

(1970) 12 MAD CK 0021
In the Madras High Court

Murlimal Santharam and Co. (Madras) Private Ltd.	APPELLANT
Vs	
Narsinsingh Ghansham Singh and Others Tarapore and Co. Vs Tractoro Export and Another	RESPONDENT

Date of Decision : 03-12-1970

Acts Referred:

Citation : (1971) 2 MLJ 410

Hon'ble Judges : S. Maharajan, J

Bench : Division Bench

Judgement

S. Maharajan, J.—The unamended plaint in C.S. No. 226 of 1962, prayed for declaration of plaintiff's title to the suit property without any consequential relief. Upon the applications of the plaintiff in Application Nos. 2104 and 2105 of 1969, this Court by order, dated 12th February, 1970, granted leave to the plaintiff to amend the plaint by impleading certain third parties in possession and by including a prayer for recovery of possession from those persons. According to the office, deficit Court-fee has to be paid upon the amended plaint as per the Court-fees Act, in force on the date of the original plaint. But the contention of the plaintiff is that deficit Court-fee is payable, not under the law relating to the Court-fee as it prevailed on the date of the original plaint, but under the law which was in force on the date of the amendment of the plaint.

2. In C.S. No. 118 of 1967, the original plaint prayed for permanent injunction. Subsequently, the plaintiff filed an application, Application No. 105 of 1968, for amendment of the plaint claiming a decree for recovery of a sum of Rs. 1,15,00,000 by way of damages from the first defendant. This amendment was allowed by order of Court, dated 12th April, 1968. According to the office, a Court-fee of Rs. 8,62,530/50 is payable under the law in force on the date of the original plaint. But according to the plaintiff, a Court-fee of Rs. 1,18,555/50 only is payable as per the law in force on the date of the amendment.

3. On the dates the unamended plaints in both these suits were instituted on the Original side of the High Court, payment of Court fee was governed by Article 1

of the Schedule I of the Madras Court-fees and Suits Valuation Act, 1955, and Rule 1 of Order 2 of the Madras High Court-fees Rule:, 1956. By judgment dated 31st March, 1967, a Division Bench of this Court struck down the above said provisions as invalid and unconstitutional but suspended the operation of this decision by two months to enable the appropriate authorities to take the required steps in the matter and to avert administrative difficulties in the interregnum-- Zenith Lamps and Electricals Ltd. Vs. The Registrar, High Court and Others, . Against this decision, the State Government preferred an appeal to the Supreme Court, and in C. M. P. No. 1916 of 1967, and C. M. P. No. 1917 of 1967, the Supreme Court passed an order dated 4th July, 1967, in the following words:

So far as relief No. 1 asked for in the stay petition is concerned the learned Advocate-General, Madras, on behalf of the State, represents that the State undertakes to make refund of any excess Court-fees that may be collected from other litigants if ultimately this Court accepts the view of the decision under attack as correct. In view of this representation by the learned Advocate-General there will be stay of the operation of the order of the High Court regarding third parties till the disposal of this appeal. So far as the respondents in this appeal are concerned, the order of the High Court will stand till the disposal of this appeal.

In view of the stay, the office has been collecting ad valorem Court-fee at 7? per cent. under Article 1 of Schedule I of the Madras Court-fees and Suits Valuation Act and Rule 1 of Order 2 of the High Court-fees Rules, 1956, even in respect of proceedings instituted after the date of the ruling reported in Zenith Lamps and Electricals, Ltd. v. The Registrar, High Court, Madras. Subsequently, however, the High Court-fees Rules, 1956, were amended with effect from 11th September, 1968, whereby the uniform levy of 7? per cent, ad valorem Court-fees prescribed in the struck down provisions was given up and the more valuable slab system with a tapering scale on the slabs was adopted. Consequently with reference to the proceedings instituted on the Original side of the High Court subsequent to 11th September, 1968, the office has been levying Court-fee on claims in accordance with the amended Order 2, Rule 1-A of the High Court-fees Rules, 1956. The Court-fee computed on the basis of the amendment of the High Court-fees Rules, is considerably less than the Court-fee computed under Article 1 of Schedule I of the Madras Court-fees and Suits Valuation Act of 1955 and Rule 1 of Order 2, of the High Court-fees Rules, the difference in Court-fees running into several lakhs of rupees in certain cases. Naturally, the plaintiffs, who have instituted suits prior to the amendment of the High Court-fees Rules and who have amended their complaints subsequent to the amendment of the rules are anxious to take advantage of the amendment of rules, and contend that the amendments of their complaints having been effected after the amendment of the High Court-fees Rules, the reliefs incorporated by virtue of the amendments of their respective claims are leviable to Court-fees under the amended rules.

4. Order 2, Rule 1-A of the High Court-fees Rules, reads as follows:

Notwithstanding anything contained in Sub-rule 1 of Rule 1 the fees in all suits and proceedings instituted on or after nth September, 1968, and all proceedings by way of appeal or otherwise arising therefrom shall be leviable by the Registrar according to the scale of fees set out in Appendix 1-A hereto.

Appendix 1-A, in so far as it is relevant, prescribes that a plaint presented to the High Court shall be leviable to the particular Court-fee prescribed in paragraph 3. The plaints in these two cases were instituted long before nth September, 1968. It cannot, therefore, be contended that reliefs incorporated in plaints instituted before nth September, 1968, by means of amendments asked for and effected after nth September, 1968, are entitled to the benefit of Order 2, Rule 1-A of the High Court-fees Rules. It may be that an application filed on or after nth September, 1968, for amendment of the plaint may be leviable to such lower Court-fee as the amendment, may prescribe. It is not, and cannot be, contended that a new plaint is instituted in Court in consequence of the amendment. What really happens by virtue of the amendment is that a relief not asked for in the unamended plaint becomes incorporated in it. In other words, the amendment is retrospective in character and speaks from the date of the original plaint. That is why Courts are averse except under special circumstances to allow amendments which deprive the defendant of a valuable plea like limitation.

