

(1963) 10 AP CK 0001
In the Andhra Pradesh High Court
Case No : S.C.C.M.P. No. 6233 of 1963

Pilla Appalanarasayya Patrudu

APPELLANT

Vs

N. Rajagopala Pillai and Co.

RESPONDENT

Date of Decision : 15-10-1963

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 110
Constitution of India, 1950 — Article 133, 133(1)

Citation : AIR 1965 AP 13

Hon'ble Judges : Satyanarayana Raju, J;Kumarayya, J

Bench : Division Bench

Advocate : P. Kameswara Rao, for G. Balaparameswari Rao, for the Appellant;
Alladi Kuppuswami and T. Ramachandra Rao, for the Respondent

Judgement

Kumarayya, J.

(1) This is an application under Articles 132 and 133 of the Constitution of India read with Rules 2 and 3 of Order 45 and Ss. 109 and 110 of the Civil Procedure Code, for leave to appeal to the Supreme Court against the judgment of this Court in A. S. No. 230 of 1959 dt. 13-10-1962.

(2) The petitioner was one of the lessees from the zamindar of Madgole and Pachipenta, for collecting adda leaves in specified areas for a period of two years commencing from 1-7-53 to 30-6-1955. He sub-leased the same to M/s. Rajagopala Pillai and Co., for an annual lease amount of Rs. 10,000/- Several months after the expiry of the first year, dispute arose between the parties as to whether the agreement as entered into was for one year or full two years. The petitioner contended that the lease was only for one year, even though the respondent continued in possession for a longer period till the petitioner sent his agent, Subbarao, for collection of the leaves. He further contended that the respondent in addition to kist amount was liable to pay him certain taxes and also expenses incurred in litigation, but in spite of notice, he failed to pay the same. As a result, he brought a suit, O. S. No. 50/55 for a sum of Rs. 18,364/-

due from the respondent.

The case of the respondent, on the other hand, was that the sub-lease was for a period of two years, that apart from the kist amount, no other amount was agreed to be paid to the petitioner, that the petitioner was in breach of the contract when he started collecting through his agent the adda leaves in the peak period of the season from 13-4-1955 to 30-6-1955, as a result of which the respondent suffered damages in the shape of loss of profits to the tune of Rs. 34,500/- His case is that had the sub-lease been allowed to function properly, he would have enjoyed the said profits after paying the balance of kist amount, which was Rs. 8,500/- On this basis, he brought O. S. No. 11 of 1956 for recovery of a sum of Rs. 26,682-8-0, inclusive of interest by way of damages. These two suits were, with the consent of the parties, tried together by the Subordinate Judge of Visakhapatnam and the learned Subordinate Judge by a common judgment, dismissed the suit (O. S. No. 50/55) brought by the petitioner and decreed the suit (O. S. No. 11/56) of the respondent to the extent of Rs. 23,000/- with interest thereon from 1-7-55 till the date of realisation at 6% per annum and proportionate costs.

Against these judgments and decree, the petitioner preferred separate appeals, A. S. Nos. 229 and 230 of 1959, which were heard and decided by us by a common judgment on 13-10-1962. A. S. No. 229/59 (preferred against O. S. No. 50/55) was dismissed and A. S. No. 230/59 (preferred against O. S. No. 11/56) was partly allowed and the decree of the Court below which was for a sum of Rs. 23,000/- was reduced to Rs. 13, 500/- and interest was granted from the date of the suit till date of satisfaction of the decree at the rate of 6% p. a. The reduction in the decretal amount was consequent on the finding that the gross profits realised during the period in question were only to the tune of Rs. 22,000/- and not Rs. 31,500/- as found by the trial Court. The petitioner now requests for leave to appeal to the Supreme Court against the judgment rendered in A. S. No. 230/59.

