

(2018) 07 CAL CK 0166
In the Calcutta High Court
Case No : C.O. No. 51 of 2018

Sri Subh Karan Sharma, Ridhakaran Sharma And Another	APPELLANT
Vs	
Shree Shree Ishwar Lakshmi Narayan Jew And Shree Shree Ishwar Chandi Thakurani	RESPONDENT

Date of Decision : 31-07-2018

Acts Referred:

West Bengal Court Fees Act, 1970 — Section 7(iv)(a), 7(v)(a), 7(iv)(b), 7(iv)(c), 11

Citation : (2018) 07 CAL CK 0166

Hon'ble Judges : SABYASACHI BHATTACHARYYA, J

Bench : Single Bench

Advocate : Partha Pratim Mukhopadhyay, Nilmoni Das, Haradhan Banerjee,
Probal Mukherjee, Sebatee Dutta

Final Decision : Dismissed

Judgement

Sabyasachi Bhattacharyya, J.

The facts of the case, in a nutshell, are as follows:

The opposite party instituted against the petitioners a suit for the following and ancillary reliefs:

i) A decree for declaration that the plaintiff/deity is the owner and occupier of the suit property as described in the Schedule A of the plaint;

ii) A further decree for declaration that the B schedule described instruments are all vague, illegal, invalid, fraudulent and collusive instruments

and both are void ab-initio;

iii) A decree for permanent injunction restraining the defendants from transferring, alienating, encumbering and also from creating any third party

interest in respect of the A schedule property and further from giving any effect to the same.

In the said suit, the petitioners entered appearance and contested by filing a written statement, inter alia taking the plea that the court below did not

have the pecuniary jurisdiction to try and decide the suit. The petitioners also filed an application challenging such pecuniary jurisdiction, seeking

determination of the dispute as to the pecuniary jurisdiction of the court by revising the valuation of the suit, also seeking determination of the correct

valuation by holding enquiry, and consequential order of return of plaint.

The plaintiff / opposite party filed a written objection to the said application, to which a counter reply was filed by the defendants/petitioners. The said

application of the petitioners was turned down by the trial court vide Order dated November 22, 2017, against which the present revision has been

preferred. Learned senior counsel for the petitioners submits that the present suit is governed by Section 7 (iv) (b) of the West Bengal Court Fees

Act, 1970 (hereinafter referred to as "the 1970 Act"). The said provision reads as follows:

"S.7. Computation of fees payable in certain suits. The amount of fee payable under this Act in the suits next hereinafter mentioned shall be

computed as follows:-

Â?| Â?| Â?| Â?| Â?| Â?|

(iv) In suits Â?

Â?| Â?| Â?| Â?| Â?| Â?|

(b) for declaratory decree and consequential relief:- to obtain a declaratory decree or order, where consequential relief is prayed,

Â?| Â?| Â?| Â?| Â?| Â?|

According to the amount at which the relief sought is valued in the plaint or memorandum of appeal subject to the provisions of section 11.Â? Section

11 of the said Act reads as follows:-

"S.11. Inquiry as to valuation of suits.- If the Court is of opinion that the subjectmatter of any suit has been wrongly valued, it may revise the

valuation and determine the correct valuation and may hold such inquiry as it thinks fit for such purpose. Â??

Learned senior counsel appearing for the petitioners argues that the very language of Section 7 (iv)(b) mandates that the own valuation of the plaintiff,

with regard to the relief claimed, is always subject to an inquiry under Section 11

of the 1970 Act. It is submitted that, in the event it is seen that the suit is manifestly overvalued without any objective standard of valuation being disclosed in the plaint, the trial court will undertake an inquiry under Section 11 of the 1970 Act and accordingly decide the correct valuation of the suit. In the present case, it is submitted, the trial court dismissed the application challenging pecuniary jurisdiction without undertaking an inquiry under Section 11 of the 1970 Act, thereby overstepping its jurisdiction. In this context, learned senior counsel for the petitioners cites several judgments, which are as follows:

(i) AIR 1979 Cal 84 (Tarai Tea Co. Pvt. Ltd. v- Life Insurance Corporation of India), where a Division Bench of this Court held, in paragraph no.

7 of the said judgment, inter alia that where in a suit to obtain a declaratory decree or order, where consequential relief is prayed, the plaintiff has

stated the amount at which he values the relief, the Court ordinarily does not interfere with the plaintiff's determination unless the court is inclined

to exercise its powers under Section 11 of the West Bengal Court Fees Act. It was held that it would not be proper for the court to disturb the

plaintiff's valuation of the relief sought, unless the court was of opinion that that valuation was illegal, palpably absurd, manifestly illogical or

arithmetically wrong.

