

(1952) 09 KL CK 0007
In the High Court Of Kerala
Case No : A.S. No. 1037 of 1952

Ulahannan Kuriyan and Others

APPELLANT

Vs

Uthuppu Varkey and Others

RESPONDENT

Date of Decision : 15-09-1952

Acts Referred:

Court Fees Act, 1870 — Article 1, 11
Travancore Court Fees Act, 1087 — Section 5, 7, 9
Travancore-Cochin Court Fees Act, 1125 — Section 11, 2, 3, 4, 5

Citation : (1952) 09 KL CK 0007

Hon'ble Judges : Koshi, C.J;Govinda Pillai, J

Bench : Division Bench

Advocate : K.T. Ninan, for the Appellant; Govt. Pleader, K.P. Abraham, for the Respondent

Judgement

Koshi, C.J.—This reference raises the question as to whether any Court-fee is leviable on a memorandum of cross-objection seeking to set aside a lower Court's decree negating a claim for mesne profits subsequent to the date of the institution of the suit, and if so what the basis of the levy should be. Respondents 1 and 2 brought the suit giving rise to the appeal for a declaration of their right to the suit properties and for their recovery with future profits at the rate of Rs. 250/- per year. An alternative relief claimed in the suit was that in case it is found that the Plaintiffs are not entitled to recover possession the Court will grant them a declaration that they are entitled to recover Rs. 2800/- by way of first charge over the properties and also allow them to realise the same with interest thereon at 12 per cent per annum

The lower Court did not uphold the Plaintiffs' claim for recovery of possession, but granted them the alternative relief asked for subject to the modification that the amount will carry interest only at 4 per cent per annum. Defendants 1 and 3 appeal from that decision and the Plaintiffs have filed a memorandum of cross-objection challenging the correctness of the lower Court's decree negating the claim for mesne profits. A further ground raised by that memorandum is that in

any view the award of interest at 4 per cent is too low. No exception is taken to the decree refusing to grant the main relief, namely, recovery of possession of the properties. We are however now concerned with the question of Court-fee.

2. The cross-objection is not valued or stamped at all. When the office raised objection as to the want of Court-fee the Respondents filed a statement to the effect that since the grounds raised in the memorandum of objection relate to mesne profits and interest accruing subsequent to the suit, no Court-fee is liable to be paid on the same. Hence this reference.

3. The question for decision is whether the Respondents' contention is right. Section 2 of the Travancore-Cochin Court-fees Act, 1125 (Section 6, Indian Act) enacts "inter alia" that no document of any of the kinds specified in the First or Second Schedule of the Act as chargeable with fees shall be filed, exhibited or recorded in any Court of Justice unless in respect of such document, there be paid a fee of an amount not less than that indicated by either of the said schedules as the proper fee for such document. Section 4 (Indian Act, Section 8) states that the amount of fee payable on a memorandum of appeal or of cross-objection shall be calculated as if it was a suit under the provisions of Section 3 for the reliefs claimed under the memorandum of appeal or of cross-objection. Section 3 (Indian Act, Section 7) deals with computation of fees payable in certain classes of suits. Article I, Schedule (1) (the corresponding provision in the Indian Act bears the same number) prescribes that a memorandum of cross-objection must bear a Court-fee stamp calculated on the value of the subject-matter in dispute. The point therefore is what the subject-matter of the dispute raised by the cross-objection is.

4. When a Plaintiff brings an action for antecedent mesne profits of the property bought to be recovered or antecedent interest on the money claimed in the suit, Court-fee on such mesne profits or interest, as the case may be, has to be paid in addition to the Court-fee payable for the recovery of the property or of the principal amount. No Court-fee however is levied on future profits or interest, the reason being that as the duration of the litigation is unknown it is not possible to make any calculation or estimate, even approximate. The same principle applies to mesne profits or interest subsequent to the date of the decree appealed from.

That rule cannot in our opinion apply to mesne profits or interest for the period between the institution of the suit and the decree. There the position is the same as with antecedent profits or interest. In the same way as Court-fee has to be paid in a suit to recover such profits or interest, in an appeal or with respect to a cross-objection seeking similar relief Court-fee has to be paid on the quantum of the claim for the ascertained period, that is, the period between the date of the institution of the suit and the date of the decree appealed against. Where the object of the appeal or the cross-objection is to avoid a liability imposed by the decree, Court-fee will have to be paid on the amount of the liability sought to be got rid of.

