
(2008) 09 AP CK 0063
In the Andhra Pradesh High Court
Case No : CRP No. 2088 of 2008

Ranga Parameswari and Others

APPELLANT

Vs

Ranga Madhusudhan Rao

RESPONDENT

Date of Decision : 05-09-2008

Acts Referred:

Andhra Pradesh Court Fees and Suits Valuation Act, 1956 — Section 20, 22, 49, 50, 6
Civil Procedure Code, 1908 (CPC) — Order 11 Rule 6

Citation : (2008) 6 ALD 334 : (2009) 1 ALT 397

Hon'ble Judges : P.S. Narayana, J

Bench : Single Bench

Advocate : Venkat Reddy Donthi Reddy, for the Appellant;

Final Decision : Dismissed

Judgement

P.S. Narayana, J.—The petitioners filed the present C.R.P. as against an order dated 22.4.2008, made by the learned District Judge, Ongole, in C.F.R. No. 1763 of 2008 in appeal suit of 2008, preferred as against the judgment and decree dated 19.11.2007 made in O.S. No. 24 of 2004.

2. The petitioners herein are the appellants. The unsuccessful defendants in O.S. No. 24 of 2004 on the file of the Senior Civil Judge, Chirala, aggrieved by the judgment and decree dated 19.11.2007, had preferred the appeal. The office had taken an objection relating to payment of Court fee and certain other objections had been raised before numbering the appeal, and the matter was called on Bench. After hearing the Counsel at length, the learned District Judge, Ongole, having formulated the point for consideration at Para 3, recorded the reasons at Paras 4, 5, 6, 7 and 8, and ultimately upheld the office objections relating to the valuation of the appeal. Aggrieved by the same, the present C.R.P. had been preferred.

3. This Court, while admitting the C.R.P on 28.5.2008, ordered notice to the respondent and the learned Counsel for the petitioners was also permitted to

take out personal notice and file proof of service. It is stated that the respondent had been served and proof of service also had been filed.

4. Sri Donthireddy Venkat Reddy, learned Counsel representing the revision petitioners, had taken this Court through Sections 20 and 49 of the A.P. Court Fees and Suits Valuation Act, 1956 (for brevity "the Act"), and would maintain that the objection raised by the office cannot be sustained and the view expressed by the learned District Judge also cannot be sustained in the light of the said provisions. The learned Counsel also would comment that merely because the plaintiff in the suit wrongly calculated and paid excess Court fee, the defendants also cannot be directed to pay the said Court fee. The learned Counsel also would maintain that the appellants have to pay Court fee that would be payable on the decretal amount, on the subject-matter of the appeal, but not on the same amount as paid by the plaintiff in the suit. The learned Counsel also would maintain that though four promissory notes had been referred to even as per the averments made in the plaint, there was only one cause of action for the suit claim, and as such, the provisions of Section 20 of the Act are attracted, and hence, the plaintiff shall compute the Court fee on the amount claimed i.e., on Rs. 4,44,000/- only, and merely because the four promissory notes were separately valued and separate Court fee had been paid, the difference of Court fee or excess Court fee paid before the trial Court need not be paid by the revision petitioners/appellants even in appeal. The learned Counsel also places strong reliance on certain decisions to substantiate his submissions.

5. Heard the Counsel.

6. The unnumbered appeal in CFR No. 1763 of 2008 was preferred by the revision petitioners/appellants, the unsuccessful defendants in O.S. No. 24 of 2004 on the file of the Senior Civil Judge, Chirala, whereunder the suit filed by the respondent/plaintiff had been decreed. It is not in controversy that the respondent herein/plaintiff in the suit before the trial Court filed the suit based on four promissory notes, said to have been executed by one R. Krishna Murthy, the husband of the first defendant and father of the other defendants, and the Court fee was paid on different causes of action for each of such promissory notes valuing every claim separately u/s 20 read with Section 6 of the Act, for the purpose of Court fee. The suit was decreed and the defendants being aggrieved by the said judgment and decree, preferred an appeal, but did not pay Court fee on respective promissory notes amounts covered by four individual causes of action of the suit, but however, the appeal was valued on the entire decree amount with subsequent interest till the date of presenting the appeal. The office raised an objection and the matter was called on Bench. The learned District Judge, Ongole, after referring to Sections 20, 49 and 50 of the Act and also Section 6 of the Act and further referring to the decisions reported in *Moreshwar v. Commissioner, Raipur* AIR 1941 Nag. 129, and *Balavenkatrama Chettiar and Others Vs. Maruthamuthu Chetty and Another*, , recorded reasons and upheld the objection of the office in directing the revision petitioners/

appellants to value the Court fee by separately showing each of the pronotes amounts decreed with subsequent interest till the date of appeal on the respective sums separately and not on the lump sum amount.

