

(1967) 06 KL CK 0002
In the High Court Of Kerala
Case No : A.S. 174 of 1967

Navaneethalal P. Lalan Moolji

APPELLANT

Vs

Manilal Damji (deceased) and Others

RESPONDENT

Date of Decision : 16-06-1967

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 7 Rule 11
Court Fees Act, 1870 — Article 1
Kerala Court Fees and Suits Valuation Act, 1959 — Section 52

Citation : AIR 1968 Ker 58

Hon'ble Judges : P.T. Raman Nayar, J

Bench : Single Bench

Advocate : A.S. Krishna Iyer and A.K. Ramaseshadrinathan, for the Appellant;
Govt. Pleader, for the Respondent

Judgement

P.T. Raman Nayar, J.—Where, as in this case, a plaint is rejected under Order 7, Rule 11 (b) of the Code there is no adjudication whatsoever regarding the subject matter of the suit. The only adjudication is as to whether or not the relief claimed is undervalued, and, in an appeal from the rejection, "the subject matter of the appeal" within the meaning of Section 52 of the Kerala Court Fees and Suits Valuation Act, or "the subject matter in dispute" within the meaning of Article 1 of Schedule I is the under valuation found, not the subject matter of the suit. Kalliappa Goundan Vs. Kandaswami Goundan, and AIR 1949 1 (Nagpur) with which I am in respectful agreement. Where the order appealed against determines the amount of the undervaluation, court fee will doubtless be payable on that amount under Article 1 of Schedule I of the Court Fees Act, 1870 in cases to which that Act applies as held in the decisions referred to above since that would be the amount or value of the subject-matter in dispute in the appeal. And, where the amount of the undervaluation has not been determined, perhaps Article 17 of Schedule I would apply.

But this case, as I have indicated, is governed by the Kerala Court Fees and Suits Valuation Act. Where the amount of the undervaluation has been determined it

would appear that Article 1 of Schedule I would directly apply without recourse to Section 52. (It seems to me, however, that the words, "memorandum of appeal" in the article are an unintended surplusage having regard to the provision in the section that the fee in an appeal shall be the same as that payable in the court of first instance on the subject matter of the appeal, the article being copied from the old article without advertence to specific provisions made in the Act--another example of this is that the article provides for a written statement pleading a set off or counter claim notwithstanding the provision in Section 8 that these shall be chargeable with fee in the same manner as a plaint).

But here the amount of the undervaluation has not been determined; therefore the subject matter of the dispute in the appeal is not capable of valuation; and hence Article 1 of Schedule I cannot apply. Article 3(iii) A(I) would apply if the context can be regarded as requiring the word, "order" appearing in that article to be read otherwise than as defined in Section 2(14) of the Civil P. C. -- see in this connection Section 3(iv) of the Act -- and as including orders like the present coming within the definition of, "decree" in Section 2(2) That the word, "order" in the article has not the same meaning as attributed to it by Section 2(14) of the Code is apparent from the fact that the article expressly includes within the scope of the word, orders under Sections 47 and 144 of the Code which are decrees and therefore not orders within the meaning of the Code. The difficulty in applying Section 52 of the Act to a case like the present is that it obviously contemplates a proceeding in the court of first instance in respect of the subject matter of the appeal. But there can be no proceeding instituted in the court of first instance, whether by way of suit, petition, or application, for adjudication on the subject matter of this appeal, namely, the adequacy of the court fee paid and naturally enough, no provision is made either in the body of the Act, or in the Schedules, for the court fee payable in the court of first instance in such a proceeding But, if the section were to be read as meaning that the fee payable would be that payable in the court of first instance if a suit were brought for the same relief, the matter would fall within Section 25(d)(ii) or Section 50(iii) read with Article 1 of Schedule I.

2. In any view of the matter, the court fee of Rs 237-50 paid on the memorandum of appeal is more than sufficient, and reviewing the order of the Taxing Officer who held that court fee was payable on the value of the subject matter of the suit, I hold that the court fee properly payable has been paid in this appeal.