5. The decision in - *Sideshwari Prosad and Others Vs. Ram Kumar Rai*, deals with the question of Court-fee relating to a claim for mesne profits "pendente lite" raised by an appeal. In - *Sheobhajan Singh and Others Vs. Manik Chand Sahu and Others*, the Court was concerned with a question of Court-fee relating, to a similar claim for mesne profits raised by a memorandum of cross-objection. The view these cases took was that when profits accruing due subsequent to the institution of the suit forms subject-matter of the decision by the appellate Court "ad valorem" Court-fee on the amount of the profits as fixed by the decree (or as estimated in the plaint) for the period commencing with the institution of the suit and ending with the decree under appeal has to be levied. This accords with the view indicated above.

6. In - "*In re Velayudhan Pillai Thanu Pillai*" AIR 19 KERLJ 1158 (C) a Full Bench of the Travancore High Court was confronted with the same question as raised here. The Full Bench held that the cross-objection memorandum has to be taxed on the profits that accrued due from the date of the suit till the date of the decree. Sections 5 and 7 of the Travancore Court-fees Act, 6 of 1087 were relied upon for the view. Section 5 was substantially in the same terms as Section 4 of the Travancore-Cochin Court-fees Act, 1125, Section 9 corresponded to the present Section 8 which in turn so far as relevant (except for the Explanation specially added to the Travancore section as also to the Travancore-Cochin section) is in the same terms as Section 11 of the Indian enactment. The said section deals with the procedure in suits for mesne profits or account when the amount decreed exceeds the amount claimed. The Indian Court-fees Act, 7 of 1870 has no Explanation added to the corresponding Section 11.

Section 9 of the Travancore Act (6 of 1087) contained an Explanation which has been reproduced in Section 8, Travancore-Cochin Act, 1125. That Explanation reads thus:

Nothing in this section shall be construed to authorise the levy, in the Court of original jurisdiction, of Court-fee on the amount of mesne profits or interest accruing due in respect of the subject-matter, between the date of the institution of the suit and the final execution of the decree.

It was in view of this Explanation that the Full Bench held that whatever the antecedent law might have been, under Act 6 of 1087 just as a Suit was taxable for the relief which was claimed as due on the date of the plaint that an appeal should be regarded as taxable on the relief claimed in. it as due on the date of the appeal. The rule that applies to an appeal must equally apply to a memorandum of cross-objection. As Stated earlier the Full Bench was dealing with the case of a memorandum of cross-objection. It is clear from the Explanation that in cases of the present nature mesne profits and interest stand on the same footing regarding Court-fees.

7. A Madras decision which renders some help to the solution of the question before us is to be found in - "*Punya Nahako v. Emperor*" AIR 1927 Mad 360 (D).

There one of the questions for decision was as to the Court-fee payable on an application for review of a judgment awarding mesne profits. It was held that the Petitioner who sought to be relieved from the payment of mesne profits due as per the terms of the decree sought to be reviewed must pay Court-fee on such mesne profits up to the date of his application for review. Two earlier decisions of that Court, - "Brahmayya v. Lakshminarasimham" 16 Mad 310 (E) and - "Balarama Naidu v. Sangan Naidu" AIR 1923 Mad 19 (F) are relied upon by the learned Judges in support of their view. We are not unaware that the correctness of the decision in AIR 1927 Mad 360 (D) on the point referred to has been doubted at least in one subsequent case. See - Kandunni Nair Vs. Ittunni Raman Nair and Others,

8. In the light of the discussion in the earlier part of this order and the authorities referred to in the latter part it is clear that the contentipn of the Respondents that no Court-fee need be paid on the memorandum of cross-objection is absolutely untenable. The subject-matter of the cross-objection must be deemed to be the difference between the mesne profits (or the higher rate of interest) claimed and the interest allowed by the decree for the period of the pendency of the suit in the lower Court. The Respondents are therefore directed to value their memorandum of cross-objection accordingly and pay Court-fee on such valuation. They will have three weeks" time to comply with the order.