7. Section 6 of the Act, dealing with multifarious suits, reads as hereunder:

6. Multifarious Suits.-(1) In any suit in which separate and distinct reliefs based on the same cause of action are sought, the plaint shall be chargeable with a fee on the aggregate value of the reliefs:

Provided that if a relief sought is only ancillary to the main relief, the plaint shall be chargeable only on the value of the main relief.

(2) Where more reliefs than one based on the same cause of action are sought in the alternative in any suit, the plaint shall be chargeable with the highest of the fees leviable on the reliefs.

(3)(a) Where a suit is based on two or more distinct and different causes of action and separate reliefs are sought in respect thereof, either alternatively or cumulatively, the plaint shall be chargeable with the aggregate amount of the fees that would be chargeable on the plaints under this Act if separate suits were instituted in respect of the several causes of action:

Provided that, where the causes of action in respect of reliefs claimed alternatively against the same person arise out of the same transaction, the plaint shall be chargeable only with the highest of fees chargeable on them.

(b) Nothing in this sub-section shall be deemed to affect any power conferred upon a Court by Rule 6 of Order 11 in the First Schedule to the Code of Civil Procedure, 1908 (Central Act V of 1908).

(4) The provisions of this section shall apply mutatis mutandis to memorandum of appeals, applications, petitions and written statements.

Explanation.-For the purposes of this section, a suit for possession of immovable property and for mesne profits, therefrom shall be deemed to be based on the same cause of action.

8. Section 20 of the Act, dealing with the suits for money, reads as hereunder:

20. Suits for money.-In a suit for money (including a suit for damages or compensation, or arrears of maintenance, of annuities, or of other sums payable periodically), fee shall be computed on the amount claimed.

9. Section 49 of the Act deals with appeals and the said provision reads as hereunder:

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

Provided that, in levying fee on a memorandum of appeal against a final decree by a person whose appeal against the preliminary decree passed by the Court of first instance or by the Court of appeal is pending, credit shall be given for the fee paid by such person in the appeal against the preliminary decree.

Explanation 1.-Whether the appeal is against the refusal of a relief or against the grant of the relief, the fee payable in the appeal shall be the same as the fee that would be payable on the relief in the Court of first instance.

Explanation 2.-Costs shall not be deemed to form part of the subject-matter of the appeal except where such costs form themselves the subject-matter of the appeal or relief is claimed as regards costs on grounds additional to, or independent of, the relief claimed regarding the main subject-matter in the suit.

Explanation 3.-In claims which include the award of interest subsequent to the institution of the suit, the interest accrued during the pendency of the suit till the date of decree shall be deemed to be part of the subject-matter of the appeal except where such interest is relinquished.

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.

Explanation 5.-Where the market value of the subject-matter of the appeal has to be ascertained for the purpose of computing or determining the fee payable, such market value shall be ascertained as on the date of presentation of the plaint.

10. Section 50 of the Act deals with suits not otherwise provided for and the said provision reads as hereunder:

50. Suits not otherwise provided for.-(1) If no specific provision is made in this Act or any other law regarding the value of any suit for the purpose of determining the jurisdiction of Courts, value for that purpose and value for the purpose of computing the fee payable under this Act shall be the same.

(2) in a suit where fee is payable under this Act at a fixed rate, the value for the purpose of determining the jurisdiction of Courts shall be the market value of the movable property or three-fourths of the market value of the immovable property or where it is not possible to estimate it at a money value the amount stated in the plaint.

11. On a careful reading of the language employed in Section 49 of the Act read along with Section 20 and also Section 6 of the Act, this Court is of the considered opinion that the view expressed by the learned District Judge, Ongole, cannot be found fault with.

