

AIR 1957 ANDHRA PRADESH 6
ANDHRA PRADESH HIGH COURT
SUBBA RAO , C.J. and VISWANATHA SASTRY , J.

Stamp Register No. 3956 of 1956 (Appeal No. 368 of 1956), D/- 26 - 3 - 1956

In re Kudappa Subbamma Appellants

(A) Court-fees Act (7 of 1870), S.11 (Madras Amendment) - Scope - Lacuna in section pointed out.

Section 11 in terms as well as in substance, provides for court-fee payable in a suit for past and future mesne profits and the stages at which they are payable. There appears to be a lacuna in the scheme from the standpoint of the State Exchequer. A party, who obtains a decree for future mesne profits in the first instance, or, in whose favour a decree for future mesne profits is made on enquiry, can evade payment of court-fee if he chooses not to execute the decree or if the decree is satisfied outside the Court.

(Para6)

Anno : AIR Com., Court-fees Act, S. 11, N. 1, 13.

(B) Court-fees Act (7 of 1870), S.4, S.7(1), S.11, Sch.I Art.1 - Scope - Court-fee on appeal in suit for mesne profits - Principles - Decree for future mesne profits under O.20, R.12(2), Civil P.C. - Appeal to High Court insufficiently stamped - Power of High Court.

In an appeal filed before the High Court against a final decree for future mesne profits granted under O. 20, R. 12 (2), Civil P. C. the court-fee payable will have to be determined with reference to the amount or value of the subject-matter in dispute and under S. 4, Court-fees Act the High Court will not receive the memorandum of appeal unless there be paid upon it a fee of an amount not less than that indicated in the Schedules to the Act. The procedure prescribed by S. 11 can have no application.

In a suit for mesne profits whether past or future, if the mesne profits are ascertained and decreed, the party preferring an appeal should pay court-fee on the amount or value of the subject-matter in the appeal. If the defendant files an appeal seeking to get rid of the decree in whole or in part, he will have to pay court-fee in whole or in part on the amount decreed which he seeks to vacate. If a plaintiff seeks to file an appeal questioning the correctness of the amount ascertained and decreed in his favour, the subject-matter of the appeal will be the excess amount he claims to have over that already awarded to him, and therefore, he will have to pay ad valorem court-fee on the additional amount he claims. In either case, the mesne profits are ascertained and the party, be he a plaintiff or a defendant, knows the exact amount which is the subject-matter of appeal. 1923 Mad 19 (AIR V 10), Rel. on; Case law referred.

(Para18)

Anno : AIR Com., C.F. Act, S. 4, N. 3, 13; S. 7(1), N. 15; S. 11, N. 7, 8; Sch. I, Art. 1, N. 14.

Cases Referred

Chronological Paras

(A) 1931 Mad 717 (AIR V 18) : ILR 54 Mad 980	6
(B) 1937 Mad 46 (AIR V 24) : ILR 1937 Mad 284	6 , 11
(C) 1938 Mad 727 (AIR V 25) : ILR 1938 Mad 1050	6
(D) 1923 Mad 19 (AIR V 10) : ILR 45 Mad 280	8
(E) 1930 Mad 597 (AIR V 17) : ILR 53 Mad 540	9
(F) 1939 Mad 667 (AIR V 26) : 1939-2 Mad LJ 356	13
(G) 1932 Pat 228 (AIR V 19) : ILR 11 Pat 532	14 , 15
(H) 1933 Pat 81 (AIR V 20) : ILR 12 Pat 188	15
(I) 1948 Pat 103 (AIR V 35) : 26 Pat 119	17

C.V. Narasimharao, for Appellant; Government Pleader, Andhra, for the State.

Judgement

1. SUBBA RAO, C.J. :-This court-fee matter has been referred to a Bench by the taxing Judge.
2. The facts are simple. The appellant obtained a decree for possession and for mesne profits in O. S. No. 104 of 1926 on the file of the Court of the Subordinate Judge, Eluru. He filed an application,

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I. A. No. 1014 of 1952, under O. 20, R. 12(2), Civil P. C., for ascertainment of profits subsequent to the suit.

