
(1941) 01 AHC CK 0014
In the Allahabad High Court

Secretary of State

APPELLANT

Vs

Gomti Kunwari and Others

RESPONDENT

Date of Decision : 23-01-1941

Acts Referred:

Citation : AIR 1941 All 221 : (1941) 11 AWR 162

Hon'ble Judges : Braund, J

Bench : Division Bench

Final Decision : Disposed Of

Judgement

Braund, J.—This is an appeal arising out of a Suit No. 127 of 1933, from the Court of the first additional subordinate Judge of Gorakhpur. In order to appreciate the point which is not an altogether easy one it will be necessary to consider the proceedings a little closely. Mt. Gomti as plaintiff brought the suit against some 33 defendants divided into two groups, the first group composed of defendants 1 to 22 and the other group composed of defendants 23 to 83. It is not very material to notice exactly what her cause of action was. It is sufficient to say that she sought a decree for a substantial sum of money on account of arrears of maintenance and for an order that she was entitled to the benefit of certain yearly payments in cash and in kind. But it is important to notice that by para. 10 of her plaint she valued her relief at the sum of Rs. 17,000.

2. Mt. Gomti brought her suit in forma pauperis, and in due course it was duly admitted under Order 33 of Schedule 1, Civil P.C. The dispute was never actually fought out because in November 1933 the parties came to a compromise about it. At that stage it is necessary to look closely to see what happened. On 30th November 1933 the plaintiff put in an application before the subordinate Judge to amend her plaint. It is to be found at p. 9 of the record and to paraphrase it she said that being an inexperienced purdanashin lady she had made a mistake, about the value of the property she claimed and she asked to have the valuation of the relief claimed by the suit which had been put by para. 10 of the plaint at Rs. 17,000 reduced to Rs. 4050. It seems to have taken some time for that to

come before the Judge because it was not until 1st February 1934 that the Judge made his order and then only by the somewhat laconic remark "Allowed". That date, 1st February 1934, is an important date.

3. On the following day a decree was passed in the suit which must have been intended to be a decree under Order 23, Rule 3, Civil P.C., a compromise decree, in fact. That is the first we have heard of the compromise and it followed within twenty four hours of the Judge's order allowing the amendment to be made. I need not point out in any detail what the terms of the compromise were. The plaintiff obtained something substantial under the compromise, although it was less than what she had asked for in the suit. One important thing to observe however is that it was a term of the compromise, to be found in Clause (8) of it, that defendants 1 to 22 should pay "the court-fee due." It is significant to bear in mind that that was actually a term of the compromise. This compromise, then, came before the Court on 2nd February 1934. The actual decree under Order 23, Rule 3, was signed on 22nd February 1934. It is at p. 10 of the record and describes the claim as being laid at Rs. 4050. It went on to pass a decree in terms of the compromise and, among other things, it ordered "that the sum of Rs. 302-8-0" that is the amount payable as court-fee on the valuation of Rs. 4050 "be paid by defendants 1 to 22 on account of court-fee." Now the result is obvious. Whether rightly or wrongly, the result was that the parties to the compromise, or rather defendants 1 to 22, had paid a court-fee which was a great deal less than the court-fee which would have been paid Had the original valuation stood and to that extent the treasury was the loser.

4. In July 1934 an application was made by the Government pleader to the Judge. It was an application, though in terms it did not seem to say so, under Order 33, Rule 12. At any rate, the Judge in the opening words of his judgment appears to have treated it so. It claimed that the amount of the court-fee ordered to be paid under the decree of 22nd February 1934 should have been Rs. 971 instead of Rs. 302-8-0, or in other words, that it should have been based on the original valuation of Rs. 17,000, and not upon the amended valuation of Rupees 4050. That is the bone of contention in this appeal. The learned Judge who decided the matter on 5th January 1935, treated it, as I have said, as an application under order 33, Rule 12. He was by no means unmindful of the possibility of a fraud having been practised on the revenue, but he came to the conclusion that there was not the material before him upon which he could conclude that any fraud was established. He said:

There is some reason to suspect that the amendment of the valuation was a collusive act between the parties for their benefit and to the detriment of the State. This mere suspicion does not however amount to a definite opinion or finding by me. I would not therefore act upon it. It is equally-possible that the plaintiff had exaggerated her claim, which is by no means a rare circumstance, and the amendment application was a bona fide one. The amended valuation shall therefore be the basis of the computation of the court-fee.

