(1988) 03 KL CK 0059

In the High Court Of Kerala

Case No : C.R.P. No. 1768 of 1987

Sathian @ Sathyavrathan	APPELLANT
Vs	
The Manager, Indian Overseas Bank and another	RESPONDENT

Date of Decision : 17-03-1988

Acts Referred:
Kerala Court Fees and Suits Valuation Act, 1959 — Section 22, 25, 25(d)(i), 27(c)

Citation : (1988) 1 KLJ 566

Hon'ble Judges : V. Bhaskaran Nambiar, J

Bench : Single Bench

Advocate : N.P. Samuel and K.P. Suresh Kumar, for the Appellant; H. Sivaramakrishna Iyer and Govt Pleader V P. Seemanthini, for the Respondent

Judgement

1. When a suit is filed for an injunction restraining a bank from paying the amount covered by a fixed deposit receipt, is the plaintiff liable to pay court fee on the amount covered by the fixed deposit receipt, treating the suit as a declaratory suit or is it sufficient to pay court fee only on the relief of injunction which he has sought? A question of court fee on which will also depend the valuation for purposes of jurisdiction thus arises for consideration in this revision. The plaintiff filed a suit in the Munsiff''s Court Varkala praying for a decree:

(a) prohibiting the 1st defendant bank from releasing the amount covered by the Fixed Deposit Receipt No. F. 409160/FBD-38/76 and renewed as G. 307528/MID/25/79 to the 2nd defendant or anybody else

(b) directing the 1st defendant to release the said amount covered by the said fixed deposit receipt with interest from 24-3-1984 to the plaintiff.

and for other consequential reliefs. He valued the reliefs of injunction u/s 27(c) of the Kerala Court Fees and Suit Valuation Act at Rs. 300/- and paid a total court fee Rs. 24/-. The value for purposes of jurisdiction was also shown as Rs. 300/-.

2. The plaintiff averred that his father Madhavan had a fixed deposit in his name

in the Varkala branch of the Indian Overseas Bank as evidenced by a fixed deposit receipt dated 15-4-1976 and renewed in 1979. Madhavan is dead and the plaintiff, his son claimed the amount covered by the receipt, but the bank refuses to pay on the ground that according to the tenor of the receipts in their possession, the amount was payable to the second defendant. The suit was therefore filed for injunction incorporting the two prayers extracted above.

3. The trial court noticed that the amount deposited in the bank exceeded one lakh and fifty thousand and therefore it had no jurisdiction to try the suit and the plaint was returned for presentation to the proper court. In appeal, the Additional Sub Court, Attingal held that the court fee paid for prayer (a) was sufficient; but regarding the mandatory injunction claimed to return the amount to the plaintiff, it was held that the plaintiff was bound to incorporate a paryer for declaration, as there is dispute regarding his right to the amount, and that court fee has to be paid on the amount claimed u/s 22 of the Act. As the claim was for over 11/2 lakhs of rupees, the lower court upheld the order of the trial court returning plaint. These orders are challenged in revision.

4. Section 27 (c) of the Court Fees Act relating to injunction applicable to the present case reads thus:-

27 - Suits for injunction - In a suit for injunction -

(a) xxxxxxxx xxxxxxxx

(b) xxxxxxxx xxxxxxxx

(c) "In any other case, whether the subject-matter of the suit has a market value or not, fee shall be computed on the amount at which the relief sought is valued in the plaint or on rupees one hundred and fifty whichever is higher.

Section 25 (d) (i) & (ii) relating to suit for declaration reads thus:-25. Suits for declaration -

(a) xxxxxxxx xxxxxxxxx

(b) xxxxxxxx xxxxxxxxx

(c) xxxxxxxx xxxvxxxxx

(d) "In other cases-

(i) where the subject-matter of the suit is capable of valuation, fee shall be computed on the market value of the property, and

(ii) where the subject - matter of the suit is not capable of valuation, fee shall he computed on the amount at which the relief sought is valued in the plaint or on rupees three hundred, whichever is higher".

