
(2006) 11 AHC CK 0241
In the Allahabad High Court

Smt. Shail Agrawal

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 03-11-2006

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 104, 115, 80
Constitution of India, 1950 — Article 226, 227

Citation : (2006) 10 ADJ 587 : AIR 2007 All 55

Hon'ble Judges : Tarun Agarwala, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Tarun Agarwala, J.—The plaintiff presented a suit praying that the three sale deeds dated 1-11-2004 and 17-2-2006 be declared null and void and further prayed that the defendants be restrained from transferring the property on the basis of the sale deeds. In paragraph 12 of the plaint, the plaintiff disclosed the valuation of the sale deeds and on that basis, paid a sum of Rs. 1300.00 as Court-fee. The Munsarim submitted a report dated 19-7-2006 stating therein that as per the valuation given by the plaintiff, the total amount of Court-fee payable as per Section 7(iv-A) of the Court-fees Act is Rs. 62,792.50, whereas the plaintiff has only paid a sum of Rs. 1300.00 towards Court-fee. Consequently, the Munsarim reported that the remaining Court-fee was required to be paid by the plaintiff.

2. Pursuant to the aforesaid report, the plaintiff filed an objection dated 31-7-2006. which was registered as Misc. Case No. 136 of 2006. The plaintiff submitted that the Court-fee was not payable as per Section 7(iv-A) of the Court-fees Act and, in fact, the Court-fee was payable as per Article 17(iii) of Schedule II of the Court-fees Act, and therefore, the Court-fee paid by the plaintiff was correct and was in accordance with the provisions of Article 17(iii) of Schedule II of the Court-fees Act. The plaintiff therefore prayed that the report of the Munsarim be set aside.

3. The Civil Judge by an order dated 14-8-2006 rejected the objection raised by the plaintiff and upheld the report of the Munsarim and directed the plaintiff to clear the deficiency of the Court-fee so that the suit could be registered. Aggrieved, the plaintiff has filed the writ petition under Article 226/227 of the Constitution of India praying for the quashing of the order of the Civil Judge dated 14-8-2006.

4. Heard Sri B. B. Paul, the learned Counsel for the petitioner and Sri G.K. Khanna, the learned Standing Counsel.

5. A preliminary objection was raised by the Court with regard to the maintainability of the writ petition in view of Section 6-A of the Court-fees Act as applicable in the State of Uttar Pradesh.

6. The learned Counsel for the petitioner submitted that the impugned order was one u/s 12 of the Court-fees Act which had attained finality and that no appeal or revision lay against the said order. Consequently, the writ petition was the only forum for the redressal of the grievance of the petitioner. In support of his submission, the learned Counsel for the petitioner has placed reliance upon a decision of Full Bench of this Court in Gupta and Co. Vs. Kripa Ram Brothers in which it was held that a decision given by a Court in the trial of a suit u/s 12 of the Court-fees Act does not amount to a "case decided" as contemplated u/s 115 of the Code of Civil Procedure, and therefore, no revision lies against the said order.

7. The learned Counsel for the petitioner further laid stress on a division bench decision of this Court in the case of Ram Krishna Dhandhanja and Another Vs. Civil Judge (Sr. Division) and Others, wherein the Court held-

Section 12 of the Act, 1870 deals with the decision of question as to valuation and it provides that such an issue shall be decided by the Court in which the plaint is filed and such decision shall be final between the parties to the suit. Thus, it is evident from the provisions of Section 12 of the Act, 1870 that the decision taken by the Court on such an issue shall be final between the parties but in case the superior Court while exercising the appellate or revisional jurisdiction comes to the conclusion that the issue has wrongly been decided to the detriment of the revenue, it can direct the party to make the deficiency good for the reasons that the object of the Act is not to arm a litigant with a weapon of technicality but to secure the revenue.

8. The learned Counsel for the petitioner further placed various judgments to show that the report of the Munsarim was incorrect, and that the Court-fee was only payable under Article 17(iii) of Schedule II of the Court-fees Act.

9. In my opinion, the writ petition is not maintainable at this stage.

10. Paragraph No. 35 of the General Rules Civil states as under:

35. Munsarim's duty in respect of plaints.- A Munsarim of a civil Court appointed

to receive complaints shall examine each complaint presented to him, and shall report thereon whether the provisions of the Code and the Court-fees Act, have been observed. Whether the claim is within the jurisdiction of the Court, constitutes a cause of action, and has been presented within the period prescribed for the institution of such a suit, and whether the complaint is otherwise in proper form including that in a suit whether a notice u/s 80, C.P.C., necessary, such a notice has been given.

The Munsarim shall see that the actual date of the presentation of the complaint is entered upon the impressed stamp and adhesive label, if any, below the date of purchase endorsed on them.

On the back of all complaints the Munsarim shall note-

- (a) date of presentation of the complaint,
- (b) name of presenter,
- (c) classification of suit, and
- (d) court-fee paid.

11. From the aforesaid, it is clear that the Munsarim was required to report as to whether the provision of the Court-fees Act had been observed or not and whether proper Court-fee had been paid or not. In the present case, I find that the Munsarim has submitted a report as per paragraph No. 35 of the General Rules Civil, stating therein, that the Court-fee as per Section 7(iv-A) of the Court-fees Act was required to be paid and that the plaintiff had only paid a certain amount and had not paid the entire amount of the Court-fee. The Civil Judge, rejected the objection of the plaintiff, holding that the Court-fee was required to be paid u/s 7(iv-A) of the Court-fees Act and that Article 17(iii) of the Schedule II of the Court-fees Act had no application.