5. The learned Judge, accordingly, dismissed the Government pleader's application for an increase in the amount of the court-fee ordered to be paid. Mr. Khwaja, on the Secretary of State's behalf, puts it in this way. He says that this is an application under Order 33, Rule 12, and I agree with him in thinking that it is. Rules 10, 11 and 12 form a fasciculus of rules providing for what is to happen as regards the court-fees in the case either of the success or failure of a pauper suit. Rule 10 provides:

Where the plaintiff succeeds in the suit, the Court shall calculate amount of court-fee which would have been paid by the plaintiff if he had not been permitted to sue as a pauper....

and shall make an appropriate order for their payment. Rule 11 provides for the converse case, which is where a pauper plaintiff fails in the suit. In that case, he is to be ordered to pay "the court-fees which would have been paid by the plaintiff if he had not been permitted to sue as a pauper." It has to be observed that the words in inverted commas are the same words as are to be found in Rule 10. Then comes the rule under which this application is made:

The Government shall have the right at any time to apply to the Court to make an order for the payment of court-fees under Rule 10 or Rule 11.

6. This is the application made in this case. I was at first sight much disposed to read the words of Rules 10 and 11 as meaning that the Court was to calculate and make appropriate order for payment of such court-fee as looking at the suit as a whole, as it then stands, the Court finds would have been the proper court-fee. That appeared to me to be a commonsense construction of the rules, enabling the Court to put the Crown in the position which it eventually turns out it would have been in but for the accident of the plaintiff being a pauper. But I do not think it is as simple as that. The words are "...which would have been paid by the plaintiff if he had not been permitted to sue as a pauper...."

7. This is a case where the suit started life with a valuation of Rs. 17,000 and which was not altered until long afterwards on the eve of the compromise to Rs. 4050. It has also to be remembered that a pauper's suit is different from any other kind of suit, inasmuch as, in no other kind of suit, is the plaintiff permitted to launch his proceedings at all until he has paid the court-fee. A pauper, so to speak, is given credit by the Government, provided he complies with the rules. If therefore the plaintiff in this case had not been permitted to sue as a pauper, it is incontrovertible that the court-fee, which not merely was payable but which "would have been paid," would have been the sum of Rs. 900 appropriate to the Rupees 17,000 valuation. There can be no doubt of that. If therefore the words of Rules 10 and 11 are to be construed strictly, it seems to me that the Court had no alternative but to ask itself "what would the plaintiff have had to pay if it had not been a pauper suit"? And to that question, it seems to me that, the answer can only be "the court-fee on Rs. 17,000."

8. I appreciate that this is putting a strict construction on Rules 10 and 11. But

where a rule is couched in unambiguous language, it is not open to the Court to alter it merely because, in the Court's opinion, it might produce a somewhat harsh result. Where the language is clear, it is the Court's duty to give effect to it. Nor am I satisfied that this construction does cause a harsh result. I am not in any way constrained to say this by any suspicion of the collusion between the parties, though that is an obvious possibility. Supposing that the plaintiff had not been a pauper at all in this case and had filed her suit with a valuation of Rs. 17,000 supposing too that, without fraud, she found that she had made an over-estimate and desired to get it altered at a later stage, now in that case it has to be remembered that, not being a pauper she would have already had to pay the court-fee on Rs. 17,000. And, even if her amendment were allowed - as it has been allowed in the present case - it would not have had the effect of entitling her to recover any part of that court-fee. It is highly material to remember that, even if the plaintiff in this case had not been a pauper, she would not have been entitled in similar circumstances to get the court-fee back. What Mr. Khwaja says therefore is that it is only the accident of its being a pauper suit that left open the door to this being done - the reason being that it is only in the case of a pauper suit that the court-fee is not paid on the spot. That is why, as Mr. Khwaja puts it, the Legislature has been so very particular in Rules 10 and 11 to make it clear that what has to be paid is what the plaintiff or the defendant, as the case may be, would have had to pay if it had not been a pauper suit at all. Or, in other words, "would have been paid if he had not been permitted to sue as a pauper." The object was to restore the position which would have applied, if the suit had not been a pauper suit.

