(2003) 03 KAR CK 0041

In the Karnataka High Court

Case No : Civil Revision Petition No. 4777 of 2002

Vinaya R. Kamath APPELLANT

Vs

Anupama Kamath and Another RESPONDENT

Date of Decision : 21-03-2003

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115
Mysore Court-fees and Suits Valuation Act, 1958 — Section 23, 24, 24 (d), 26

Citation : AIR 2003 Kar 366 : (2004) 4 BC 510 : (2004) 118 CompCas 117 : (2003) 3 KarLJ 415 : (2003) 2 KCCR 1409

Hon'ble Judges : A.V. Srinivasa Reddy, J

Bench : Single Bench

Advocate : Kishore Shetty, for the Appellant; T.S. Mahanthesh, for Caveator-Respondent-1, for the Respondent

Final Decision : Allowed

Judgement

A.V. Srinivasa Reddy, J.—In this revision u/s 115 of the CPC, the petitioner (defendant 1) calls in question the legality and correctness of the order dated 19-8-2002 passed by the Principal Civil Judge (Senior Division) at Udupi in M.A. No. 23 of 2001 reversing the order dated 9-7-2001 in O.S. No. 248 of 1992 passed by the II Additional Civil Judge (Junior Division) at Udupi, produced as Annexure-A to the petition.

2. The plaintiff initially filed the suit for the relief of permanent injunction restraining the defendant 1 from operating the safety locker No. 78 opened at Canara Bank, Town Branch, Udupi and later also included the relief of declaration that the plaintiff is the exclusive owner of the articles in the locker with the defendant-Bank. The plaintiff is the wife of the first defendant, the petitioner herein. After marriage she stayed with her husband for three months and later due to differences among them she is staying separately. The safety locker is opened in the joint names of the plaintiff and defendant 1 and the defendant 1 is the first hirer. It is the case of the plaintiff that when she went to operate the

safety locker she was not permitted to do so by the second defendant-Bank. Hence, she filed the suit.

3. The defendant 1 filed his written statement and questioned the valuation of the suit as done by the plaintiff for the purpose of Court fee and jurisdiction claiming that the suit ought to have been valued and Court fee paid on the basis of the market value of the gold articles kept in the safety locker. The Trial Court framed a preliminary issue on the question of pecuniary jurisdiction of Court. The parties led evidence before it. On perusal of the evidence led on the issue and hearing the parties, the Court below answered the issue in the negative holding that it has no jurisdiction to go into the matter as the value of the suit property exceeded its pecuniary jurisdiction. Being aggrieved the plaintiff preferred an appeal before the Court below. The Court below allowed the appeal and set aside the order of the Trial Court directing it to take up the suit on its file in its original number and dispose it off on merits. The order passed by the Court below is impugned in this revision by the first defendant.

4. It is the case of the first defendant that the plaintiff while leaving her marital home also surreptitiously took away the key of the safety locker and, therefore, the defendant 1 was forced to inform the second defendant not to permit the plaintiff to operate the locker on her own. The plaintiff claims that the jewels kept in the safety locker belong to her exclusively. The defendant 1 denies this assertion and claims that the jewels kept in the safety locker belong to him alone and the plaintiff was also included as an hirer for the sake of convenience and otherwise she has got nothing to do with the jewels.

5. I have heard the learned Counsels on both sides in this revision.

6. The limited question involved in this revision is about the pecuniary jurisdiction of the Trial Court to try the suit as brought by the plaintiff. The suit as brought by the plaintiff is for declaration that she is the exclusive owner of the articles kept in-the locker and for a permanent injunction against the first defendant from operating locker No. 78 opened by the plaintiff at Town Branch of Canara Bank, Udupi. It is argued by learned Counsel for the petitioner that the suit as brought by the plaintiff without claiming for possession of the articles kept in the locker is not maintainable. But, presently, I am not concerned with the said submission because whether the suit as brought by the plaintiff without the prayer for possession of the articles is maintainable or not is something to be decided by the Trial Court having jurisdiction over the matter and the question whether the Trial Court has pecuniary jurisdiction or not can be gone into and determined de hors the question of maintainability of the suit in its present form. At the very outset I make it clear that Section 50 of the Karnataka Court Fees and Suits Valuation Act, 1958 (''the Act'', for short) does not apply to the facts of the case as the Act has made provision for valuation of a suit of the nature as brought by the plaintiff in Section 23. Both the Courts below have proceeded to value the suit for the purposes of Court fee and pecuniary jurisdiction by reference to Section 24 of the Act. Section 24 of the Act relates to suits for

declaration. It reads:

