

(1927) 04 MAD CK 0016
In the Madras High Court

T.S. Swaminatha Aiyar and Others

APPELLANT

Vs

M. Guruswami Mudaliar and Others

RESPONDENT

Date of Decision : 28-04-1927

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 92

Citation : AIR 1927 Mad 940 : (1927) 26 LW 378 : (1927) 53 MLJ 457

Hon'ble Judges : Beasley, J

Bench : Division Bench

Judgement

Beasley, J.—The plaintiffs riled a suit in this High Court u/s 92 of the CPC and presented the plaint bearing a five-rupee stamp. The Taxing

Officer has rejected the plaint as insufficiently stamped as in his opinion the plaint should have been stamped with a hundred and fifty rupees stamp

as provided for in the High Court-Fees Rules, 1925, Appendix II, which provides that in respect of a plaint or special case under Order 36 of the

CPC where the value of the subject-matter does not exceed Rs. 10,000 a fee of Rs. 150 is to be levied. The plaintiffs contend that this is a suit in

respect of which the relief claimed is incapable of valuation and that the Court-fees leviable by reason of the High Court-Fees Rules, 1925,

Appendix II cannot be applied to such a case. The learned Advocate-General in support of the Taxing Officer's decision, however, contends

firstly, that the decision of the Taxing Officer is final and cannot be called in question here and secondly, that the Taxing Officer is right in having

rejected the plaint as insufficiently stamped and that the proper fee payable is Rs. 150. I will deal first with the contention of the learned Advocate-

General that the Taxing Officer's decision is final. Section 5 of the Court-Fees Act of 1870 provides that

when any difference arises between the officer whose duty it is to see that any fee is paid under this Chapter and any suitor or attorney as to the

necessity of paying a fee or the amount thereof the question shall, when the difference arises in any of the High Courts, be referred to the Taxing

Officer whose decision thereon shall be final except when the question is in his opinion one of general importance, in which case he shall refer it to

the final decision of the Chief Justice of such High Court or of such Judge of the High Court as the Chief Justice shall appoint either generally or

specially in this behalf.

2. Mr. C. Veeraraghava Aiyar argues that Section 5 of the Court-Fees Act of 1870 does not apply to this-case because that section provides for

differences which arise as to the fee to be paid under that chapter and admittedly Section 4 of that chapter does not apply to fees to be paid in

cases before the High Court in its ordinary original civil jurisdiction and that therefore the decision of the Taxing Officer rejecting the plaint cannot

be final and he argues that Rule 542, Sub-rule 2(37)(b) of the Original Side Rules entitles the plaintiff to bring this matter up before a Judge. That

rule is as follows:

Any party desiring to have any question which has been decided by the Deputy Registrar whether contested or not referred to a Judge may apply

to the Court within 8 days of the issuing of the order complained of or within such further period as the Judge for sufficient cause may allow.

3. There are, however, many reported cases which clearly lay down that in such a matter as this the decision of the Taxing Officer is final. In the

case of *In the Goods of Bhubaneswar Trigunait, deceased, Mukteswar Trigunait and Ors.* 29 CWN 879 a Hindu father and his brother and two

sons lived together in a joint Mitakshara family. The father died intestate leaving certain money in a bank. The brother and the two sons applied for

Letters of Administration with a certificate from the Registrar who as the Taxing Officer under Rule 4 of Chapter XXXV of the Rules and Orders

of the Calcutta High Court certified the exemption of the Court-fees as the property was held in trust not beneficially or with general power to

confer a beneficial interest. It was held on appeal that the decision of the Taxing Officer under Rule 4 of Chapter XXXV was final by virtue of

Section 5 of the Court-Fees Act and could not be reviewed u/s 19(1). It was

further held that the jurisdiction of the Taxing Officer does not arise upon a difference of opinion between an office clerk and a suitor and upon some sort of formal reference to decide that dispute. It is enough that

the Taxing Officer has brought his mind to bear on the question and has decided it. On page 882 Rankin, J., says as follows:

It would appear that in a matter so important as a claim to exemption from probate duty, the ordinary Court clerk or officer whose duty it is to see

that Court-fees are paid is not authorised in this Court to allow such claims on his own responsibility and that all such claims are required to be

queried and referred to the Taxing Officer. I think this involves that the Taxing Officer's decision is a final decision under, Section 5 and that in this

case the learned Judge had no authority to review it u/s 19(1).

4. On page 883 he says:

In my opinion the decision of the Taxing Officer under Rule 4 of Chapter XXXV is final by virtue of Section 5 of the Act.

