Mt. Kulsumunn-Isan vs Khushnudi Begum And Anr. on 5 August, 1953

Equivalent citations: AIR1954ALL188

JUDGMENT

Brij Mohan Lall, J.

1. This is an appeal by a plaintiff under Section 6A, Court-fees Act. The appellant instituted a suit in the Court of the Civil Judge of Agra, claiming several reliefs of which the following is the only relevant one viz.:

> "That the plaintiff be delivered possession over the land in dispute marked by letters A, B, C, D, E, F, G, H and shown in red colour in the attached plan by dispossessing defendant 1 therefrom and by the demolition of the constructions made unauthorisedly by her in the portion A, H, G of the said land in dispute."

2. This relief was valued at Rs. 6,000/-. A plea was taken in defence by the defendants that the subject-matter of the suit should be valued at Rs. 60,000/- and not Rs. 6,000/-. A Commissioner was appointed by the Court to assess the valuation of the subject-matter of the suit and, according to his report, the subject-matter should have been valued at Rs. 21,445/-, Both parties lodged objections against the Commissioner's report. The learned Civil Judge rejected the objections of both parties in a summary judgment and called upon the appellant to pay the deficiency of Rs. 937-8-0 as calculated on the basis of the Commissioner's report. Dissatisfied with this order, the plaintiff has preferred this appeal.

3. The defendants have filed a cross-objection and their contention is that the market value of the Land in question should be fixed at Rs. 60,000/-.

4. The cross-objection may be disposed of first. It is provided by Order 41, Rule 22, Civil P. C. that a respondent "though he may not have appealed from any part of the decree may.....take any cross-objection to the decree which he could have taken by way of appeal."

It is, therefore, obvious from the very language of the statute that a cross-objection can be taken in respect of that matter only which could be agitated by means of an appeal, if the respondent had so chosen to do. In the matter of court-fee, however, law has conferred a right of appeal on the plaintiff alone but not on the defendant. If the respondents had thought fit to prefer an appeal against the decision of the learned Civil Judge, they could not do so. In the circumstances, they cannot file a cross-objection also because that would amount to circumventing the law. If a cross-objection is allowed to be filed in respect of a matter which could not be agitated by means of an appeal, the very

purpose of the law will be defeated I am, therefore, of the opinion that the cross-objection is not maintainable. It is dismissed with costs.

5. Taking up the appeal, the first point to decide is as to which section of the Court-fees Act governs a suit like the present. The parties are agreed that Section 7(v), Court-fees Act will apply to a case like the present, although they differ as to which sub-clause will be applicable to this case. Section 7(v) says that in suits for possession of land, buildings or gardens, the court-fee shall be levied "according to the value of the subject-matter". Thereafter rules have been laid down for determining the value of the subject-matter. The point for decision in the present case is as to what is the subject-matter of the relief in question. It is the land itself or also the buildings that stand thereon?

It has been contended on behalf of the appellant that the subject-matter of this relief is the land itself and not the buildings standing thereon. On the contrary, it has been urged on behalf of the respondents that the buildings are also the subject-matter of the dispute and their value should also be taken into consideration. It is, therefore, contended on behalf of the respondents that the present suit falls Under Section 7(v)(II), while the learned counsel for the appellant maintains that the suit falls under Section 7(v)(I)(c).

6. If a plaintiff brings a suit stating that he, owns certain land and also the buildings standing thereon, that he has been dispossessed by the defendant from the land as well as the buildings and he seeks possession over both the land and the buildings, the subject-matter of dispute will certainly be the land as well as the buildings. But if the plaintiff comes with the allegation that he owns the land and that the defendant has unlawfully taken possession of the land and made constructions thereon without his consent and if he further prays that the land alone be delivered to him and the buildings be allowed to be removed by the defendant, the buildings standing thereon are not, in my opinion, the subject-matter of the suit. It may be pointed out that he does not seek possession over the buildings.