9. I think therefore that under Rule 12 the Government was entitled to claim an order for the payment of the court-fees. The right to make that application applies both to cases of error and omission with regard to court-fees. In this case there had been an error, because Rs. 302-8-0 was not, upon the construction I have applied to Rules 10 and 11, the correct court-fee. As I have endeavoured to show the payment of the court-fee under Rules 10 and 11 ought to have been calculated, not on the basis of the amended valuation, but on the basis of the valuation at the date of the filing of the suit which was the valuation upon which the plaintiff would have had to pay "if he had not been permitted to sue as pauper." I have not decided this matter upon any ground that there was a fraud practised on the Crown, though it is impossible not to suspect that the application for the reduction of the court-fee had some connexion with the compromise which immediately followed. In all the circumstances therefore I am compelled to think that the learned Judge's decision was wrong and accordingly I must make an order for the payment of a court-fee amounting to Rs. 971-4-0 instead of Rs. 302-8-0.

10. Having decided that the court-fee of Rs. 971-4-0 must be paid, it remains to consider by whom it must be paid. Rule 10 of Order 33 deals with the case of a successful plaintiff, while E. 11 deals with the case of an unsuccessful plaintiff. There is no separate provision for the case in which a pauper plaintiff has, as in

this ease, partially succeeded and partially failed. That was the result of the compromise. It seems from the authorities that, in such a ease as that, the Court is intended to deal with it by complying with the provisions of the two rules and by apportioning the court-fee between the plaintiff and the defendant. That has been held in an Allahabad case, *Ganga Dahal Rai and Another Vs. Musammat Gaura*, . Normally, therefore, I should have thought that the proper decree would have been to have apportioned this sum of Rs. 971-4-0 as to Rs. 302-8-0 to be paid by the plaintiff and as to the remainder to be paid by the defendants.

11. But this is a special case, because the compromise between the parties itself provided how the court-fee was to be borne. The parties themselves have come to an agreement about it. It is contained in paragraph 8 of the compromise as set out at p. 11 of the record. There it is said "Thus with reference to the compromise defendants 1 to 22 would pay the court-fee due." I draw particular attention to the words "the court-fee due." Now, where the parties themselves as part of the agreement between them have expressly disposed of the court-fees, it seems to me that that must necessarily override the provisions of both Rules 10 and 11. It is not for the Court to undo the compromise in any respect. Indeed, the duty of the Court is to give effect to it and this particular provision is part and parcel of the compromise. What the parties agreed, as part of the compromise, should be paid by defendants 1 to 22 is "the court-fee due." The learned Judge in the Court below, consistently with his own decision that the only court-fee due was Rs. 302-8-0, ordered that sum to be paid by defendants 1 to 22. Now it has been determined that the court-fee is Rs. 971-4-0. And I can see no reason why defendants 1 to 22 should not have to pay the whole of that sum. It is in fact "the court-fee due." The learned advocate for the respondent has argued that what the compromise meant was that defendants 1 to 22 should only have to pay the court-fee due on the valuation of Rs. 4050. But that is not what the contract said. The contract said that defendants 1 to 22 must pay "the court-fee due." There is no qualification about it. One has to ask oneself "what is the court-fee due?" The answer is "a court-fee of Rs. 971-4-0 is due." Therefore, that sum under the contract must be paid by defendants 1 to 22. The words of the contract are unambiguous, and it is not for me to speculate whether the parties meant something different from that which they have actually and plainly said. That is an elementary canon of construction. For these reasons I must order that the sum of Rupees 971-4-0, being the court-fee due, must be paid by defendants 1 to 22. The costs of this appeal must be paid by the respondents.