5. I can see no distinction whatever between this case and the case before the Calcutta High Court as Rankin, J., says on page 883:

Probate duty being treated in the same manner as any other Court-fee, a suitor who satisfies the Taxing Officer satisfies the revenue--at least for

the time being. It is not necessary to consider here whether his decision hampers the Collector in claiming more money u/s 19(h). On the other

hand, if the suitor does not satisfy the Taxing Officer he must either pay or persuade the Taxing Officer that the question is one of general

importance so as to entitle the suitor to the decision of the Chief Justice or other Judge. The object of the Act is to secure payment prior to

litigation and to afford as little scope as possible for litigation over the payment.

6. In *Balkaran Rai v. Gobind Nath Tiwari* ILR (1890) 129 it was held that a decision under S.5 of the Act, that is the Court-Fees Act, 1870, is

not open to appeal, revision or review and is final for all purposes and no means have been provided or suggested by the Legislature for

questioning it. This Court, however, distinguished between a decision of the Taxing Officer as to the category under which a suit fell and the fee to

be paid and held that a decision as to the category was not a question relating to valuation and therefore was not declared by the section to be

final. In *Kunwar Karan Singh v. Gopal Rai* ILR (1909) A 59 it was held by Tudball,

J., that the order of the Taxing Officer u/s 5 of the Court-

Fees Act of 1870 was a final order and could not be reviewed. In *Ram Sekhar Prasad Singh v. Sheonandan Dubey* ILR (1922) Pat 198 it was

held that under S . 5 of the Court-Fees Act of 1870 the decision of the Taxing Officer is final and even if he has done anything which the law does

not allow him to do, the High Court has no jurisdiction to interfere with his decision as to the amount of the fee. Therefore in Calcutta, in *Allahabad*

and in Patna it has been definitely decided that the Taxing Officer's order u/s 5 of the Court-Fees Act of 1870 is a final order and cannot be

reviewed. This matter has moreover been dealt with in this High Court in *Mahomed I shack Sahib v. Mahomed Moideen* ILR (1922) M 849 : 43

MLJ 436 where it was held by the present Chief Justice, then Mr. Justice Courts Trotter, that a dispute as to the fees payable to the clerks and

officers of the Court within the meaning of Section 3 of the Court-Fees Act fell within S.5 of that Act and the High Court can make rules for the

imposition and collection of Court-fees in proceedings on the Original Side of the Court by virtue of the power to make regulations for its

procedure conferred by Section 15 of the Charter Act. With this decision and the other decisions already referred to. I am in entire agreement and

I am clearly of the opinion that the Court has no power whatever to interfere with the decision of the Taxing Officer as his decision is final u/s 5 of

the Court-Fees Act of 1870.

7. Although this objection of the learned Advocate-General disposes of this matter, nevertheless I have been asked to give a decision upon the

other question. Mr. Veeraraghava Aiyar contends that as the relief claimed in this suit is incapable of valuation and no provision has been made in

the High Court-Fees Rules, 1925, for the fee leviable in respect of such suits no stamp fee is leviable at all when such suits are filed on the Original

Side of this High Court. Under the Court-Fees Amending Act, Madras, suits u/s 92 of the CPC are provided for in Schedule II, Article 17, sub-

section 3 and a fee of Rs. 50 is levied. But the Court-fees leviable in the schedule as to both the Court-Fees Act of 1870 and the Amending Act

have no application to suits on the Original Side of the High Court but only apply to the mofussal Courts. But Mr. Veeraraghava Aiyar argues that

before the High Court-Fees Rules of 1925 were framed, the only Court-fee

leviable in the High Court was a fixed fee and that of Rs. 30

irrespective of the value of the relief claimed or value of the subject-matter of the suit but that now instead of the fixed fee, an ad valorem fee is for

the first time by those rules introduced and that as suits u/s 92, Civil Procedure Code, are incapable of valuation, no ad valorem scale of fees can

rightly be applied to those suits. There is abundant authority for the proposition that the relief claimed in such suits is incapable of valuation. In

Thakuri v. Bramha Narain ILR (1896) A 63 in the judgment of the Court it is stated:

In our judgment the suit as framed embraced a claim for a declaratory decree to the effect that the property in suit was endowed property. For that

portion of the claim the amount of Court-fee was Rs. 10. It also embraced a prayer for the appointment of the plaintiffs as trustees. In our opinion

it was impossible to estimate at a money value that prayer in the plaint.

