

(1992) 12 AP CK 0031

In the Andhra Pradesh High Court

Case No : Letters Patent Appeal No. 255 of 1991

Paidipati Dhanamma and Others

APPELLANT

Vs

Moutupalli Siva Ram Prasad

RESPONDENT

Date of Decision : 18-12-1992

Acts Referred:

Andhra Pradesh Court Fees and Suits Valuation Act, 1956 — Section 47, 49

Citation : (1993) 1 ALT 253

Hon'ble Judges : Sivaraman Nair, J;A. Gopal Rao, J

Bench : Division Bench

Advocate : A. Surayanarayanamurthy, D. Srinivas, C. Ramachander Rao, B. Kamalakarakarao, P.V. Ramana Rao and R. Venkateswar, for the Appellant; T. Veerabhadrayya and Government Pleader for Revenue, for the Respondent

Judgement

A. Gopal Rao, J.—This appeal is filed against the order of a learned single Judge, upholding the office objection, that the cross-objectors should pay the court-fee on the same value given in the plaint, with respect to the relief of rendering of accounts. The decree of the trial court will disclose that, among other reliefs granted to the plaintiff with respect to accounting, the following relief is granted:

"That defendants 2 and 3 be and hereby are directed to render true and correct account of Sriramulu's account in the partnership firm, M/s. Motupalli Sreeramulu until 15-12-79 and do pay half of the said amount to the plaintiff with interest at 12% per annum from 15-12-1979."

2. The plaintiff, in the plaint, valued the relief of settlement of accounts at Rs. 55,000/- and paid a court-fee of Rs. 2546/- u/s 33 of the Andhra Pradesh Court-Fees and Suits Valuation Act, 1956 (hereinafter called "the Act") Aggrieved by the judgment and decree, plaintiff filed appeal, A.S. (SR) 52607 of 1990. Since the rendering of account by the defendant was limited to the period upto 15-12-1979 only, and rejected with respect to the remaining period claimed by the plaintiff, plaintiff valued that part of the claim denied to him at Rs. 10,500/- and paid court-fee of Rs. 300/- u/s 47 of the Act read with Explanation 4 to

Section 49, in the appeal.

3. The cross-objectors filed cross-objections, aggrieved by that part of the decree granted against them, for accounting till 15-12-1979. They have also valued the subject-matter of cross-objections at Rs. 10,500/- and paid a court-fee of Rs. 300/-.

4. The Office took the objection that the cross-objectors should adopt the value of accounting as was given in the plaint, viz., Rs. 55,000/- and pay the court-fee of Rs. 2,546/-. As mentioned already, the office objection was upheld by the learned single Judge. Hence the present appeal by the cross-objectors.

5. During the course of arguments in this appeal, a doubt arose as to the correctness of the court-fee paid by the appellant in AS(SR) 52607 of 1990. Therefore, the appellant, after due notice, was also heard on this aspect.

6. Learned Counsel for the cross-objectors contends, relying upon the decision of the Full Bench in *In Re. Food Corporation of India, Hyderabad and Ors.* 1990(2)APLJ 68, that court-fee on cross-objections is payable under the residuary section, viz., Section 47 of the Act and, therefore, the court-fee of Rs. 300/- already paid is correct and sufficient.

7. The Full Bench decision in *In Re. Food Corporation of India, Hyderabad and Ors.*, is not applicable to the facts of this case. The relief of accounting was not quantified in that decision and so court-fee was ordered to be paid u/s 47 of the Act. In the present case, as stated earlier, in the plaint the relief of settlement of accounts was valued at Rs. 55,000/- and a court-fee of Rs. 2,546/- was paid u/s 33 of the Act. Since the lower court granted the relief of accounting in favour of the plaintiff upto 15-12-1979 only and rejected for the other period, appellant valued the subject-matter of the appeal for the period denied to him at Rs. 10,500/- and paid the court-fee of Rs. 300/- u/s 47 of the Act. The cross-objectors filed the cross-objections aggrieved by the decree directing them to render account upto 15-12-1979, valuing the relief in the cross-objections also at Rs. 10,500/- and paid the court-fee of Rs. 300/- u/s 47 of the Act.

8. In our considered view, the appellant as well as the cross-objectors should pay court fee u/s 49 and not u/s 47 of the Act. It is necessary to notice the relevant provisions of Section 49 of the Act, for the purpose of this appeal, which run thus:

"49 Appeals:- The fee payable in an appeal shall be the same as the fee that will be payable in the court of first instance on the subject-matter of the appeal.

Explanation 1:- xxx xxx xxx Explanation 2:- xxx xxx xxx Explanation 3:- xxx xxx xxx Explanation 4:- Where the relief prayed for in the appeal is different from the relief prayed for or refused in the Court of first instance, the fee payable in the appeal shall be the fee that would be payable in the court of first instance on the relief prayed for in the appeal."

9. Normally, when the value of the appeal is the same as that in the suit, u/s 49

of the Act, the court-fee paid on the plaint should be paid on the memorandum of appeal also. Since the trial court granted decree against the defendants for rendering account upto 15-12-1979 only and denied for the remaining period claimed by the plaintiff, plaintiff valued that part of the claim. denied to him at Rs. 10,500/-. Therefore, the subject-matter of appeal, so far as this portion of the decree is concerned, is not the same as that in the suit (vide Explanation 4 to Section 49 of the Act). As stated earlier, plaintiff has valued the relief of accounting in the suit at Rs. 55,000/-. The cross-objectors have filed the cross-objections aggrieved by the decree directing them to render account upto 15-12-1979. The value of the cross-objections should, therefore, be at Rs. 44,500, i.e., Rs. 55,000 minus (-) Rs. 10,500/- = Rs. 44,500/-. In similar circumstances, in *Balaramamurthy v. Seetharamaswamivari Devasthanam* 1963 (1) An.W.R.158:1963 (1) ALT 203 it was held:

"The relief prayed for in the second appeal is different from the relief prayed for in the court of first instance, in the sense that, the period concerned is less, viz., period from 1935 to 1953 in the second appeal as against the period from 1925 to 1953 in the plaint as against the first defendant, though rate per year on which the valuation was made is the same. Consequently, I find that the valuation given by the defendants in the second appeal is in conformity with Explanation 4 to Section 49 of the Andhra Court-Fee Act (VII of 1956) and does not in any way contravene the principle decided by the Madras High Court in *In re Dhanakodi Nayakkar* (1938 I MLJ 628)."

10. Therefore, we hold that the court-fee of Rs. 300/- paid by the appellant on the memorandum of appeal and the Court fee of Rs. 300/- paid by the cross-objectors u/s 47 of the Act is not proper. The appellant in ASSR 52607 of 1990 has to pay the ad valorem court-fee on the value of the appeal, viz., Rs. 10,500/-. Similarly, the cross-objectors have to pay advalorem court fee on the value of the cross-objections, viz., Rs. 44,500/-. The appellants as well as the respondent shall pay the deficit court-fee on the memorandum of appeal and on the cross-objections respectively, within one month from today.

11. The L.P.A. is disposed of with the above direction.

N.B:- The deficit court fee of Rs. 516/- has been paid by the advocate for the Appellant.