(ii) 70 CWN 857 (Amritalal Chatterjee v- Hiralal Chatterjee and Anr.), where another Division Bench of this Court held, while considering the

Court-fees (West Bengal Amendment) Act, 1963, inter alia that the amendment was obviously intended to make it clear that an owner wanting to

evict a licensee should not be put into a position where he has to pay either the same or even a larger amount of court-fee than a landlord wanting to

evict a tenant. That overriding purpose of the Amending Act, it was held, was to be respected and that the relief should not be rendered illusory by

any construction or interpretation introducing value of the 'property' or 'subject-matter' and ignoring the value of 'relief sought' which

was the only object of the amendment.

However, it was also held that the Court Fees Act expressly and impliedly made a distinction between value of 'relief' and value of 'subject-

matter' according to the nature of suits described in the Act. The Amending Act, it was held, in permitting valuation of the 'relief' was not

adopting any unusual principle but a very well recognised principle. It was further held that valuation of the "relief sought" was not the same thing

as valuation of the "property" itself or the "subject-matter" of the suit.

(iii) AIR 1981 Cal 196 (Sambhu Nath Singh v- Sankarananda

Banerjee), where, in a suit for recovery of possession against a trespasser, a co-ordinate Bench of this Court held inter alia that Sections 7 (vi) (a) and

11 of the 1970 Act had to be read together; Section 11 empowered the court to make an enquiry as to the valuation of any suit if it was of opinion that

the subject-matter of the suit had been wrongly valued. It was held that in the said suit, the plaintiff had not asked for declaration of title, which was

also not necessary for the disposal of the suit. Hence, in the said case, Section 7 (vi) (a) and not Section 7 (v) (a) was held to apply. Objective

standard of valuation having been given, it was held that the learned Munsif had no pecuniary jurisdiction to try the suit.

(iv) 2009 (4) CHN 425 (Goutam Ghosh v- Magma Fincorp Ltd.), which saw a Division Bench of this Court hold, in a suit for declaration that an

agreement of advancement of more than Rs. 17 lakh was vitiated by fraud, that the relief was to be valued at the amount which was admittedly

received by the plaintiff from the defendant. It was held further that in a suit for declaration and permanent injunction, the suit was valued according to

the valuation of the relief and where the nature of the declaration was such that it had no objective standard of assessing the valuation, the plaintiff

could value the relief according to his own choice; but in a case where from the case made out by the plaintiff it was apparent that the relief was

capable of appropriate valuation according to the case made out by the plaintiff, the plaintiff could not arbitrarily value the relief according to his whim.

(v) AIR 1973 SC 2384 (Shamsher Singh v- Rajinder Prashad and Ors.) in which the Supreme Court held that the court, in deciding the question of

court-fee, should look into the allegations in the plaint to see what was the substantive relief that was asked for. Mere astuteness of drafting the plaint,

it was held, would not be allowed to stand in the way of the court looking at the substance of the relief asked for. In the said suit, a Hindu son sought

against his father and the mortgagee decree-holder a declaration that the mortgage executed by the father in respect of the joint family property was

null and void for want of legal necessity and consideration. The Hon'ble Supreme Court held that, though couched in a declaratory form, the suit

was in substance a suit either for setting aside the decree or for a declaration with consequential relief of injunction, liable to payment of ad valorem

court-fee under Section 7 (iv) (c) of the 1970 Act.

In reply, learned senior advocate appearing for the opposite party also submits that the instant suit is essentially one covered by Section 7 (iv) (b) of

the 1970 Act, as a consequence of which the plaintiff / opposite party was liable to pay court fees only according to the amount at which the relief

sought was valued in the plaint.

It is further submitted that Section 11 of the 1970 Act is not attracted at all to the instant lis, since the plaint, on the face of it, shows that the suit is for

declaration and consequential reliefs, thus fixing the court fees at the valuation of the relief in the plaint. Such valuation in cases of this sort is the

absolute discretion of the plaintiff and as such requires no inquiry under Section 11. The following judgments are cited on behalf of the opposite party:

(i) (2010) 12 SCC 112 (Suhrid Singh alias Sardool Singh â"v- Randhir Singh and Ors.), in which a non-party to certain deeds prayed inter alia that the

same be declared null and void. It was held that the court fees payable were according to the valuation of relief by the plaintiff in the plaint. Where the

executant of a deed wants it to be annulled, he has to seek cancellation of the deed, but if a non-executant seeks annulment of a deed, he has to seek

a declaration that the deed is invalid, or non est, or illegal or not binding on him. So the plaintiff in the reported case, being a non-party to the deed, only

had to seek a declaration that the deed is not binding on him, and not a cancellation of the deed. As such, the court fee was computable on the own

valuation of relief by the plaintiff.

(ii) (2016) 4 WBLR Cal 553 (Umapada Jati & Ors. â"v- Manas Jati & Ors.) , passed by a co-ordinate Bench of this Court, reiterated the same

proposition as laid down in Suhrid Singh (supra).

