

(1986) 09 KL CK 0005
In the High Court Of Kerala
Case No : A.S. (Un-numbered) of 1986

State Bank of Travancore

APPELLANT

Vs

K.V. Bhaskaran and Others

RESPONDENT

Date of Decision : 05-09-1986

Acts Referred:

Kerala Court Fees and Suits Valuation Act, 1959 — Section 50, 52

Citation : (1986) 23 KLJ 874

Hon'ble Judges : K.T. Thomas, J;K.S. Paripoornan, J

Bench : Division Bench

Advocate : N. Nandakumara Menon, for the Appellant; N.N. Divakaran Pillai
Government Pleader, for the Respondent

Final Decision : Allowed

Judgement

Paripoornan, J.—The matter is coming up before us on an objection raised by the Taxing Officer that tin court fee paid in the appeal it insufficient. Notice was issued to the Advocate General. We heard counsel for the appellant, Mr. N. Nadakumara Menon and also the learned Government Pleader, Mr. N. N. Divakaran Pillai. The short facts are as follows:

The plaintiff in O. S No. 136 of 1985, Sub-Court Trivandrum (Bank) is the appellant. The suit was one for realisation of money. The court below decreed the suit against the defendants and their assets and also against the plaint schedule properties. While so, the court allowed the defendants to pay the decree amount on a monthly installment of Rs 5,000/- per mensem, and also made it clear that on default of any two consecutive installments the entire balance decree amount can be realised in a lump. The plaintiff-Bank (appellant herein) has objected to that portion of the decree permitting the defendants to pay the decree amount in instalments. This is the subject matter of Ground No 4 in the appeal memorandum. The Taxing Officer has stated that this ground requires the appellant to pay court-fee u/s 50 of the Kerala Court Fees Act.

2. Learned counsel for the appellant, Mr. Nandakumara Menon, contended that what he seeks is only a declaration by the appellate court that the court below erred in granting the payment of the decree amount in instalments. Counsel submitted that it is only incidental or ancillary to the other grounds raised in the appeal memorandum. We are unable to accept this submission. Section 50 of the Court Fees Act provides as follows:

50 Suits not otherwise provided for-- In suits not otherwise provided for, fee shall be payable at the following rates;-

(i)

In a Revenue Court

Rupees fifteen.

(ii)

In a Munsiff's Court

Rupees thirty.

(iii)

In a Sub-Court or a District Court.

Rupees one hundred if the value of the Subject-matter is Rs. 10 000/- or less; and rupees two hundred if the value is above Rs. 10 000

In Guide to the Law of Court-Fees in Kerala, First Edition, by K Krishnamurthi and R. Mathrubutham, it is stated as follows.

An appeal by plaintiff who has obtained a decree for payment of the suit amount in instalments with a default clause and providing for interest, seeking to recover the whole amount immediately is not capable of being valued in money. Smt. Sardar Devi Vs. Nihalkaran and Others, . Section 50 read with section 52 would enable payment of fixed fee provided in section 50 in such cases as the above.

It is agreed that the appellant (plaintiff-decree holder) wants to recover the whole decretal amount immediately avoiding the instalment payment. The said relief is not capable of being valued in money. It necessarily involves passing of a decree providing greater and more immediate relief for the decree-holder than the one passed by the trial court. In this view of the matter, we are of the view that the Taxing Officer was justified in holding that the appellant is bound to pay court-fee regarding Ground No 4 under Sec. 50 of the Kerala Court Fees Act.

In this connection, we concur with the views expressed in Smt. Sardar Devi Vs. Nihalkaran and Others, . The objection raised by the Taxing Officer is accepted.