

(1986) 02 MAD CK 0038
In the Madras High Court

P. Ramaswamy Gounder

APPELLANT

Vs

Ambujam and Others

RESPONDENT

Date of Decision : 18-02-1986

Acts Referred:

Tamil Nadu Court Fees and Suits Valuation Act, 1955 — Section 35(1), 36, 36(1), 37(1), 37(2)

Citation : (1986) 99 LW 711 : (1987) 1 MLJ 113

Hon'ble Judges : Shanmukham, J

Bench : Single Bench

Judgement

Shanmukham, J.—The revision arises under the Tamil Nadu Court-fees and Suits Valuation Act, 1955 (Act 14 of 1955).

2. At the outset, I wish to point out that I heard the arguments on behalf of respondents 17 and 24 not in recognition of their rights to support the

petitioner, but not to deny me the able assistance from the learned Advocate General.

3. The petitioner is the 11th defendant in the suit. His contentions are three-fold, viz., that the relief as regards the partnership business is governed

by Section 36, but not by Section 37(1) of the Act; that the relief regarding the other assets should have been valued u/s 37(1) but not u/s 37(2)

and that when certain sums are estimated to be due in respect of accounting the court-fee ought to have been paid on such an estimated sum, but

not on the notional figure of Rs. 5,000. All these contentions did not find favour with the court below. Hence this revision.

4. The three cardinal principles that should be borne in mind while disposing of a question relating to court-fee are : (1) The Court shall accept the

plaint averments as correct and apply the appropriate provision in the Act, (b)

the court shall not be carried away by the form in which the plaint is dressed but shall peep into the substance to ascertain the base for reliefs claimed and the reliefs really asked for in the action, and (c) the Court is not concerned with the legality or maintainability of the claim as that relates to the merits and falls outside the purview of the Act.

5. Let me take up the first contention that the relief claimed in respect of partnership business"" shall be valued u/s 36(1) of the Act. In the body of

the point, a common relief is claimed both in respect of the partnership business as also in respect of other assets both movable and immovable. It

is therefore necessary to extract the very relief and it runs as follows-

Directing the defendants to divide the properties consisting of movable, immovable and businesses into 63 shares and allot ten such shares to the plaintiff.

It is therefore contended by the Learned Counsel for the petitioner, which is also the argument advanced by the learned Advocate General, that the

sum and substance of the claim made in prayer (1) with reference to the partnership business is for an accounting of a dissolved partner-(sic) am

unable to agree. For, nowhere in the body of the plaint, has it been averred that there had been a dissolution of the partnership. Secondly, the relief

claimed proceeds on the basis that the partnership businesses are still subsisting. What was claimed under relief (1) is to quantify her share in the

partnership businesses and to put her in possession of such share. This would not mean even impliedly that the relief is in respect of a dissolved

partnership. What was intended by the plaintiff in claiming such a relief with reference to partnership business is that her share should be quantified

and that she should be put in possession of such share. This is the literal meaning that is indicated in the said relief claimed in respect of the

partnership business. In substance, what the plaintiff wants is that her share in the partnership business Should be quantified and that she should be

recognised as such partner in the partnership businesses. I am to reiterate that on the averments in the plaint and on the relief so claimed, it is not

possible to infer that the plaintiff has anywhere indicated that these partnership businesses were dissolved and that she is only claiming an account

of such dissolved partnership.

6. I have already pointed out that at this stage, I am not concerned with the

maintainability of such claim made in the plaint. While dealing with a question of court-fee, I am bound to accept the averments and then determine the appropriate section in the Court-Fees Act, under which such relief has to be valued. Section 36 of the Act cannot at all be attracted. Section 36 deals with, a suit for dissolution of partnership. I have already pointed out that this is not a suit, where dissolution is sought for. The law is well settled that a partner can claim for accounting and even seek for injunction without asking for dissolution. Here, in this case, the plaintiff had claimed her entitlement as a partner in the partnership business and her such share in the income from the said business. The citation relied on by the Learned Counsel for the petitioner as also by the learned Advocate General, viz, Chinna Venkataramaiah v. Peda Venkataramaiah (1959) 1 M.L.J. 224 : 72 L.W. 172 : ILR (1959) Mad 707, will hardly be applicable to this case, because the learned Judge in the body of the judgment had referred to the statement in the plaint.