5. u/s 4 of the Madras Courts-fees and Suits Valuation Act, 1955, no document which is chargeable with fee under that Act shall be filed, exhibited or acted on by any Court including the High Court, unless in respect of such document there be paid a fee of an amount not less than that indicated as chargeable under that Act. u/s 5 of the Act:

When a document on which the whole or any part of the fee prescribed by this Act has not been paid is produced or has, through mistake or inadvertence, been received in any Court or public office, the Court or the head of office may, in its or his discretion at any time, allow the person by whom such fee is payable to pay the fee or part thereof, as the case may be, within such time as may be fixed; and upon such payment, the document shall have the same force and effect as if the full fee has been paid in the first instance.

Order 4, Rule 1, Civil Procedure Code, prescribes:

- (1) Every suit shall be instituted by presenting a plaint to the Court or such officer as it appoints in this behalf;
- (2) Every plaint shall comply with the rules contained in Orders 6 and 7, so far as they are applicable.

Order 7, Rule 1, Civil Procedure Code, requires the plaint to contain among other particulars the reliefs which the plaintiff claims and a statement of value Of the subject-matter of the suit for the purposes of Court-fee.

6. The provisions above abstracted show that the primary document which initiates proceedings in a suit is the plaint, and the effect of a subsequent

amendment is not to institute a new plaint, but to incorporate retrospectively in the unamended plaint a relief which was not there. By virtue of the subsequently introduced relief, the plaint becomes liable to additional Court-fee. Though the quantum of Court-fee payable is determined by the relief claimed in the plaint or subsequently incorporated therein, the primary document that is liable to pay the Court-fee is the plaint, and not the relief. It would, therefore follow that the plaint would be governed for the purposes of Court-fee, not by the relevant law in force at the time it is amended, but by the law in force at the time the plaint was originally instituted. Further, Order 2, Rule 1-A of the High Court-fees Rules, far from being retrospective in character, expressly states that only plaints presented after nth September, 1968, shall be liable to Court-fee in accordance therewith.

7. It is next contended that even if the High; Court-fees Rules, do not apply, the plaints in these cases will not be governed by the Madras Court-fees Act, and the unamended High Court-fees Rules, inasmuch as they have been struck down by the High Court as unconstitutional. I am unable to accept this contention, because the operation of the ruling reported in *Zenith Lamps and Electricals Ltd. Vs. The Registrar, High Court and Others*, , has been stayed by the Supreme Court so far as third parties like the plaintiffs herein are concerned, in view of the undertaking given by the State to refund any excess Court-fee collected from other litigants, if ultimately the Supreme Court accepts the view of this Court. The resulting position is that the plaintiffs are liable to pay Court-fee upon the amended plaints in accordance with the provisions of the Madras Court-fees and Suits Valuation Act, 1955, and Order 2, Rule 1 of the High Court-fees Rules, 1956, with liberty to obtain refund of any excess Court-fee in case the said provisions are struck down by the Supreme Court ultimately.

8. It is next contended that even as in cases where in the course of the litigation, Court-fee is enhanced by an amendment of the fiscal enactment, the plaintiffs are permitted to pay Court-fee on the appeal memorandum in accordance with the pre-existing law, in the converse cases, where the quantum of Court-fee is reduced by an amendment of the fiscal enactment pendente lite, the plaintiffs must be given the option to take advantage of the reduced scale of fee. This is a view for the Legislature to consider, and not for the Court to countenance. If the plaintiffs, who have instituted a suit before the amendment of the Court-fees Act are allowed to pay Court-fee upon the memorandum of appeal in accordance with the pre-existing Act, it is on the principle that an appeal is only a continuation of the proceedings, that on the date the plaintiffs instituted the suit they acquired a vested right to prefer an appeal in accordance with the existing Court-fees Act, and that no amendment of the Court-fees Act, pendente lite ought to prejudicially affected their right. In this case, when the plaintiffs instituted the suits, they paid Court-fees due under the Madras Court-fees Act, and they must also have known that in case they amended the plaints at any time subsequently they would have to pay Court fees upon the amended plaints in accordance with the law in force on the date of the institution. They cannot,

therefore, contend that any vested right which they had acquired on the date of the institution of the suit has been prejudicially affected by the application of the Court-fee law as it was then in force. The enactment of Order 2, Rule 1-A of the High Court-fees Rules, during the pendency of the litigation has not, by reducing the Court-fee payable, adversely affected them, though it has conferred upon litigants filing suits after the date of the amendment an advantage, which the plaintiffs may envy. It is open to them to take advantage of the amended rule by withdrawing the suits previously filed by them and by instituting new plaints and paying the reduced Court-fee in accordance with the new rules. For the reasons stated supra, I have little doubt that the plaintiffs are liable to pay the deficit Court-fee upon the amended plaints, not in accordance with Order 2, Rule 1-A of the High Court-fees Rules, 1956, but in accordance with the Madras Court-fees and Suits Valuation Act, 1955, and Order 2, Rule 1, of the High Court-fees Rules, 1956. The plaintiffs are granted four weeks" time for payment of the deficit Court-fees.