The Subordinate Judge passed a decree in favour of the appellant for a sum of Rs. 1876-12-0 towards mesne profits for the year 1943 and for the subsequent seven years at Rs. 1676-12-0 per year payable with interest compoundable on 1st April every year. The appellant has filed the above appeal claiming an additional amount towards mesne profits for the said period which he valued in a sum of Rs. 44,980/- and paid a court-fee of Rs. 2/-. The office raised an objection expressing the view that an valorem court-fee should be paid on the value of the subject-matter of the appeal.

3. Learned counsel for the appellant contends that, in the case of mesne profits subsequent to the filing of the suit, the procedure prescribed by S. 11, Court-fees Act should be followed and that his liability to pay court-fee would arise only when he seeks to execute the decree, whereas the Government Pleader argues that the question of court-fee payable on a memorandum of appeal depends upon the value of the subject-matter of the appeal and that in a case where mesne profits are ascertained, court-fee is payable on the ascertained value of the subject-matter.

4. It would be convenient to read the relevant provisions pertaining to suits as well as appeals vis-a-vis the payment of court-fee before considering the case law on the subject.

SUITS.

Order 7, R. 1, Civil P. C. :

"The plaint shall contain the following particulars.

(i) a statement of the value of the subject-matter of the suit for the purposes of jurisdiction and of court-fee so far as the case admits." Section 7(1), Court-fees Act :

In suits for money (including suits for damages or compensation or arrears of maintenance, of annuities, or of other sums payable periodically, according to the amount claimed." Section 11 as amended by Madras Act 5 of 1922 :

"In suits for mesne profits or for immovable property and mesne profits, or for an account, if the profits or amount decreed are or is in excess of the profits claimed or the amount at which the plaintiff valued the relief sought, the decree shall not be executed until the difference between the fee actually paid and the fee which would have been payable had the suit comprised the whole of the profits or amount so decreed shall have been paid to the proper officer.

"Where a decree directs an inquiry as to mesne profits which have accrued on the property during a period prior to the institution of the suit, if the profits ascertained on such inquiry exceed the profits claimed, no final decree shall be passed till the difference between the fee actually paid and the fee which would have been payable, had the suit comprised the whole of the profits so ascertained, is paid. If the additional fee is not paid within such time as the Court shall fix, the claim for the excess shall be dismissed, unless the Court for sufficient cause extends the time for payment.

Where a decree directs an inquiry as to mesne profits from the institution of the suit, and a final decree is passed in accordance with the result of such inquiry, the decree shall not be executed until such fee is paid as would have been payable on the amount claimed in execution if a separate suit had been instituted therefor."

ORDER XX, Rule 12, Civil P. C. :

"(1) Where a suit is for the recovery of possession of immovable property and for rent or mesne profits, the Court may pass a decree

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(b) for the rent or mesne profits which have accrued on the property during a period prior to institution of the suit or directing an inquiry as to such rent or mesne profits.

(c) directing an inquiry as to rent or mesne profits from the institution of the suit until

(i) the delivery of possession to the decree-holder.

(ii) the relinquishment of possession by the judgment-debtor with notice to the decree-holder through the Court or

(iii) the expiration of three years from the date of the decree whichever event first occurs.

(2) Where an inquiry is directed under cl. (b) or cl. (c) a final decree in respect of the rent or mesne profits shall be passed in accordance with the result of such inquiry."

5. The aforesaid provisions formulate a scheme for the ascertainment of mesne profits which accrued prior to the institution of the suit. They are also designed to protect the interests of the State exchequer. The plaintiff is enabled to value his claim for past mesne profits tentatively and to pay the difference between the court-fee paid and payable on the amount ascertained either before the decree is made or before the execution is ordered.

Paragraph 1 of S. 11 provides for the collection of court-fee in the case of a decree for mesne profits made by a Court without passing a preliminary decree and directing further enquiry.