"24. Suits for declaration.--In a suit for a declaratory decree or order, whether with or without consequential relief, not falling u/s 25.--

(a) where the prayer is for a declaration and for possession of the property to which the declaration relates, fee shall be computed on the market value of the property or on rupees one thousand, whichever is higher;

(b) where the prayer is for a declaration and for consequential injunction and the relief sought is with reference to any immovable property, fee shall be computed on one half of the market value of the property or on rupees one thousand, whichever is higher;

(c) (omitted by Act No. 13 of 1982 with effect from 1-4-1982)

(d) in other cases, whether the subject-matter of the suit is capable of valuation or not, fee shall be computed on the amount at which the relief sought is valued in the plaint or on rupees one thousand, whichever is higher".

The only clause that might apply to the present suit is Clause (d) as Clause (a) relates to a prayer for declaration and for possession of property and Clause (b) relates to an immovable property. Both the Courts below have proceeded on the basis that valuation of the suit is governed by Sections 24(d) and 26 of the Act. The valuation as made u/s 26 insofar as the prayer of injunction is concerned cannot be found fault with. The declaration sought in the suit is that the plaintiff is the exclusive owner of the movable property kept in the safety locker. The valuation made insofar as the prayer for declaration is improper as the suit which is one filed in respect of movable property ought to have been valued u/s 23 which specifically caters to suits filed for movable property. The said provision reads:

"23. Suits for movable property.--(1) In a suit for movable property other than documents of title, fee shall be computed--

(a) where the subject-matter has a market value, on such value;

or

(b) where the subject-matter has no market value, on the amount at which the relief sought is valued in the plaint:

Provided that where the suit is for goods pledged as security for payment of a debt, the fee shall be computed on the amount of debt.

(2).....".

Though the suit is one for a declaratory relief the declaration sought being in respect of a movable property the provision that governs such a suit is Section 23 and not Section 24(d) of the Act. It is the common case of the plaintiff and the defendant that 40 pavans of jewels are kept in the safety locker. The subject-matter of the suit, therefore, has a market value and Court fee has to be paid on such market value. The learned Trial Judge was right in answering the issue in negative by holding that it has no pecuniary jurisdiction to try the suit. The order of the Court below holding otherwise is incorrect and cannot be sustained in law.

7. Several decisions have been cited at the Bar touching various aspects of law. In State of Rajasthan Vs. Rao Raja Kalyan Singh, (Dead by his Lrs.), it was held that the plea of non-maintainability of a suit is a legal plea and can be accepted although no specific plea was taken or precise issue framed. In the present revision we are only concerned with the pecuniary jurisdiction of the Court and the issao whether the suit is maintainable or not has not been decided and is not in issue before me and it is not even decided by any Court. In Ram Saran and Another Vs. Smt. Ganga Devi, the Apex Court has laid down that a suit for mere declaration brought by the plaintiff who is not in possession of the property is not maintainable. This Court is not presently concerned with the said issue as the suit is held up on the question of pecuniary jurisdiction of the Court and so long as a finding is recorded by the Courts below on that question, this Court in a revision filed u/s 115 cannot go into questions that have not been determined by the Courts below. In Manicklal Verma and Another Vs. Smt. Jamunadevi and Others, this Court has held that the procedure provided under the Act is a special procedure for determining the issue relating to valuation and it has an overriding effect over the procedure contained in Civil Procedure Code. It is also held therein that the issue of valuation has to be decided before evidence is recorded. It has been so done in the present case by the Trial Court. The decision in Riyaz Khan and Others Vs. Modi Mohammed Ismail and Others, relates to stamp duty paid on a document which was marked in evidence and it was held that marking of a document would not render it immune from the effect of Section 35 of the Karnataka Stamp Act. This decision is of no relevance for the issue involved in this revision.

8. In the result, for the reasons stated above, the revision petition is allowed setting aside the order passed by the Court below in M.A. No. 23 of 2001 and affirming the order passed by the Trial Court in O.S. No. 248 of 1992 on the preliminary issue.