12. The question now is, whether the order passed by the Civil Judge is an order passed u/s 12 of the Court-fees Act or not ?

13. Sections 5 and 12 of the Court-fees Act confers finality on decision of matters effecting the valuation and Court-fee payable thereon. Section 5 of the Act has no application to the decision of the Civil Judge, and therefore, the said provision is not being considered.

14. Section 12 of the Court-fees Act reads as under:

12. Decision of question as to valuation.- (i) Every question relating to valuation for the purpose of determining the amount of any fee chargeable under this chapter on a complaint or memorandum of appeal shall be decided by the Court in which such complaint or memorandum, as the case may be, is filed, and such decision shall be final as between the parties to the suit.

(ii) But whenever any such suit comes before a Court of appeal, reference or revision, if such Court considers that the said question has been wrongly decided

to the detriment of the revenue, it shall require the party by whom such fee has been paid, to pay within such time as may be fixed by it, so much additional fee as would have been payable had the question been rightly decided. If such additional fee is not paid within the time fixed and the defaulter is the appellant, the appeal shall be dismissed, but if the defaulter is the respondent the Court shall inform the Collector who shall recover the deficiency as if it were an arrear of land revenue.

15. From the aforesaid, it is clear that this Section is confined to such decision on a question relating to the valuation for the purpose of determining the Court-fee.

16. The Supreme Court in *Nemi Chand and Another Vs. The Edward Mills Co. Ltd. and Another*, held that the finality u/s 12 of the Court-Fees Act attaches only to a decision which concerns valuation simpliciter and that no finality attaches when a Court decides a question whether a case falls within one or the other category of the cases mentioned in the different sections and schedule of the Court-Fees Act.

17. In *Lala Ram Babu v. Lala Ramesh Chandra* 1957 ALJ 53, this Court held that a decision of the trial Court relating to the valuation of the subject-matter of the suit for the purpose of determining the amount of Court-fee payable is final between the parties and cannot be challenged in an appeal u/s 6-A of the Court-fees Act.

18. In *Smt. Bibbi and Another Vs. Shugan Chand and Others*, a Full Bench of this Court held that Section 12 of the Court-fees Act only attaches finality to the question of valuation and not to the category under which the suit falls. The Full Bench further held that the decision of the Civil Judge on the issue relating to Court-fee had not become final.

19. From the aforesaid decisions, it is clear that Section 12 of the Court-fees Act is not applicable in the present case. In the present case, the Civil Judge held that the Court-fee is payable u/s 7(iv-A) of the Court-fees Act and that Article 17(iii) of Schedule II of the Court-fees Act has no application. A decision on the question whether the suit falls u/s 7(v-A) or Article 17(iii) of Schedule II of the Court-fees Act is not a decision on a question relating to the valuation but on a question relating to the basis or the mode of computation of the Court-fee. Keeping this in mind, the Supreme Court in *Nemi Chand and Another Vs. The Edward Mills Co. Ltd. and Another*, held that the finality declared by Section 12 is limited only to the question of valuation pure and simple and does not relate to the category under which a certain suit falls.

20. In *Ram Krishna Dhandhanja and Another Vs. Civil Judge (Sr. Division) and Others*, a Division Bench of this Court also held the finality is, however, with respect to arithmetical calculation and not with respect to classification, i.e., category under which the suit falls.

21. In view of the aforesaid, the contention of the learned Counsel for the petitioner is, that the order of the Civil Judge was one u/s 12 of the Court-fees

Act and had become final is patently erroneous.

22. Section 6-A of the Court-fees Act as applicable in the State of U.P. reads as under:

6-A. Appeal against order to pay Court-fee.- (1) Any person called upon to make good a deficiency in Court-fee may appeal against such order as if it were an order appealable u/s 104 of the Code of Civil Procedure.

The party appearing shall file with the memorandum of appeal, a certified copy of the plaint together with that of the order appealed against.

(2) In case an appeal is filed under subsection (1), and the plaintiff does not make good the deficiency, all proceedings in the suit shall be stayed and all interim orders made, including an order granting an injunction or appointing a receiver, shall be discharged.

(3) A copy of the memorandum of appeal together with a copy of the plaint and of the order appealed against shall be sent forthwith by the appellate Court to the (Commissioner of Stamps).

(4) If such order is varied or reversed in appeal, the appellate Court shall if the deficiency has been made good before the appeal is decided grant to the appellant a certificate, authorising him to receive back from the Collector such amount as is determined by the appellate Court to have been paid in excess of the proper Court-fee.

(5) The Court may make such order for the payment of costs of such appeal as it deems fit, and where such costs are payable to the Government, they shall be recoverable as arrears of land revenue.

23. In my view, the order of the Civil Judge is an order which is appealable u/s 6-A of the Act. The question as to whether the Court-fee payable should be u/s 7(iv-A) or under Article 17(iii) of Schedule II of the Court-fees Act can be questioned by the plaintiff by filing an appeal u/s 6-A of the Court-fees Act.

24. In view of the aforesaid, the petitioner has a statutory remedy of filing an appeal u/s 6-A of the Court-fees Act as applicable in the State of Uttar Pradesh. The writ petition is therefore dismissed on the ground of an alternative remedy.