6. There is a conflict of views on the question which is not relevant for the present enquiry, namely, whether a Court can make in the first instance, a decree for future profits. While in *Ramalinga Sethupathi v. Andiappan Ambalam*, ILR 54 Mad 980 : (AIR 1931 Mad 717) (A) and *Ekanthalingaswamy Koil, In re*, ILR 1937 Mad 284 : (AIR 1937 Mad 46) (B), it was held that para. 1 of S. 11 would not apply to a decree for future mesne profits, another Division Bench of the same High Court in *Veeran Chetti v. Veeran Chetti*, ILR 1938 Mad 1050 : (AIR 1938 Mad 727) (C) expressed the view that para. 1 of S. 11 applies even to a decree for future mesne profits.

Where a Court gives a decree for mesne profits without directing further enquiry under para. 1 of S. 11, the decree cannot be executed till the difference between the fee actually paid and the fee payable shall have been paid to the proper officer. Where a decree directs an enquiry to be made as regards past mesne profits, no decree can be made unless the difference between the court-fee actually paid and the fee payable on the amount ascertained has been paid.

Where a decree directs an enquiry as to mesne profits from the institution of the suit under para. 3, the final decree made cannot be executed unless the court-fee payable on the amount ascertained is paid. These provisions, in terms as well as in substance, provide for court-fee payable in a suit for past and future mesne profits and the stages at which they are payable. There appears to be a lacuna in the scheme from the standpoint of the State exchequer.

A party, who obtains a decree for future mesne profits in the first instance, or, in whose favour a decree for future mesne profits is made on enquiry, can evade payment of court-fee if he chooses not to execute the decree, or, if the decree is satisfied outside the Court.

But, that need not detain us as nothing turns upon that in the present case. We have mentioned all this only to show that the provisions relied upon by the learned counsel for the appellant are only

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designed to prevent evasion of court-fee payable on the claims finally ascertained and embodied in a decree in a suit for mesne profits.

7. The principles governing the payment of court-fee in the case of appeals against the said decrees are found elsewhere. Under S. 4 Court-fees Act, no document of any of the kinds specified in the

first or second schedule to this Act, annexed as chargeable with fees, shall be received or furnished by any of the High Courts in any case coming before such Court in the exercise of its extraordinary original jurisdiction, or in the exercise of its jurisdiction as regards appeals from the judgments other than judgments passed in the exercise of the ordinary original jurisdiction of the Court of one or more Judges of the said Court or of a Division Court, or in the exercise of its jurisdiction as regards appeals from the Courts subject to its superintendence, 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.

Schedule I prescribes the ad valorem fee at different rates payable on the amount or value of the subject-matter in dispute in the appeal. To fix the court-fee payable, the Court will have to ascertain the amount or the value of the subject-matter in dispute. Doubtless, the other provisions of the Act may enable the Court to ascertain the value of the subject-matter. The question, therefore, is what is the value of the subject-matter of the appeal filed against a final decree ascertaining mesne profits due to the plaintiff.

Looking squarely at the problem uninfluenced by decided cases, we do not see any difficulty in fixing the value of the subject-matter of the appeal in such case. In a suit for past mesne profits, the value of the subject-matter is always approximately given, for that requires to be ascertained in the suit. The plaintiff, therefore, puts his own valuation on the claim and pays court-fee.

In the case of future mesne profits, the claim is based upon a different cause of action but for convenience and to avoid multiplicity of suits, the Court, in its discretion, may direct an enquiry in regard to the said profits. The preliminary decree may reject the claim for future mesne profits or may direct an enquiry for the ascertainment of future mesne profits. At the stage when an application is filed for enquiry, the plaintiff will not be in a position to know definitely the rate or the period for which he will be entitled to recover the said profits.