12. In *Pandurangam v. Sharadamba* 1986 (1) ALT 297, a learned Judge of this Court at Para 4 observed thus:

Clause (1) relates to the past maintenance for one year and Clause (2) refers to the payment of amount towards maintenance from the date of the suit: A reading thereof would manifestly establish that so long as the decree subsists there is an obligation cast on the Appellant to continue to pay the maintenance at the rates mentioned in Clause (2) of the decree. The question is whether the appellant is required to pay separate Court fee in respect of the relief in Clause (2). It is undoubtedly true that u/s 22(a) the Legislature animated that the plaintiff has to pay the Court-fee in a suit for maintenance on the maintenance payable for one year and if it is decreed for that amount, undoubtedly by reading Section 49 and Explanation (1) thereto, the Court fee is to be paid on the same amount as claimed in Section 22(a) thereof. But the decree goes further and postulates under Clause (2) that the appellant shall continue to pay the future amount at the specified rate. This question was considered squarely by this Court in *Linga Reddy v. G. Rukma Reddy* 1975 (2) An.WR 320. Explanation (3) to Section 49 of the Act postulates that where the award of interest subsequent to the institution of the suit is granted, then the interest accrued during the pendency of the suit till the date of decree was declared to be part of the subject-matter of the appeal by employing deeming provisions as it forms part of the subject-matter of the appeal. Equally Explanation (4) postulates that where the relief prayed 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. The ambit of Explanation (4) would postulates that where the relief is prayed for or was refused by the Court of first instance and that relief is the subject-matter of the appeal in the appellate Court, Section 49 of the Act adumbrates and enjoins the appellant to pay the Court fee payable in respect of the relief prayed for in the appeal. One of the reliefs claimed for in the appeal is the avoidance of future maintenance under Clause (2) thereof. Therefore, the question is whether the appellant is enjoined to pay Court fee in respect thereof. This matter is no longer *res integra*. This Court in *G. Linga Reddy v. G. Rukma Reddy* (*supra*), squarely dealt with the question. Venkatrama Sastry, J., has considered in *extenso* and held thus:

Section 49 in the beginning portion speaks of a fee payable in the appeal is the same fee that would be payable in the Court of first instance, on the subject-matter of the appeal. The expression "on the subject-matter of the appeal" makes all the difference for the purpose of valuation of the appeal. If the idea of the Legislature was to apply the same provision as in the suit applicable to the appeals also without any modification they would not have added the expression "on the subject-matter of appeal" in this section. Whenever the expression "Subject-matter of appeal" is used, it must be understood as the entire subject-matter covered by the appeal. The appeal may cover either the entire portion of the claim in the suit or a part of it or something more than the claim made in the suit. The subject-matter of the appeal therefore cannot be synchronized or equated with the subject-matter of the suit for purposes of Court-fees. In the

appeal the guiding factor then is the subject-matter of the appeal.

I respectfully agree with the above ratio. When the Legislature has used the expression "the subject-matter of the appeal" despite the claim made in the suit, whatever relief is sought for in the appeal, the appellant has to pay the Court-fee in respect thereof as per the provisions of the Act. No doubt, Section 22(a) of the Act postulates that the appellant has to pay the Court-fee on the maintenance for one year i.e., at the time of laying the suit. That is the subject-matter of the suit. But when the matter reaches the appellate Court, the subject-matter is the decree already in the appeal, i.e., Clause (2) of the decree which has already been referred to and therefore when the appellant is seeking to avoid Clause (2) of the decree he has also to separately value the appeal in that regard, and pay the Court-fee accordingly. The decision relied upon by the learned Counsel for the appellant is clearly distinguishable. Therein the similar provision Explanations (3) and (4) to Section 49 of the Act is not available. Therefore, the ratio therein would not squarely govern the subject under consideration. Therefore, the ratio laid down in Mishrilal's case (*supra*), is of little assistance. Sri Mohan Rao, the learned Counsel for the appellant then requested to refer the matter to a Division Bench for consideration. I am afraid I cannot accede to his request. When I am in full agreement with the statement of law made by Venkatrama Sastry, J., there is no need for me to make a reference to a Division Bench. Accordingly, I uphold the objection raised by the Office and the appellant is directed to pay the Court fee accordingly.