(3) The judgment passed by this Court is not one of affirmance but of variance. The variation, of course, is to the benefit of the petitioner. But the petitioner will still be entitled to a certificate, if his case satisfies the valuation test prescribed by the Constitution. The petitioner has in his application, no doubt, referred to Art. 132 also. But Art. 132 has no application as the case does not involve any substantial question of law as to the interpretation of the Constitution. There remain Art. 133 and S. 110 C. P. C. Even according to the learned counsel, the case does not come under sub-cl. (c), corresponding to para 1 of S. 110, C. P. c. is concerned with the amount or the value of the subject-matter of the dispute in the Court of first instance and still in dispute on appeal which must be not less than Rs. 20,000/- and cl. (b) of Art. 133(1) is concerned with the effect of the judgment, decree or final order on any claim or question respecting property of Rs. 20,000/- whether direct or indirect. Article 133(1)(b) obviously enough had no application to this case. The only point then that fails for determination is

whether the case satisfies the test of valuation prescribed in Art. 133(1)(a).

(4) The facts stated above clearly show that though what was claimed at the time of the suit in the court of first instance was more than Rs. 20,000/- as a result of the decree of this Court the amount still in dispute on appeal is less than Rs. 20,000/- The learned counsel for the petitioner does not concede this position, for he contends that since the subject matter of the dispute is a claim for damages, the actual loss of profit during the period in question, without taking into account, the amount payable to the petitioner by way of kist amount should be regarded as the amount or value of the subject matter of the dispute, within the meaning of Art. 133(1)(a) or para 1 of S. 110, C. P. C. Judged thus, it is argued, the amount or value of the subject matter still in dispute on appeal is Rs. 22,000/- and therefore, the petitioner is entitled to certificate under Art. 133(1)(a) of the Constitution.

(5) We cannot accept this line of argument advanced by the learned counsel, obviously because of its inherent fallacy. The suit according to the respondent-plaintiff was for a sum of due to him in law by way of compensation for loss of profits caused to him on account of petitioner's unlawful occupation and collection of adda leaves during the period of continuance of his lease. It is but elementary that in order to assess the measure of profits, not only the collection made, but all the expenses, including the lease amount payable under the contract, have to be taken into consideration. It may be borne in mind that the respondent-plaintiff himself stated in his plaint that had the sub-lease been allowed to function properly without disturbance, he would have had to pay the balance of the kist of Rs. 8500/- In fact, he has deducted that amount in order to arrive at the net figure, to which alone he set up his claim. The amount that he claims thus is not the amount of gross profits, but only of net profits. Even though he has shown the realisation after deduction of expenses as Rs. 35,000/- he had claimed only Rs. 26,000/- and odd, a sum representing the net profits.

The subject matter of dispute in the suit thus was the measure of damages or extent of loss of profits which arose from breach of contract, the value of which was set at Rs. 26,000/- and odd. That, indeed, was the value of the subject matter according to the plaintiff-respondent at the time of the suit. But as result of decree of this Court, which determined the measure of net profits at Rs. 13,500/- Such being the case, it is indisputable that having regard to the value of the subject matter still in dispute which is less than Rs. 20,000/- the petitioner is not entitled to a certificate under Art. 133.

(6) The learned counsel in support of his argument that the subject matter still in dispute should be taken as Rs. 22,000/- and not Rs. 13,500/- has relied on a Full Bench decision of this Court in Smt. Rajah Kishore Devigaru Vs. Bhaskara Gouta Chorani and Others, where the learned Judges exhaustively dealt with the scope of Art. 133(1)(a) and (b) of the Constitution read with S. 110 C. P. C., the learned Judges observed thus :

"It is well settled that with regard to "the amount or the value of the subject-matter of the suit in the Court of first instance" the material date is that of the institution of the suit AIR 1931 125 (Privy Council) That subject matter and the amount or the value thereof must naturally be looked at from the point of view of the plaintiff, because it is he that brings the suit and is the dominus litis".

As regards the second limb of para (1) of S. 110 C. P. C. which relates to the value of the subject matter in dispute on appeal to the Supreme Court, the learned Judges observed that the material date is that of the judgment appealed from and the subject-matter in dispute must be determined by looking at the portion of the decree sought to be got rid from the point of view of the appellant. The learned Judges in this behalf cited with approval the following observations of Lord Chelmsford in *Macfarlane v. Leclaire*, (1862) 15 ER 462 at p. 465.

