
(2007) 07 MP CK 0089
In the Madhya Pradesh High Court

Smt. Manjula

APPELLANT

Vs

Pradeep and Others

RESPONDENT

Date of Decision : 20-07-2007

Acts Referred:

Displaced Persons (Debts Adjustment) Act, 1951 — Section 10

Citation : (2007) 4 MPHT 109

Hon'ble Judges : N.K. Mody, J

Bench : Single Bench

Judgement

N.K. Mody, J.—A preliminary objection has been raised by the Counsel for respondent No. 1 to the effect that the appeal itself deserves to be dismissed as the appellant has not paid ad valorem Court fee. Learned Counsel for the respondent submits that by the impugned order the objections submitted by the appellant under Order 21 Rule 58, CPC has been dismissed. Learned Counsel further submits that since against the dismissal of the objection under Order 21 Rule 58, CPC first appeal is maintainable under Sub-rule (4) of Rule 58 of Order 21, CPC, therefore, the appellant is liable to pay ad valorem Court fee. Learned Counsel further submits that since the order impugned herein adjudicates the objections filed by the appellant therefore, the same is having the force of decree. It is submitted that in the facts and circumstances of the case, the appellant is liable to make payment of Court fee as per Article 1 of Schedule I of the Court Fee Act, which require ad valorem Court fee. Reliance was placed on a decision of this Court in the matter of M.G. Tipnis Vs. The Secretary, Ministry of Commerce, Union of India (UOI), New Delhi and Others, , wherein Divisional Bench of this Court held that in a case where memorandum of appeal is filed against an order rejecting a plaint under Order 7 Rule 11 (a) and (d) of the CPC, what has to be valued is the subject matter involved and not the abstract question of law raised for consideration in appeal. The subject matter of appeal is not different even in case of appeals against rejection of plaints under Order 7 Rule 11 (a) and (d) of the CPC on these grounds because it will be readily seen that the real relief involved in either case is the same, namely, reversal of the

decree or order of rejection of plaint having the effect of a decree and remand of the suit for trial on merits for the purpose of granting the reliefs claimed in the plaint. Court-fee payable in such a case is governed by Schedule I, Article 1 of the Court Fee Act, 1870 and it must be ad valorem on the subject-matter in dispute in appeal which is the same as that in the Court of first instance.

2. Reliance was also placed on the decision in the matter of AIR 1949 1 (Nagpur) , wherein the Hon"ble Full Bench of Nagpur High Court has held that Court fee on appeal should be ad valorem on difference between Court fee paid and demanded in Lower Court.

3. Shri R.S. Chandrawade, learned Counsel for the appellant submits that in a money decree passed in favour of respondent No. 1 against respondent No. 2 the property of the appellant was attached, learned Counsel submits that in the execution proceedings appellant submitted the objections on a fixed Court fee which is payable on the application, therefore, the appellant is not liable to pay the ad valorem Court fee. For this contention reliance was placed on a decision of Rajasthan High Court in the matter of Punjab National Bank Ltd. v. Firm Isardas Kaluram reported in (S) AIR 1957 Raj 146, wherein Full Bench of Rajasthan High Court has held that where an application u/s 10 of the Displaced Persons (Debts Adjustment) Act is rejected on the ground that the applicant is not a displaced person, the order does not amount to a decree, and ad valorem Court-fee is not to be paid, and the appeal can be filed with the Court-fee provided in Schedule II.

In the present appeal the appellant is only an objector. Neither the decree is passed in favour of appellant nor against him. Only grievance in the appeal is that while executing the decree passed in favour of respondent No. 1 the property of the appellant cannot be partitioned as the property in dispute is self earned property and appellant was not party to the suit objections were considered by the learned Court below on a nominal Court fee which is required to be paid on an application. Order passed on the objections filed by the appellant under Order XXI Rule 58 can be challenged in first appeal and the order shall have same force and be subject to the same conditions as to appeal or otherwise as if it were a decree.

4. Article 17 (i) of Schedule II of Court Fees Act, 1870 lays down that in a suit or appeal where a summary decision or order of any Civil Court is challenged a fixed Court fee is payable.

In the matter of Anil Kumar v. State of Madhya Pradesh and Kaluram reported in 1971 MPLJ (94), wherein recovery of sales tax against a firm as land revenue, the Revenue Court brings to sale certain property alleged to belong to the firm, but the plaintiff, raised an objection that the property belonged to them and not to the firm, and the objection was dismissed, suit by the plaintiffs for a declaration that the property belongs to them, it was held that suit falls under Rule 24 of Schedule I, M.P. Land Revenue Code and it is governed by Article 17 of the Court Fees Act. Thus, in the case where the objections against attachment

were dismissed was challenged in Civil Suit the Divisional Bench of this Court held that in such type of suit fixed Court fee is payable under Article 17 (i) of Second Schedule of Court Fee Act, therefore, in a appeal against the dismissal of the objections appellant cannot be asked to pay the ad valorem Court fee.

5. In view of this objections raised by the respondent No. 1 is rejected and it is held that appellant has paid the proper Court fee.