13. Strong reliance was placed by the learned Counsel representing the revision petitioners on *Chinimilli Balaramamurthy v. Sitaramaswamivari Devastanam* 1963 (1) An.WR 158, wherein it was observed thus:

When the appeal came on for hearing, Burn, J., questioned the right of the defendants-appellants to make an arbitrary valuation and suggested that the decision in *In re Venkatanadham* 1932 64 MLJ 122 : ILR Mad. 705, should be reconsidered as it appeared to go beyond the decision of the Privy Council in *Faizulla Khan v. Mauladad Khan* 1929 57 MLJ 281 : LR 56 1A 332 (PC).

The matter was referred to a Full Bench. The learned Judge of the Full Bench, in the course of their judgment, referred to the decision of Shepherd and Subramania Ayyar, JJ., in *Samiya Mavali v. Minammal* 1899 10 MLJ 240 : ILR Mad 490, rendered in the year 1889, wherein it was held that the valuation given by the plaintiff was the valuation to be accepted except when the appeal did not comprise the entire subject-matter of the suit. Similarly, the Full Bench made mention of an earlier Full Bench decision of the Madras High Court of the year 1915 in *Srinivasacharlu v. Perindevamma* 1915 30 MLJ 402 : ILR Mad 725, consisting of Wallis, CJ, and Sadasiva Ayyar and Srinivasa Ayyangar, JJ., who concurred in the opinion expressed in *Samiya Mavali v. Minammal*. The Full Bench observed as follows (page 437):

therefore for nearly 40 years a defendant appealing from a preliminary decree

for an account has ordinarily had to stamp his memorandum according to the plaintiffs valuation.

At page 438, the Full Bench also stated thus:

until the decision in *In Re. Venkatanadham* 1932 64 MLJ 122 : ILR Mad 705, it was never questioned in the High Courts of India that a defendant appealing against a final decree should pay a Court-fee on the amount of the decree passed against him -except in cases where he appealed only against a portion of the decree.

Finally, the Full Bench concluded as follows:

The section gives great freedom to plaintiff-appellants but we do not consider that it gives the same freedom to defendant-appellants. When a defendant appellant appeals against a Final decree he knows exactly the value of his relief. It follows that we consider that *In re Venkatanadham* (supra), was wrongly decided and therefore should not be followed.

The above Full Bench decision in effect accepted the principle laid down in *Samiya Mavali v. Minammal* (supra) and *Srinivasacharlu v. Perindevamma* (supra), that when the appeal did not comprise the entire subject-matter of the suit, the valuation given by the defendant in the appeal preferred against the preliminary decree need not be exactly the same as the valuation given by the plaintiff in the plaint. Similarly, the Full Bench disagreed with the decision in *In re Venkatanadham* (supra) and accepted the principle that, when a defendant appealed against a Final Decree, he should pay Court-fee on the amount of the decree passed against him since he knew exactly the value of his relief except in cases where he appealed only against a portion of the decree.

14. There cannot be any doubt or quarrel regarding the propositions laid down by the learned Judges in the decisions specified supra. The question which may have to be decided in the present C.R.P is that when a suit had been instituted by the plaintiff on the strength of several promissory notes and Court-fee had been paid on these different promissory note amounts and a decree had been made, merely on the ground that only one suit had been instituted, can the defendants while preferring the appeal take a stand that they can present an appeal paying Court-fee not on the separate amounts and the subsequent interest accrued, if any, but only on the decretal amount on the ground that excess payment of Court-fee had been made by the plaintiff before the Court of first instance by valuing the suit for the purpose of Court-fee and jurisdiction separately i.e., giving valuation of each promissory note amount separately and calculating the Court-fee. When parties are common for the purpose of convenience even on the strength of more than one promissory note, one suit would be instituted, but on that ground itself it cannot be said that inasmuch as the cause of action is one, the Court-fee to be paid in lump sum computing all the amounts due on all the promissory notes. Separate Court-fee need to be paid and the respondent/plaintiff had correctly valued the suit by paying the separate

Court-fee on several promissory notes, though a common suit had been instituted and in the light of the same, the objection raised by the Office, which was upheld by the learned District Judge, Ongole, cannot be found fault with.

15. In the light of the same, let the revision petitioners comply with the objections of the Office relating to deficit Court-fee within a period of eight weeks from today.

16. It is needless to say that the learned District Judge, Ongole, to further proceed with the matter, if the appeal is otherwise in order. With the above observation, the CRP is dismissed. No order as to costs.