But when once the Court ascertains the rate and fixes the period and passes a decree for future mesne profits, it is impossible thereafter to contend that his claim is in a fluid state. The Court has exercised the discretion in his favour recognised his right and ascertained the amount due to him. What was nebulous at the time when he asked for an enquiry has been crystallised. The Court gives him a decree for a specific amount.

If the defendant prefers an appeal questioning the decree passed against him it is not disputed that he will have to pay ad valorem court-fee on the amount decreed as that amount is the subject-matter of the appeal. If the plaintiff got towards his future mesne profits but seeks to get some more amount, can it be said that the excess he claims in definite terms is not an ascertained amount? The subject-matter of the appeal in that contingency is the excess amount which he claims in the appeal.

To put it differently, the test is whether the mesne profits, past or future, are ascertained. If they are ascertained, whether the defendant files an appeal seeking to escape from liability completely or in part, or, the plaintiff files an appeal questioning the correctness of the amount and claiming additional amount, in either case the subject-matter of the appeal is definite and is capable of valuation.

At the inception of the proceedings, the rate at which future mesne profits are payable or the term for which it is payable will not be definite. But, at the time the appeal is filed, both the rate as well as the period have become definite and there cannot be any difficulty in evaluating the subject-matter of the appeal.

Different considerations may arise in a case where the Court dismisses an application for ascertainment of mesne profits either because it refuses to exercise its discretion in favour of the plaintiff or because it rejects his claim altogether, for, in those cases, the amount is not ascertained and, therefore, the subject-matter of the appeal is not capable of valuation. But decisions dealing with such situations are not of much relevance in considering a case where mesne profits are ascertained and, therefore, the relief claimed in the appeal is capable of valuation.

8. We shall now proceed to consider some of the cases, which throw considerable light on the question raised. In *Balarama Naidu v. Sangan Naidu*, ILR 45 Mad 280 : (AIR 1923 Mad 19) (D), a Division Bench of the Madras High Court held that an order determining the amount of mesne profits payable, subsequent to the filing of a suit is a final decree within O. 20, R. 12(2), Civil P. C. and ad valorem court-fee is chargeable under Art. 1 of Sch. I, Court-fees Act calculated on the amount of mesne profits in dispute in appeal.

The facts there were : The appellants filed a suit against the respondent for partition of joint family properties. A decree was passed determining the shares of both the parties. By a subsequent order, the Court of first instance determined the amount of mesne profits subsequent to the suit at Rs. 500/- as payable by the defendant to the plaintiff. Both parties appealed against this decision to the District Court and each paid only 0-8-0 as court-fee on his appeal.

Ayling, Offg. C.J., and Odgers J., held that the appeals were against a final decree under O. 20, R. 12(2), Civil P. C. and ad valorem court-fee must be charged under Art. 1 of Sch. I, Court-fees Act calculated on the amount of mesne profits in dispute. It will be seen from the aforesaid facts that the plaintiff in his appeal claimed more mesne profits than what was awarded to him by the first Court, while the defendant sought to get it reduced by preferring a cross-appeal.

The Court held that court-fee was payable on the amount of mesne profits in dispute, indicating thereby that the plaintiff had to pay court-fee on the amount he had claimed in excess of what was awarded to him in the first Court. This is a direct decision on the question raised before us. The only thing that can be said is that the learned Judges did not give elaborate reasons for their conclusions but that does not detract from its authority. Apart from that we agree with the conclusion, we are also bound by it, that being a decision of a Division Bench of the Madras High Court. .

9. Another Division Bench of the Madras High Court in *Kandunni Nair v. Raman Nair* ILR 53 Mad 540 : (AIR 1930 Mad 597) (E) held that as mesne profits were not ascertained in the preliminary decree, no court-fee need be paid in an appeal, on the claim for mesne profits. The Subordinate Judge had given a preliminary decree for partition which directed that the amount of mesne profits due to the plaintiff should be determined at the time of the passing of the final decree.

