 1870 — Article 1A, 35

Citation : (1991) 36 MPLJ 774 : (1991) MPLJ 774

Hon'ble Judges : K.L. Issrani, J

Bench : Single Bench

Advocate : Ravish Agarwal, for the Appellant; V.S. Shroti, for the Respondent

Final Decision : Allowed

Judgement

K.L. Issrani, J.

This is a revision-petition against the order dated 5-7-1990, passed by Shri R. K. Shrivastava, District Judge, Hoshangabad, in Civil Suit No. 27-A of 1989 rejecting the application to sue as forma pauperis based on the Government Notification.

The applicant-plaintiff filed a suit claiming partition and separate possession of her one-fifth share in the suit house, situated at Balaganj Mohalla, Hoshangabad and for mesne profits Rs. 23,310/- and further profits pendente lite and future. For the purpose of Court-fee and jurisdiction, the Court-fee was payable on market value of the suit house valued at Rs. 2,70,000/-. Since the applicant claimed one-fifth interest, the Court-fees was payable for her share on Rs. 54,000/- in the house and also at mesne profits on Rs. 23,310/-. The Court-fee on which was payable comes to Rs. 6,530/- in accordance with Article 1-A of the Schedule-I of the Court-Fees Act with table of ad valorem Court-fee appended thereto. The plaintiff being widow having no source of income claimed exemption from payment of Court-fee under Notification F.No. 9-1-83-B-XXI, dated the 1st April, 1983.

The non-applicants opposed the application. The plaintiff entered into the

witness-box to establish that her annual income does not exceed Rs. 6,000/- per year. The trial Court by interim order, dated 5-7-1990 has observed that the applicant's annual income is below Rs. 6,000/-, but she is not entitled to the exemption under the Notification for the suit for partition, which does not fall under any of the Articles of Schedule-I or Schedule-II mentioned in the Notification. Consequently, the Court has directed to pay requisite Court-fee. Aggrieved by the said order, the present revision-petition is filed by the plaintiff-applicant.

Submission of the learned counsel for the applicant is that the applicant comes within the purview of the Government Notification. Being a woman she is exempted from paying Court-fee. The lower Court was wrong in holding that the partition suits are not covered under the said Notification. The learned counsel for the non-applicants opposes the submissions of the learned counsel for the applicant and supports the order passed by the trial Court.

After recording evidence, the trial Court when deciding it on merits has rejected the application on technical ground that since the partition suit does not fall within articles and schedules specified in the Notification, the applicant is not entitled to the benefit. Here it is to be noted that the object of collecting Court-fee is to secure revenue for the State. u/s 35 of the Court Fees Act, the State Government has power to remit the Court-Fee by Notification. In the partition suit for the purposes of jurisdiction, the valuation of the suit will be according to the share of the plaintiff and not the entire property, out of which the share is claimed. Section 7 of the Court fees Act provides the method of computation of Court-fee. Clause (vi-a) provides the method of calculation of Court-fee in suits for partition. The amount of fees payable is governed by Schedules. Schedule-I, Art. I-A provides calculation of the Court-fee on different valuations of the plaint, written statement, pleading a set-off or counter-claim or memorandum of appeal (not otherwise provided for in this Act) presented to any Civil or Revenue Court except those mentioned in Section 3. Section 3 provides for levy of fees in High Courts on their original sides, which is not applicable in this case. This Schedule also contains the table of rates of ad valorem Court-fee leviable on the institution of the suits. Schedule-II provides fixed rates of Court-fee on certain applications or petitions under the different enactments etc. The impugned Notification, on which the applicant relies reads as under :-

Notification F. No. 9-1-83-B-XXI, dated the 1st April, 1983.- In exercise of the powers conferred by Section 35 of the Court Fees Act, 1870 (No. 7 of 1870), the State Government hereby remits in the whole of the State of Madhya Pradesh, the Court Fees mentioned in Articles 1-A and 2 of the first schedule and Articles 5, 17 and 21 of the second schedule to the said Act payable on plaint by the following categories of persons whose annual income immediately preceding the date of presentation of plaint from all sources does not exceed rupees six thousand, namely : -

(i) member of Scheduled Tribes;

(ii) member of Scheduled Castes;

(iii) minors;

(iv) women;

Reading of the above referred Notification specifies that the State Government has remitted in whole of the State of Madhya Pradesh the Court-fees mentioned in Articles 1-A and 2 of the first schedule and Articles 5, 17 and 21 of the second schedule. This case falls under the category of Article 1-A of Schedule-I. The trial Court has mis-read and mis-construed the provisions. The impugned order dated 5-7-1990 is, therefore, set aside. Since, the trial Court has already recorded the evidence and only the order on merits of the application is to be passed by the trial Court, it is, therefore, directed that the same be passed after assessing the evidence already on record. No further evidence need be taken on the point.

With the above directions, the revision is, therefore, allowed with costs. Counsel's fee Rs. 200/-, if certified.