
(1940) 04 CAL CK 0030
In the Calcutta High Court

Sm. Jarimon Khatoon (Chowdhurani)	APPELLANT
Vs	
Secretary of State and Another	RESPONDENT

Date of Decision : 18-04-1940

Acts Referred:

Court Fees Act, 1870 — Article 5, 8C

Citation : AIR 1940 Cal 451

Judgement

1. The plaintiff is the appellant before us. She appeals against the order of the learned Subordinate Judge dated 8th April 1937 by which her plaint had been rejected for non-payment of the deficit court-fees of Rs. 1980 which the Court below had asked her to pay. The suit was valued by the plaintiff for the purpose of jurisdiction and of court-fee at the sum of Rs. 2100 and she paid ad valorem court-fee upon that amount at the time when the plaint was registered after presentation. After the plaint was registered, the defendants entered appearance and they raised the question of the sufficiency of the court-fees paid on the plaint. On that the learned Subordinate Judge took security for the payment of the additional court-fee that may eventually be found due and proceeded to determine the amount payable. For the purpose of determining the amount payable, he started an enquiry u/s 8-C, Court-fees Act. A Commissioner was appointed for the purpose of finding out certain details which would, according to the learned Subordinate Judge, be relevant to find out the value of the property in suit. After the Commissioner had submitted his report he took further evidence and came to the conclusion that the net profits of the property in suit were Rs. 4000 a year. He capitalized the said amount and came to the conclusion that the value of the property in suit was Rs. 60,000. The question as to the amount of court-fees on the plaint was then argued before him.

2. The plaintiff first contended that Article 5 of Schedule 2, Court-fees Act, was applicable and under that Article the court-fee stamp of 12 annas was sufficient. She further contended that if Article 5, Schedule 2 was not applicable, the computation must be made in accordance with the terms of Clause (xi) of Section 7, Court-fees Act. These two points raised by the plaintiff were overruled

by the learned Subordinate Judge. He came to the conclusion that the case fell within Section 7, Sub-section (iv), Clause (c), Court-fees Act. He further found that the valuation given in the plaint was an arbitrary valuation and for the purpose of computing court-fee u/s 7, Sub-section (iv), Clause (c), Rs. 60,000 should be taken to be the value of the subject-matter of the suit. This finding of the learned Subordinate Judge is recorded in his order dated 30th January 1937. On the basis of the said order, he found that Rs. 2175 was the fee payable on the plaint but inasmuch as Rs. 195 had already been paid, he demanded from the plaintiff the difference, viz., Rs. 1980. He gave the plaintiff time to pay the said deficit amount by 6th February following. On 6th February however the plaintiff put in an application for amendment of the plaint with a view to circumvent the order of the learned Subordinate Judge passed on 30th January 1937. That application for amendment was refused on the same day and we think rightly. The Subordinate Judge however extended the time for the payment of deficit court-fee to 20th February 1937. In his order dated 6th February 1937, when extending the time up to 20th February, the learned Subordinate Judge made it quite clear that no further time would be given for putting in the deficit court-fee inasmuch as the matter regarding court-fees was pending in that Court since 17th June 1936.

3. On 20th February however the plaintiff did not pay the deficit court-fees but made an application for being allowed to continue the suit as a pauper. This last mentioned application was kept pending till 5th April 1937. On that date, the matter was fully gone into. The learned Subordinate Judge came to the conclusion that the plaintiff had failed to establish that she was a pauper, further, he recorded a finding that the suit was really being continued by other persons behind the scene. On 5th April, the plaintiff moved this Court against the order of the learned Subordinate Judge dated 30th January 1937 by which the amount of court-fees payable had been determined and also the order of 5th February 1937 by which her application for amendment of the plaint had been refused. On the next day, viz., on 6th April, she made an application to the learned Subordinate Judge which is printed. At page 98 of the paper-book. It is a curious application. First of all, it stated that notice ought to be issued upon the sureties to compel them to pay court-fees on her behalf. She further stated that she had moved this Court and this Court had issued a rule on her application. In the prayer she said that she wanted a further week's time for paying the deficit court-fees and at the same time prayed for a week's time for the purpose of enabling a communication to that Court of this Court's order, that is to say of the rule which had already been issued on 5th April. The Court did not give further extension of time for the payment of court-fees as prayed for but only gave two days' time to the sureties to appear, and on 8th April following passed the formal order rejecting the plaint for non-payment of the deficit court-fees. It is against this order that the present appeal has been filed. Mr. Moitra appearing on behalf of the plaintiff-appellant accepts the position that neither Article 5, Schedule 2, Court-fees Act, nor Section 7(xi) of the same Act is applicable to the case and

that the learned Subordinate Judge was right in holding that the computation has to be made under the provisions of Section 7(iv), Clause (c), Court-fees Act. He does not contend before us that Section 8-C, Court-fees Act, is inapplicable to a case falling within Section 7(iv), Clause (e), Court-fees Act. In fact, having regard to the decision of this Court, that contention, even if it had been made before us, could not have been sustained: see the cases in *Jitendra Nath Ghosh v. Hiranmoy Kumar Saha* ILR (1937) Cal. 501, *Santa Prosad Saha Vs. Sm. Mrinalini Saha and Another*, , *Urmilabala Biswas Vs. Binapani Biswas and Others*, , *Kumudini Kanta v. Municipal Commissioners of the Barasat Municipality* 42 C.W.N. 315, *Anath Nath Banerjee v. Kalimata Thakurain* (1938) 25 Cal. 865 and *Kanailal Banerjee Vs. Satyabati Devi and Others*, . Nor does he contend that the reliefs prayed for in the suit before us have no objective standard of valuation. In the circumstances, he raised the question that the learned Subordinate Judge was not right in valuing the subject-matter of the suit at Rs. 60,000 for the purpose of computing court-fees u/s 7(iv)(c), Court-fees Act. That is the first point he raised. The second point that he raised is that the Court ought to have given his client some further time for the purpose of enabling her to put in deficit court-fees. At least a week's time, he says, should have been granted to her as prayed for in her application printed at page 98 of the paper-book. For deciding the first point, we will have to construe the provision of para. (1) of Section 12, Court, fees Act. That paragraph enacts:

Every question relating to valuation for the purpose of determining the amount of any fee chargeable under this chapter on a plaint...shall be decided by the Court in which such plaint...is filed, and such decision shall be final as between the parties to the suit.