It was held in that judgment that only three years' mesne profits were awardable but that decision was not carried into the decree. The learned

Judges observed at page 548 (of ILR Mad) : (at p. 599 of AIR) :

"The decree, which we must follow in preference to the judgment, contains no more than a direction for the determination of the mesne profits and accordingly it is difficult to apply the terms of Sch. I, Court-fees Act, where it is said that the fee is to be payable on the amount or value of the subject-matter in dispute.....Where, however, a preliminary decree only makes provision for the subsequent determination of the mesne profits, we think that the apt occasion for requiring, a defendant to pay a court-fee in this respect would be if and when the profits have been determined by a final decree."

10. Though in that case as the decree only contained a direction for the determination of mesne profits, the learned Judges held that no court-fee was payable, their observations indicate that, where the mesne profits were ascertained, if a defendant preferred an appeal, court-fee should be paid on the amount ascertained.

11. In ILR 1937 Mad 284 : (AIR 1937 Mad 46) (B), the defendant, against whom a decree for possession was made preferred an appeal and the plaintiff filed a memorandum of objections putting forward a claim for future mesne profits. The learned Judges Venkata Subba Rao, Offg. C.J., and Horwill J., held that no court-fee was payable on the memorandum of objections. After pointing out the procedure prescribed under S. 11, Court-fees Act, Venkata Subba Rao, Offg. C.J., posed the question at p. 291 (of ILR Mad) : (at p. 49 of AIR) thus :

"Is there any reason then why in principle this rule, which applies in terms to suits, should be departed from in the case of appeals?"

The learned Judge answered the question thus :

"True, the value of an appeal is not always the value of the suit but the value of the relief granted by the decree which the party seeks to get rid of in that sense, where the suit and the appeal are differently valued, the schedules to the Act may furnish the approximate articles. In the matter in hand, there is no question of an amount being claimed in appeal in excess of what has been granted by the lower Court. On the other hand, the claim made here is identical with that made in the Court below, namely, to have the right to subsequent profits adjudicated upon."

12. These observations, though made in a different context, recognise the distinction between a case where the claim of the plaintiff to future mesne profits was rejected and a case where it was granted by the Court. The observations of the learned Judge indicate the inclination of his mind to hold that, where the defendant files an appeal against a decree for mesne profits, the value of the appeal is the value of the relief granted by the decree and in a case where the plaintiff claims in appeal an excess of what was granted by the lower Court, the value of the appeal is the excess claimed by him.

13. Abdur Rahman, J., in Pulla Reddi v. Venkata Reddi, 1939-2 Mad LJ 356 : (AIR 1939 Mad 667) (F) held that in an appeal filed against an order dismissing an application for ascertainment of future mesne profits the court-fee of Re. 1/- paid under Art. 2, Sch. 2, Court-fees Act was sufficient. The judgment of the learned Judge can be sustained on the ground that the order in that case was one

rejecting an application for future mesne profits and not one for an ascertained amount. In a case where the right to future mesne profits is rejected, the subject-matter of the appeal is not capable of valuation.

14. The Patna High Court took a consistent view supporting the argument of the Government Pleader. In *Kedar Nath Goenka v. Chandra Mouleshwar Prasad*, ILR 11 Pat 532 : (AIR 1932 Pat 228) (G), after a decree for possession was made, two applications were filed by the decree-holders for ascertainment of future mesne profits from the date of the suit up to the date of delivery of possession.

The Subordinate Judge passed decrees for mesne profits, awarding Rs. 41,803/- and odd to one of the decree-holders and Rs. 57,452/- and odd to another decree-holder. Four appeals were filed, two by the decree-holders claiming additional amounts towards mesne profits and two by the judgment-debtors questioning the decree made against them. The memorandum of appeal is each one of these four appeals was stamped with a court-fee stamp of Rs. 4/- only.

