
(1996) 01 KL CK 0040
In the High Court Of Kerala
Case No : C.R.P. No. 2000 of 1993-A

P. Sreekumaran

APPELLANT

Vs

The State of Kerala and Others

RESPONDENT

Date of Decision : 16-01-1996

Acts Referred:

Kerala Court Fees and Suits Valuation Act, 1959 — Section 25, 7

Citation : AIR 1996 Ker 293 : (1996) 2 ILR (Ker) 653

Hon'ble Judges : V.V. Kamat, J;P.K. Balasubramanyan, J

Bench : Division Bench

Advocate : K.T. Sankaran, for the Appellant; V.B. Unniraj and Ajith Narayanan, Mary Benjamin, Govt. Pleader, for the Respondent

Final Decision : Dismissed

Judgement

Balasubramanyan, J.—In this Revision, the plaintiff questions the order of the court below holding that the plaintiff has not valued the reliefs in the plaint properly and asking him to value the reliefs on the basis of the amount shown in the demand notice in respect of which he was seeking relief in the suit.

2. The plaintiff filed the suit praying for a declaration that the Revenue Recovery proceedings No. R.R. 1/91/PGT initiated by defendants 1 to 4 is illegal, erroneous and unsustainable besides being mala fide and for a further declaration that the plaintiff has no liability to pay any amount which has accrued after 8-4-1987 and that the liability of the plaintiff is only to pay the amounts due to the second defendant up to 8-4-1987. The plaintiff also sought a consequential decree for permanent injunction restraining defendants 1 to 4 from proceeding further with the revenue recovery proceedings referred to above as against the plaintiff. He valued the suit for the purpose of declaration and consequential injunction at Rs. 1000/- and paid a court-fee u/s 25(d)(ii) of the Kerala Court Fees and Suits Valuation Act and paid a court-fee of Rs. 20. It may be noticed that the prayer in respect of declaring his liability as confined to the period prior to 8-4-1987 was introduced by way of an amendment as per order dated 1-4-1993. The cause of

action of the suit as set out by the plaintiff was the issuance of a demand not be to him on 13-3-1991 and the alleged threat held out by defendant No. 4 to the plaintiff that both movable and immovable properties of the plaintiff would be attached and proceeded against for the amounts due under the notice. The plaintiff averred in the plaint that the action of the defendants in issuing such a notice to him and threatening coercive action was highly illegal and erroneous and that the defendants were to be restrained by way of a permanent injunction from proceeding with the Revenue Recovery against the plaintiff. In paragraph 3 of the plaint the plaintiff submitted that in the notice served on him by defendant No. 4 it was stated that an amount of Rs. 2,85,023.50 with interest at 15% from 1-9-1990 was due from the plaintiff to the second defendant, being the arrears of Kerala Financial Corporation loan due from the plaintiff as on 30-6-1990. It was really strange and surprising as to how defendant No. 4 had arrived at that exorbitant amount.

3. Objection having been raised on behalf of the defendants to the valuation adopted by the plaintiff and the court-fee paid by him, the trial court took up that question preliminarily and entered a finding therein to the effect that the plaintiff was bound to value the suit at Rs. 2,85,023.50 being the subject matter of the suit and was consequently liable to pay court-fee u/s 25 of the Court Fees Act on such a valuation.

4. When the Revision came before one of us, considering the contentions raised on behalf of the plaintiff revision petitioner and the decisions brought to the notice of the court, the matter was referred to a Division Bench for being heard. That is how the matter has come up before us.

5. The trial court rested its conclusion on the finding that the notice in respect of which the relief is claimed by the plaintiff shows a specific amount as being liable to be recovered from the plaintiff in his capacity as the partner of a firm which had originally taken a loan from the Kerala Financial Corporation and since the plaintiff was contending that he was not liable to pay that amount in view of the fact that he had retired from the partnership on 8-4-1987 and has consequently disputed his liability to pay the amount shown in the demand notice, he was bound to pay court fee on that amount, the same being the subject-matter of the suit. In challenging this conclusion of the court below learned counsel for the petitioner submitted that the suit was governed by Section 25(d)(ii) of the Court Fees Act and would come u/s 15(d)(i) of the Court Fees Act. It is not disputed that clauses (a) to (c) of Section 25 of the Court Fees Act have no application under Clause (d) of Section 25 where the subject-matter of the suit is capable of valuation, fee shall be computed on the market value of the property and under Clause (ii) of Section 25(d) where the subject-matter of the suit is not capable of valuation fee shall be computed on amount at which the relief sought is valued in the plaint or on rupees one thousand, whichever is higher. According to learned counsel Section 25(d)(i) of the Act has application only in a case where the property in the sense of it being either immovable or movable property was