4. This paragraph stood in the same form since 1870. It is only para. 2 that has been amended in Bengal by the Act 7 of 1935. By the same Act (Bengal Act, 7 of 1935) an Explanation was added to the Section. The Explanation is in these terms:

For the purposes of this Section a question relating to the classification of any suit for the purpose of 8. 7 shall not be deemed to be a question relating to valuation.

5. On the Section as it stood before its amendment by Act 7 of 1935 (B.C.), there was a series of decisions in which the view was maintained that Section 12 had no application when the question for decision was as to the class under which a suit fell and not merely of valuation in that class. If there was a question of valuation, there being no question as to the class in which the suit fell, the valuation made by the Court of first instance was final. Some of these cases are mentioned in the judgment in *Sunder Mal v. J.C. Murray* (1912) 16 C.L.J. 375 and in other cases which it is not necessary for us to review because the explanation added to Section 12 by Bengal Act 7 of 1935 had made the position clear. It is the statutory recognition of the effect of the decisions given on para. 1 of Section 12, Court-fees Act, as it stood from 1870. As the appellant's advocate

does not dispute before us the finding of the learned Subordinate Judge, that computation has to be made u/s 7(iv)(c), Court-fees Act, and as the learned Subordinate Judge valued the subject-matter at Rs. 60,000 for the purpose of computing the court-fees under that Section, we do not think that it is open to the appellant to challenge the correctness of the finding of the learned Subordinate Judge that the value of the subject-matter is Rs. 60,000.

6. Our attention has been drawn by the appellant to a judgment of a Division Bench in Prokash Chandra Sarkar v. Bishambar Nath 14 C.W.N. 343, where Brett J. and Sharfuddin J. held that para. 1 of Section 12, Court-fees Act, does not prevent an appellant from challenging the valuation made by the Court of first instance for the purpose of assessing court-fee even when there is no question as to the class in which the suit falls. This view is not in accord with the series of previous decisions of this Court and of other Courts which it does not appear were cited before them. They rely upon two cases Omrao Mirza v. Mary Jones (1883) 12 C.L.R. 148 and H.C. Studd v. Mati Mahto (1901) 28 Cal. 334. The last-mentioned case, however, does not support the view taken in that case for there the question raised in the lower Court and in this Court related to the class in which the particular suit fell. In Omrao Mirza v. Mary Jones (1883) 12 C.L.R. 148 the actual decision related to the question as to whether the suit fell within a particular class or not. There is, however, an obiter in that case which would support the view taken by Brett J. and Sharfuddin J. In view of the fact that the Legislature had made the position clear by adding the Explanation to Section 12, Court-fees Act, and having regard to the fact that a series of cases had decided the other way, we do not feel impressed by the judgment in Prokash Chandra Sarkar v. Bishambar Nath 14 C.W.N. 343. In view of the fact that we have now a statutory enactment, we do not further feel inclined to refer the matter to a Full Bench for the purpose of considering the correctness of the decision in Prokash Chandra Sarkar v. Bishambar Nath 14 C.W.N. 343. We accordingly overrule the first point urged by the appellant.

7. With regard to the second point, we are of opinion that sufficient time had been given to the appellant to pay the deficit court-fee. The matter was hanging from June 1936. Just before the enquiry was started, security was demanded from her for court-fees which would be payable on a valuation of Rs. 60,000. She had warning from the time when the security was demanded, and that was in 1936. She had warning that she might be called upon to pay further court-fees. On 30th January 1937, the amount was assessed; she was given a week's time to pay the deficit court-fees. She did not comply with that order and got further time till 20th February 1937. On 20th February 1937, she asked for further time for seven days to put in the deficit court-fees and in that application she expressly stated that she would not pray for any further adjournment for further time. On the same day, however, she put in an application to continue the suit in forma pauperis and that application kept the suit still alive not for seven days but for nearly seven weeks. On 5th April 1937, her application to continue the suit in forma pauperis was dismissed. No final order had been passed on her plaint on

that date. On the 6th she made a prayer for time for another week to pay in the deficit court-fees. But that prayer having regard to the contents of the application printed at page 98 of the paper book and the other prayer made therein was not a bona fide prayer at all. In the circumstances, we think that the Court below was justified in rejecting the plaint on 8th April 1937. We think that the proper order for the Court would have been an order for dismissal under the provisions of Section 8-B(3), Court-fees Act, as amended in Bengal by Act 7 of 1935 and not an order rejecting the plaint under the provisions of Order 7, Rule 11, Civil P.C. But the form of the order is not very material to us in this case. We have proceeded on the footing of the order as actually made and even proceeding on that footing, we do not find any substance in this appeal. The appeal is accordingly dismissed with costs, hearing fee six gold mohurs, to be divided equally between the appearing respondents.