That relief arises on the facts stated in the plaint, viz., that the partnership was dissolved and that its affairs have not been wound up.

Thus, it is clear that in the above case, there was an averment in the plaint that the partnership was dissolved. It was therefore there was no

difficulty for the learned Judge in holding that Section 36(1) is the appropriate section as regards valuation and court-fee. Thus, this decision will

not render any assistance to the petitioner. In my view therefore the relief as claimed u/s 37(2) is unassailable.

7. According to the Learned Counsel for the petitioner, a reading of the plaint as a whole will disclose that the plaintiff is not even in constructive

possession of both movable properties in respect of which she had claimed partition and therefore the court-fee has to be paid u/s 37(1) of the

Act. In this context great reliance is made on the allegations in the plaint that the plaintiff had claimed accounting in respect of these properties as

well. According to the learned Advocate General, that will imply that there was an ouster and therefore, the appropriate provision is Section 37(1)

but not Section 37(2). I am unable to agree. The plaint has categorically stated that she is one of the heirs to her father and that all the properties

were the separate and absolute properties of her father and that she claims a share as a heir to her father. "The law presumes that the possession

and enjoyment of one co-owner is on behalf of others as well. It may be open to one of the co-owners to plead ouster and if she were to succeed, it is a different matter. But when considering the question of court-fee, as already pointed out by me, the relevant data to be noticed is the averments in the plaint. I have already referred to the fact that the plaintiff has claimed a share as heir to her father and that she stated that because she was denied the share in the income, she was constrained to ask for accounting in respect of her share in the income. That by itself will not necessarily imply that she is out of legal possession of the properties in respect of which the relief for partition is claimed. It is true that "the plaintiff is deemed to be in joint possession of the properties" is written in ink later in the body of the original plaint. I am at a loss to understand as to how such as insertion will in any way alter the position of law. It is always open to the plaintiff to amend the plaint in any manner he or she likes, before it is presented. Therefore, when the matter is taken up for consideration by court, it has to take the averments as a whole as found in the plaint albeit there, was correction or addition before it was presented. I am to reiterate that there is enough indication in the plaint that the possession of others is on behalf of all the sharers entitled to the property and therefore, as rightly pointed out by the plaintiff, she shall be deemed to be in joint possession of the property. If so, the claim for partition as valued u/s 37(2) is quite correct.

8. The last contention is that though in the body of the plaint the total value of the properties is shown as Rs. 78,00,000 and the plaintiff's 10/63

share is Rs. 12,38,000 to value the accounting in the sum of Rs. 5,000 is against hard facts. Even the plaintiff had nowhere stated in the plaint that

she estimates the income at any particular sum. It is open to her to value such a relief in the notional figure as she liked. That is because, there is

provision in the Act that if she ultimately were found to be entitled to large sum, she shall pay court-fee and thereafter only will she be in a position

to recover such entitlement. In the body of the plaint, nowhere do I find that the plaintiff has estimated her income from the properties at any figure.

On the other hand, she had only stated that she is entitled to income from all the properties including the partnership businesses and for the purpose

of court fee, she had valued tentatively at a notional sum of Rs. 5,000 and paid a court fee of Rs. 376.50. It is worth while to refer to Section

35(1) of the Act. Section 35(1) provides that in a suit for accounts, fee shall be computed on the amount sued for as estimated in the plaint. The

amount sued for accounting is Rs. 5,000. Quite rightly, the plaintiff has paid a court-fee of Rs. 375.50. Even here, I do not find any substance in

the petitioner's contention.

9. In the result, the revision fails and is dismissed with costs of contesting first respondent.