It was argued in that case, as it was argued before us, that ad valorem court-fee need not be paid on the value of the subject-matter of the appeals. The Court rejected the said contention and held that ad valorem court-fee should be paid on the amount involved in each of the appeals. At page 536 (of ILR Pat) : (at p. 230 of AIR), the learned Judges observed :

"Under S. 4, Court-fees Act, the document which has to be considered is not the petition for ascertainment of mesne profits but the memorandum of appeal.....Schedule I, Art. 1, Court-fees Act prescribes that a memorandum of appeal is to be stamped with a court-fee stamp calculated on the amount or value of the subject-matter in dispute in the appeal. The amount or value of the subject-matter in dispute in the four appeals was the amount claimed by the appellant in each case and, therefore, the memorandum of appeal in each case ought to have been stamped ad valorem."

We respectfully agree with the aforesaid observations :

15. The same High Court in *Dhanukdhari Prasad v. Ramadhikari*, ILR 12 Pat 188 : (AIR 1933 Pat 81) (H) held that, where the amount of mesne profits is definitely ascertained and embodied in a final decree, and an appeal is presented against that decree, the appellant must pay on the memorandum of appeal ad valorem court-fee calculated on the amount of the decree, which is the subject-matter of the appeal and not merely on the value of the mesne profits claimed in the plaint. At page 194 (of ILR Pat) : (at pp. 83-84 of AIR), James, J., observed :

"The question, therefore, to be considered in the present case is that of whether ad valorem court-fee is payable on the whole amount for which the appellants seek to avoid liability or only on that portion of it which was included in the value of the plaint. It appears to me that the reasons given by the Division Bench for their decision in ILR 11 Pat 532 : (AIR 1932 Pat 228) (G) should prevail, that an appeal differs from a mere application for ascertainment of mesne profits and that a memorandum of appeal of this kind is liable to ad valorem court-fee under Art. 1 of Sch. I, Court-fees Act.

When mesne profits have once been definitely ascertained in execution, the plaintiff is certainly capable for ascertaining the exact amount which he claims, and the defendant knows definitely the amount of the liability which he is seeking to escape."

16. This case also accepts the principle that, where the amount is ascertained or ascertainable, ad valorem court-fee should be paid on the amount or the value of the subject-matter of the appeal.

17. The same High Court again in Sheobhajan Singh v. Manik Chand Sahu, AIR 1948 Pat 103 (I) considered the question of the court-fee payable in an appeal against an order rejecting the claim for

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future mesne profits. There, a suit for possession and for future mesne profits of certain property was dismissed by the trial Court but, in appeal, the claim for possession was decreed, while the relief as to future mesne profits was refused. The defendant appealed from the decree for possession and the plaintiff filed cross-objections on the ground that the lower appellate Court had erred in refusing the relief as to future mesne profits.

Meredith J. held that the claim in the cross-objection in so far as it related to a fixed period, namely, from the date of the institution of the suit to the date of the decree for possession, was no longer a claim in respect of future mesne profits but was a claim in respect of antecedent mesne profits but was a claim in respect of antecedent mesne profits and, therefore, the cross-objector must value that claim and pay ad valorem court-fee thereon.....We need not, in this case, consider the correctness of this decision for this is contrary to the view expressed by the Madras decision.

18. Having regard to the provisions of the Court-fees Act and the decisions interpreting the said provisions, the law may be briefly stated thus : "In a suit for mesne profits whether past or future, if the mesne profits are ascertained and decreed, the party preferring an appeal should pay court-fee on the amount or value of the subject-matter in the appeal. If the defendant files an appeal seeking to get rid of the decree in whole or in part, he will have to pay court-fee in whole or in part on the amount decreed which he seeks to vacate.

If a plaintiff seeks to file an appeal questioning the correctness of the amount ascertained and decreed in his favour, the subject-matter of the appeal will be the excess amount he claims to have over that already awarded to him, and, therefore, he will have to pay ad valorem court-fee on the additional amount he claims. In either case, the mesne profits are ascertained and the party, be he a plaintiff or a defendant, know the exact amount, which is the subject-matter of appeal." We answer the reference accordingly.

19. One month's time from today is granted for payment of deficit court-fee.

Reference Answered Accordingly .