involved and not in a case where a liability as such is sought to be challenged as in the present case. He also submits that the market value of the property referred to in Section 25(d)(i) has to be determined in terms of Section 7 of the Court Fees Act and it is obvious that Section 7 cannot have application to a case like the present since there was no question of determining any market value as provided in any of the sub-sections of Section 7 of the Act. The term "property" is not defined in the Act and it must therefore receive the ordinary connotation of the term. From that point of view it is not possible for us to accept the contention of learned counsel for the petitioner that Section 25(d)(i) could have application only in a case where property either immovable or movable alone was involved and not money. There is no indication in the Section that the word "property" should be construed in such a manner. The term "property" can be ascribed only its ordinary meaning as being not confined to those properties referred to in Section 7 of the Kerala Court Fees Act. We are inclined to the view that money as well as right to property or a liability, would also be property within the meaning of Section 25(d)(i) of the Court Fees Act. In that view, we are satisfied that Section 25(d)(i) of the Court Fees Act has application to the case on hand and the argument that Section 25(d)(i) is not attracted cannot be accepted. Of course, Section 25(d)(ii) of the Act would apply only when the subject-matter of the suit is not capable of valuation. The contention of learned counsel for the petitioner that the subject-matter of the suit in the present case is not capable of valuation cannot be accepted in the nature of the notice issued to the plaintiff, the nature of the averments in the plaint and the nature of the relief sought for by the plaintiff. The amount demanded from the plaintiff is a specific amount. The subject-matter of the suit is the liability or otherwise of the plaintiff in respect of that definite sum. It is now settled that for the purpose of valuation what the court is concerned with is the subject-matter of the relief. From that point of view on a reading of the plaint it is clear that the subject-matter of the suit is a sum of Rs. 1,85,023.50.

6. In *The Vishnu Pratap Sugar Works (P) Ltd. Vs. The Chief Inspector of Stamps, U.P.*, the Supreme Court has observed:

"It is true that for purposes of the court-fees Act, it is the substance and not the form which has to be considered while deciding which particular provision of the Act applies."

Similarly in *Shamsher Singh Vs. Rajinder Prashad and Others*, the Supreme Court has observed as follows;

"As regards the main question that arises for decision it appears to us that while the court-fees payable on a plaint is certainly to be decided on the basis of the allegations and the prayer in the plaint and the question whether the plaintiff's suit will have to fail for failure to ask for consequential relief is of no concern to the Court at that stage, the Court in deciding the question of court-fee should look into the allegations in the plaint to see what is the substantive relief that is asked for."

Judged in the light of these principles, the only aspect to be considered is what in substance is that relief asked for by the plaintiff in the present plaint.

7. On a reading of the plaint involved in the present case and looking at the substance of the relief prayed for by the plaintiff, it is clear that the plaintiff is seeking relief in respect of a liability which amounts to a sum of Rs. 2,85,023.50 and applying the test laid down by the Supreme Court in *Shamsher Singh Vs. Rajinder Prashad and Others*, the substantive relief necessarily relates to the alleged obligation of the plaintiff to pay the amount. referred to in the plaint and as already noticed that is the subject-matter of challenge in the suit. In view of this position, the decisions relied on by learned counsel for the plaintiff in *Chenthamarakshan v. Velayudhan Nair*, (1979 KUC 301) and *Kuriakose v. Joseph* (1988) (2) KLT 958) do not advance the case of the plaintiff. On going through the said decisions we find that the said decisions do not have any impact on the questions arising for decision in this case. In the first of the decisions, what was involved was the frame of the suit as to whether the plaintiff therein was bound to sue for recovery of the proceeds of the lottery ticket which was still in the custody of the conductor of the lottery and whether a mere declaration as to title over the lottery ticket would be sufficient in law. In the latter case this court held that in such a situation the plaintiff was bound to pay court-fee on the amount involved namely the proceeds of the lottery ticket. The latter decision if at all tends to go against the contention of learned counsel for the plaintiff in the present case. What was attempted by learned counsel was to distinguish that decision on the ground that in that suit there was a claim for the amount involved namely the proceeds of the lottery ticket and in the present case there was no such claim. He followed up this argument by referring to the decision of the Bombay High Court in *Sardarsingji v. Ganpatsingji* ILR (1893) Bom 56 He pointed out that the plaintiff was not seeking recovery of any specific amount in this case but was only seeking to ward off an obligation to an amount and in a case where a negative relief as the one in question is sought for, no court-fee is payable on the amount in respect of which the relief is claimed. In the said decision it was observed as follows:

"And, in any event, I cannot perceive why, in construing a fiscal enactment, we are to take a distinction, by which, without clear authority in the language used by the Legislature, a suit in which a plaintiff does not pray for money or property to be paid or delivered to him is to be treated on exactly the same footing as a suit in which he does pray for such relief."

Though the decision of the Bombay High Court referred to above may support the contention of learned counsel for the plaintiff to the extent it goes, his argument cannot be accepted in the light of the pronouncement of the Supreme Court in *Shamsher Singh Vs. Rajinder Prashad and Others*, to the effect that what is relevant is to see what is the substantive relief that is asked for, unclouded by any astuteness in drafting the plaint before the Court can decide as to what is the Court fee payable on a plaint. We also find that there is no

reasoning as such supporting the conclusion as stated in the decision in Sardarsingji's case ILR (1893) Bom 56 Moreover with respect we feel that in the light of the subsequent pronouncements including the decisions of the Supreme Court referred to above, the principles enunciated in Sardarsingji's case (ILR (1893) Bom 56) cannot be fully accepted. We have also some difficulty in finding a distinction between couching a relief in a position manner and seeking a relief in a negative form when in substance the relief that is sought cannot be in doubt.

8. Ultimately all that it boils down to is to understand the averments in the plaint and to understand clearly what is the subject-matter of the suit. Reading the plaint in the present case, we have no difficulty in agreeing with the finding of the Court below that the subject-matter of the suit is the amount claimed in the recovery notice and in respect of which the plaintiff has sought the relief of declaration that he has no liability in terms of the notice.

In the light of what is stated above, we find no reason to interfere with the order of the Court below in this revision. We dismiss the revision but we make no order as to costs.