(iii) (2011) 2 WBLR (Cal) 539 (Pintu Santra â"v- Sambhunath Samanta) where another co-ordinate Bench of this Court held that a suit was one for

declaration simpliciter, on the prayer made by the plaintiff that the deed-inquestion was inoperative and ineffective, and that court fee payable was on

own valuation of plaintiff and not the valuation of the deed.

An assessment of the ratio laid down in the judgments cited by the petitioner shows that where in a declaratory suit with consequential relief the

plaintiff has stated the amount at which he values the relief, the Court ordinarily does not interfere with the plaintiff's determination unless the

court is inclined to exercise its powers under Section 11 of the West Bengal Court Fees Act. It was held that it would not be proper for the court to

disturb the plaintiff's valuation of the relief sought, unless the court was of opinion that that valuation was illegal, palpably absurd, manifestly illogical or arithmetically wrong.

Moreover, valuation of the 'relief sought' was not the same thing as valuation of the 'property' itself or the 'subject-matter' of the suit.

However, if in the garb of a suit for declaration and consequential reliefs, the plaintiff claims reliefs which require higher valuation, it would be incumbent

upon the court to embark upon an inquiry under Section 11 of the 1970 Act to ascertain the true valuation of the suit, in the event objective standards

for valuation were not disclosed in the plaint.

The judgments cited by the opposite party, on the other hand, laid down that a nonparty to a deed may seek declaration that the said deed is void and

not binding on such party, without seeking cancellation of the deed. In such a case, the relief can be valued by the plaintiff in his own way, in

accordance with Section 7 (iv) (b) of the 1970 Act. In the event it is seen that the suit, although couched in the form of declaration and consequential

relief simpliciter, in effect seeks other reliefs, e.g. cancellation of a deed, the court can undertake an inquiry under Section 11 of the 1970 Act and fix

the amount of court fees to be paid at an ad valorem rate.

Hence, the crux of the cited judgments is that courts ordinarily do not interfere with the own valuation of a suit by the plaintiff, if the suit is under

Section 7 (iv) (b) of the 1970 Act. However, if in the garb of such a suit, the plaintiff seeks cancellation of a deed or seeks a relief which requires

higher valuation, the court has to look at the objective standard disclosed in the plaint for assessing the valuation; and, in the absence of disclosure of

such objective standard, the court may undertake inquiry under Section 11 of the 1970 Act to ascertain the proper court fees.

If we examine the plaint filed by the plaintiff / opposite party in the above light, it is seen that the same seeks the relief of declaration and

consequential reliefs simpliciter, and not cancellation of any deed or any other relief necessitating higher valuation. Since the plaintiff / opposite party

was a third party to the deeds in question, the suit for declaration that the â??
Bâ?? schedule described instruments were all vague, illegal, invalid,

fraudulent and collusive instruments and both were void ab initio had to be
governed by Section 7 (iv) (b) of the 1970 Act and did not tantamount to

seeking cancellation of the deed in question. As such, the plaintiff was entitled to
attribute its own valuation to the suit.

In such cases, there would not arise any occasion for the court to hold any
inquiry under Section 11 of the 1970 Act. In the event such an inquiry was

contemplated by the legislature in each and every case, Section 7 (iv) (b) would
not leave the liberty to the plaintiff to state the amount at which he

valued the relief sought. An inquiry under Section 11 of the 1970 Act would only
be necessitated in the event the suit, in the garb of being one under

Section 7 (iv) (b), was actually one seeking cancellation of the deeds in question
or otherwise deserving higher valuation under the 1970 Act. In such

event, if no objective standard of valuation of the relief claimed was given in the
plaint, the court would be free to undertake an inquiry under Section

11 of the 1970 Act.

Since, on a plain reading of the plaint in the present lis, it is evident that the
same was on the face of it covered by Section 7 (iv) (b) of the 1970 Act,

no question of any further objective standard being disclosed, or any inquiry
under Section 11 of the 1970 Act being held, arises. The court fees paid

were proper and in consonance with the valuation shown by the plaintiff, and as
such there could not arise any question of returning the plaint upon

holding that the suit was undervalued, as well as of undertaking any inquiry
under Section 11 of the 1970 Act unnecessarily.

Hence the trial court was justified in refusing the challenge to the pecuniary
jurisdiction of the court and the ancillary prayers for undertaking inquiry

under Section 11 of the 1970 Act and returning the plaint. Accordingly, C.O. No.
51 of 2018 is dismissed on contest, thereby affirming the impugned

order dated November 22, 2017 passed by the Civil Judge (Junior Division), Fifth
Court at Howrah, District: Howrah in Title Suit No. 1113 of 2016.

There will, however, be no order as to costs. Urgent photostat certified website
copies of this order, if applied for, be made available to the parties

upon due compliance of necessary formalities.