"In determining the question of the value of the matter in dispute upon which the right to appeal depends, their Lordships consider the correct course to adopt is to look at the judgment as it affects the interests of the parties who are prejudiced by it, and who seek to relieve themselves from it by an appeal. If their liability upon the judgment is of an amount sufficient to entitle them to appeal, they cannot be deprived of their right because the matter in dispute happens not to be of equal value to both parties, and, therefore, if the judgment have had no power to question it by an appeal."

The learned Judges then expressed their opinion on the first para of s. 110 as a whole that for the purpose of valuation under S. 110, paragraph 1, the correct course is to consider the reliefs the plaintiff would have obtained had he been successful as on the date of the suit and the reliefs that the appellant would have obtained had he been successful as on the date of the decree appealed from. That, indeed, is the only correct course in view of the language of the provision. While construing the expression "subject-matter in dispute" in Art. 133(1)(a), the learned Judges agreed that the expression has the same meaning as the expression "subjects in dispute" which came up for consideration before a Division Bench of the Madras High Court in *Ramaswamy Ayyar v. Vaithinatha Ayyar*, 13 MLJ 448 : ILR 26 Mad 760 , 763, 766 and as regards which the following opinion was expressed :

"In our opinion, the expression "the subjects in dispute" signifies the jural relation between the parties to the suit, for the determination of which the suit is brought

It is clear that the expression "subjects in dispute" means the cause of action or the subject-matter of litigation, that is, the right which one party claims as against the other and demands the judgment of the Court upon."

The net result of the discussion was summarised by the Full Bench at page 89 thus :

(1) For valuation under S. 110 of the subject-matter of the suit in the Court of

first instance, the matter should be looked at from the point of view of the plaintiff. It is the amount or value of the reliefs excluding costs that the plaintiff would have directly obtained if he were successful, as on the date of the institution of the suit.

(2) For also the valuation under Art. 133(1)(a) of the subject-matter of the dispute in the court of first instance, the matter must be looked at from the point of view of the plaintiff. But it is the amount or value of the reliefs excluding costs that the plaintiff would, either directly or indirectly by the principle of *res judicata*, obtain if he were successful as on the date of the institution of the suit.

(3) For the valuation of the subject-matter in dispute on appeal to the Supreme Court, both under S. 110 paragraph 1 and under Art. 133(1)(a) the effect of the judgment appealed from must be looked at from the point of view of the appellant as on the date of the judgment. It is the amount or the value of such of the reliefs determined under rule (2) *supra* in respect of which he is prejudiced by the judgment."

These observations, with which we respectfully agree, do not in any way manner advance the contention of the petitioner. On the other hand, they are destructive of his case, as the amount or value of the subject matter still in dispute on appeal would be determined by the effect of the judgment appealed from as to what extent, having regard to the reliefs claimed by the plaintiff the appellant-defendant is prejudiced or has suffered detriment, on the date of the judgment. Certainly the petitioner in assessing the value of the subject-matter still dispute on appeal cannot take into account that portion of the subject-matter in relation to which he has suffered no prejudice. Otherwise, the expression "subject-matter still in dispute" would have no meaning. In fact, the Supreme Court in *Tirumalachetti Rajaram Vs. Tirumalachetti Radhakrishnayya Chetty*, observed that the value of the subject matter has to be determined by reference to the subject-matter which is actually the subject matter of proposed appeal to the Supreme Court. That apart, it cannot also be legitimately urged that even though the claim is one for compensation or damages in the shape of loss of profits, in valuing this subject-matter in dispute the necessary expenses which go to determine its size and extent shall not be taken into consideration. Indeed, that is a vital factor in determining whether or not and if so to what extent the business has resulted in profits. It indeed has a direct bearing on the determination of the subject-matter and its measure.

It is plain, therefore, that the amount or the value of the subject matter still in dispute on appeal to the Supreme Court is not Rs. 22,000/- but only Rs. 13,500/- in this view of the matter it is obvious that the instant case does not satisfy the test of valuation prescribed by Art. 133(1)(a) of the Constitution or Para 1 of S. 110 C. P. C. We are, therefore, dismissed with costs.

(7) Petition dismissed.