8. This was a suit u/s 539 of the CPC but which is now Section 92. In Girdhari Lal v. Ram Lal ILR (1899) A 200 it was held that the mere fact

that the plaintiffs in a suit u/s 539 of the CPC may ask for an account to be taken from the trustees and that the trustees may be compelled to

refund moneys alleged to have been misappropriated by them does not take the case out of the purview of Article 17, Clause (vi) of the second

schedule of the Court-Fees Act, and render the plaintiffs liable to pay an ad valorem fee on that part of their plaint. Under Schedule II of the

Court-Fees Act, 1870, Article 17, Sub-clause (vi) for every suit where it is not possible to estimate at a money value, the subject-matter in dispute

and which is not otherwise provided for by that Act, a fee of Rs. 10 was leviable and the Court held that that was a suit within that Article. In

Kunhi Govindan Nambiar v. Krishnan Nambiar ILR (1881) M 146 it was held that a suit for the removal of a karnavan of a Malabar tarwad on

the ground of misfeasance is incapable of valuation and fell under Clause (vi), Article 17, Schedule II of the Court-Fees Act of 1870. In Ramrup

Das v. Mohunt Shiyaram Das 14 CWN 932 it was held that a plaint in a suit u/s 92 of the CPC relating to public charities should bear a Court-fee

of Rs. 10 only as required by Article 17, Clause (vi) of Schedule II of the Court-Fees Act of 1870. In Ramrup Das v. Mohunt Shiyaram Das 14

CWN 932 it was held by the Calcutta High Court that a suit u/s 92 generally

involves a question upon which no pecuniary value can be placed and therefore such a suit falls within the purview of Article 17, Clause (vi), Schedule II to the Court-Fees Act and that the mere fact that the plaintiff asks for an account to be taken from the trustees does not take the case out of the purview of that Article. In *Rajagopala Naidu v. Ramasubramanya Aiyar* ILR (1923) M 782 : 45 MLJ 274 (FB) it was held that a temple, which is devoted absolutely and in perpetuity to religious purposes even if it is to be regarded as a house, has no market value within the terms of Section 7, Clause (v)(e) of the Court-Fees Act and that hence a suit for the recovery of possession of it by a person claiming as trustee against another person also claiming as trustee falls u/s 11, Article 17, Clause (vi) of the same Act. Therefore according to this decision the subject-matter of a suit u/s 92 is incapable of valuation. It is quite clear from these decisions to which I have referred that in most cases, if not in all cases, suits u/s 92 of the CPC are incapable of valuation but what I have got to consider is whether suits which are incapable of valuation are within the scope of the High Court-Fees Rules, 1925. It is true that Appendix II does not in express terms deal with such suits and it is argued on behalf of the plaintiffs that such suits have been excluded from the rules either intentionally or per incuriam. I do not myself see why it should have been intended that no Court-fee at all should be charged in respect of such suits. In the mofussal, a fee of Rs. 50 is charged in respect of them and previous to the High Court-Fees Rules of 1925 a fixed fee of Rs. 30 was charged and I cannot see any force in the contention before me that it was intended when these rules were framed that no fees at all should be charged in respect of these suits. Nor do I think that these suits were omitted per incuriam. The fees to be levied under the High Court-Fees Rules of 1925, Appendix II fall into two classes : those under Rs. 10,000 and those over Rs. 10,000. In respect of those of Rs. 10,000 and under, a fee of Rs. 150 must be paid and in respect of those over Rs. 10,000 there is a scale of Rs. 20 for every Rs. 5,000 in excess of Rs. 10,000 and in my view it was the deliberate intention of the framers of these rules that any suit of however small value or whether it had any value at all was to have charged in respect of it a minimum fee of Rs. 150. I do not myself see that the fact that the High Court has changed its practice from that of

charging a fixed fee irrespective of value to that of charging an ad valorem fee can make any difference whatever. The High Court has chosen to adopt an ad valorem scale and fixed a minimum amount to be paid in respect of suits filed in the High Court. I do not see that there is anything ambiguous about this rule, I have been referred to cases where it has been laid down that the language of a taxing Act must be unambiguous and that the benefit of the doubt is the right of the subject and that the party has a right acting legally to evade payment of stamp duties and that the Crown must make out its right to its duty and if there is any means of evading stamp duty it is quite legitimate for the subject to do so. But, for the reasons I have given, I do not think that it can be said that the High Court-Fees Rules are ambiguous. I therefore hold that the Taxing Officer was right in rejecting the plaint as insufficiently stamped as in my view all suits irrespective of whether they have any value at all must have paid in respect of them the minimum fee of Rs. 150. In view of my finding that the order of the Taxing Officer was final, this latter decision was not necessary, but, as I was asked to decide the point, I have done so.

9. This application must therefore be dismissed with costs. But as the plaintiffs have since paid Rs. 150 in respect of the suit as Court-fees pending a decision upon this point the plaint has been received and the suit will proceed. Taxed costs. Certificate for counsel.