5. The suits for money are governed by Section 22 which reads thus:-22. "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".

6. It is settled law that the court fee payable is to be decided on the basis of the averments in the plaint and the relief sought by the plaintiff. The court, however, will have to look at the substance of the relief sought, as the question of court fee is linked to the substantial relief claimed.

7. In the plaint now filed, the actual relief prayed for is only for an injunction. It is clear from the plaint averments that the petitioner assert, that he alone is entitled to the amount covered by the fixed deposit receipt in the bank, and does not seek any declaration of his right. He, therefore proceeds on the footing that the bank has no power to pay the amount to any other person. It may be that while deciding to grant injunction or not, the court might have to consider the question as to whether the plaintiff is entited to the amount. The suit in which the plaintiff does not pray for the money cannot be treated on exactly the same footing as a suit in which, he does pary for such relief for purpose of court fee.

8. It is, therefore clear that the suit has to be valued only u/s 27 (c) as a suit for injunction and not u/s 25, as a suit for declaration or u/s 22, as a suit for the recovery of money.

9. I am fortified in view of the decision of the Supreme Court in The Vishnu Pratap Sugar Works (P) Ltd. Vs. The Chief Inspector of Stamps, U.P., . In that case, the suit was for injunction restraining the State of Uttar Pradesh, its servants and agents from realising or from proceeding to realise sugar cane cess and purchase tax amounting to Rs. 33 lakhs and odd charged under the Uttar Pradesh Sugar Cane (Regulation of Supply & Purchase) Act. The Supreme Court held that the suit will be valued only as a suit for injunction and the reasons were stated thus:-

It cannot, however, be gainsaid that the actual relief prayed for in the plaint was an injunction restraining the State and its authorities to realise from the appellant-company the aforesaid cess and the purchase tax. It is clear from the plaint when read as a whole that though the appellant-company alleged that the Acts were void and therefore non est for the reasons set out therein, it did not seek any declaration that they were void. The plaint proceeds on the footing that the said Acts were void and that therefore the State of U. P. or its authorities had no power to realise the said tax and the said cess. It may be that while deciding whether to grant the injunction or not, the court might have to consider the question as to the validity or otherwise of the said Acts.. But that must happen in almost every case where an injunction is prayed for. If for the mere reason that the court might have to go into such a question, a prayer for injunction were to be treated as one for a declaratory decree of which the consequential relief is injunction all suits where injunction is prayed for would have to be treated as falling under Cl. (a) of sub-s (iv) of S. 7 and in that view Cl. (b) of sub-s. (iv-B) of S. 7 would be superfluous.

10. This decision has been followed in Collector of Customs v. Abdurahimankutty (1980 KLT 806) where a suit for injunction restraining the defendant from realising customs duty was held to be a suit for injunction, the court fee being payable on that basis.

11. In one of the earliest decisions of the Bombay High Court, in Sardarsingji v. Ganpatsingji. ILR (1892) 17 Bom 56 . Justice Telang, held thus:-

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.

12. It is also be noted that the counsel for the plaintiff submitted at the time of arguments that he is not pressing for his relief under prayer (b) because prayer (a) alone is sufficient for the purpose. This is recorded.

13. The courts below were therefore, wrong in holding that the plaintiff was liable to pay the court fee on the amount covered by the fixed deposit receipt and that the suit was beyond the pecuniary jurisdiction of the Munsiff''s Court. The orders are wrong, as the courts below have wrongly interpreted and applied the provisions of the Court Fees Act and denied jurisdiction to the Munsiff''s Court to try the suit. In the result, the orders of the courts below are set aside, The suit was properly valued for purposes of court fee and jurisdiction. The suit is well within the jurisdiction of the Munsiff''s Court, Varkala. The court will, therefore, proceed to try the other issues framed and dispose of the suit on the merits and according to law.