

(1978) 10 GUJ CK 0016

In the Gujarat High Court

Case No : Civil Revision Application No. 1229 of 1978

State of Gujarat and Others

APPELLANT

Vs

Shankerlal D. Desai

RESPONDENT

Date of Decision : 17-10-1978

Acts Referred:

Bombay Court Fees Act, 1959 — Section 6(iv)(j)

Citation : AIR 1979 Guj 166 : (1979) 20 GLR 586

Hon'ble Judges : S.H. Sheth, J

Bench : Single Bench

Advocate : C.K. Takwani, Asst. Govt. Pleader, for the Appellant; G.K. Sukhwani and Maya N. Bhavnani, for the Respondent

Judgement

1. The plaintiff, has filed Regular Civil Suit No. 148 of 1978 against the State of Gujarat and others for a declaration that the order made by the Mamlatdar on 17th May 1977 demanding of him the payment of Rupees 50,000/- was illegal and void. He has also prayed for a permanent injunction restraining the defendants from recovering that amount from him. He valued the declaration u/s 6(iv)(j) of the Bombay Court-fees Act, 1959 and paid a Court-fee of Rs. 30/-, The defendants contended that ad valorem Court-fee was payable on the sum of Rs. 50,000/- which is the subject-matter of the declaration which the plaintiff seeks. The learned trial Judge" held that the plaintiff had properly valued his claim and had paid the requisite Court-fee. It is that order which is challenged by the State of Gujarat in this civil revision application.

2. The learned Judge has held that the declaration which the plaintiff seeks is not susceptible of monetary evaluation within the meaning of Section 6(iv)(j) of the Bombay Court-fees Act, 1959, and that, therefore, he has paid the requisite Court-fee. If a plaintiff seeks to avoid monetary liability by seeking a declaration it cannot be said that such a declaration is not susceptible of monetary evaluation.

3. In Civil Revn. Appln. No. 134 of 1976 decided by me on 22nd August, 1978, 1

have expressed the view that the very fact that the Legislature has used the expression "not susceptible of monetary evaluation" pre-supposes that certain declarations are susceptible of monetary evaluation. However, in the instant case, that question recedes into background. The plaintiff has filed three other suits against the State and others, viz., Special Civil Suit No. 37 of 1976 in which he claims from the State of Gujarat and others Rs. 1,68,273/-; the second is Special Civil Suit No. 38 of 1976 in which he seeks the recovery from the State, of Gujarat and others of Rs. 1,38,276/-; the third is Special Civil Suit No. 39 of 1976 in which he seeks recovery of a sum of Rupees 1,06,955/- from the State of Gujarat and others. In these claims which he has made he has included the sum of Rs. 50,000/- which is the subject-matter of the order which is challenged in the present suit. Demand of Rs. 50,000/which is the subject-matter of the order which is challenged in the present suit and which is the subject-matter of the impugned order, consists, Of three sums-

(i) Rs. 16,888/-;

(ii) Rs. 25,404/-; and

(iii) Rs. 7,708/-;

Rs. 50,000/-

Rs. 1,6,888/- forms a part of the subject-matter of the claim which plaintiff has made in Special Civil suit No. 37 of 1976; Rs. 25,404/- forms a part of the subject-matter of the claim which the plaintiff has made in Special Civil Suit No. 38 of 1976; and Rs. 7,708/- forms a part of the subject-matter of the claim which the plaintiff has made in Special Civil Suit No. 39 of 1976. It is, therefore, clear that the plaintiff has already paid Court-fees on these three items which go to make up the total of Rupees 50,000/-, which in its turn, is the subject-matter of the impugned order.

4. Now, if the plaintiff is directed to pay ad valorem Court-fee on Rupees 50,000 in the present suit, it will mean that the plaintiff, having paid the Court-fees on this amount in three suits referred to above, will be required to pay the Court-fee again on the said amount. The Bombay Court-fees Act, 1959 contains no provision which requires the plaintiff to pay twice the the Court-fees in respect of the same subject-matter. In fact, the State of Gujarat should not have made the impugned order when the plaintiff had filed against the State of Gujarat and another three suits in which the demand which the State makes forms a part of his claim. The impugned order, in my opinion, was therefore made by the State in a precipitate and uncalled for manner. Having done so, they cannot require the plaintiff to pay twice the Court-fee in respect of the same amount. In that view of the matter, the plaintiff was justified in paying the Court-fee of Rs. 30/- because he merely seeks a declaration of illegality of the impugned order in order to avoid the imminent danger likely to be caused to him if the impugned order is implemented against him. He does not seek anything more because whatever remains to be sought by him will be had by him in the three suits which he has

filed. In that view of the matter, it is not necessary to interfere with the impugned order.

5. For the reasons stated by me in this order and not for the reasons stated by the learned trial Judge in his order, the impugned order is confirmed. The Civil Revision Application, therefore, fails and is dismissed. Rule is discharged with costs.

6. Application dismissed.