Section 7(v), which imposes on the plaintiff the obligation to pay court-fee in respect of the subject-matter, contemplates a suit for "possession' of that subject-matter. Since possession is not sought over the buildings in this case court-fee cannot be levied in respect of the price of the buildings. To hold that in such a case a]so the buildings would be the subject-matter of the suit would mean placing this class of case on the same level with a suit in which possession is sought over the land as well as the buildings.

7. This point arose for decision in the Full Bench case of -- 'Jogal Kishore v. Tale Singh', 4 All 320 (A). Stuart C. J. made certain observations on pages 327-328 which' bear quotation. He remarked as follows :

> "In Section 7, Sub-section (v), there is a court-fee provided for 'suits for the 'possession' of land, houses, and gardens, according to the value of the subject-matter', ...and if this expression 'subject-matter' could be detached from the opening words of the same Sub-section, it might perhaps be considered to cover a claim of the nature made in these limits, but the words 'subject-matter' in this

> provision must, I think, be read not irrespective of but 'with' the commencing words of the same sub-section, 'for the possession of land, houses and garden'.....And of course if that be the true view of the present state of the law as provided by the Court-fess Act of 1870, the value of the buildings in these two cases sought to be demolished is not to be taken into account in estimating the court-fees to be charged in the suit."

In a separate and concurrent judgment, Tyrrell J., (Straight and Brodhurst JJ., concurring), observed as follows:

> "But he (plaintiff) need not pay on the value of the buildings raised by the defendant. This is not a proper factor in the estimate of the plaintiff's reliefs. He must pay on the title he asserts the thing he wants to recover, or the equities he has to vindicate, not on any considerations of what cost or charges or loss his success in his suit may entail on the defendant."

The judgment goes on to add:

> "The answer therefore in this as well as in the other referred case should be that the value of the buildings which may have to be demolished is not to be taken into account in estimating the value of the suit for the purposes of the Court-fees Act....."

8. It is true that the relief in question is to be distinguished from another relief in which the only prayer is for possession of land. The relief in question differs from the relief claiming possession only without demolition in this much that it contains a prayer for demolition also. Therefore, while holding that, in a case like the present, the value of the buildings is to be excluded from consideration, I must record a finding that a separate court-fee must also be paid for the relief of demolition. That court-fee will not be paid under Section 7(v) but under Article 17(vi) of Schedule 2, 'Court-fees Act. That Article provides that for "every other suit where it is not possible to estimate at a money value the subject-matter in dispute and which is otherwise provided" for by this Act" a fixed court-fee of Rs. 18-12-0 is chargeable. I am, therefore, of opinion that the relief in question is, in substance, a combination of two reliefs, i.e., a relief for possession of land, which is governed by Section 7(v)(I)(c), and a relief for demolition, in respect of which court-fee is payable under Article 17 (vi), Schedule 2, Court-fees Act.

9. Having determined this basic principle, it remains to find out the market value of the land under Sub-clause (c). This clause runs as follows:

> "Where the land pays no such revenue, or has been partially exempted from such payment, or is charged with any fixed payment in lieu of such revenue, and nett profits have arisen from the land during the three years immediately preceding the date of presenting the plaint--twenty times the annual average of such nett profits; but when no such nett profits have arisen therefrom, the market value, which shall be

> determined by multiplying by twenty the annual average nett profits of similar land for the three years immediately preceding the date of presenting the plaint."

10. It will appear that the Commissioner should have found out the average net profits of this land and should have multiplied the said profits by twenty. If no net profits had accrued from this land during the three years immediately preceding the date of the suit, he should have found out the average annual profits of a similar land and should have multiplied the figure so found out by twenty. This was the proper method for determining the net profits. Unfortunately the Commissioner seems to have overlooked this method of calculation. The provisions of Section 7(v)(I)(c) do not appear to have been present to the mind of the Commissioner because he has nowhere attempted to multiply the net profits by twenty.

The method adopted by him may be reproduced in his own words as follows:

> "I have therefore no exemplars before me and the only data before me is the rent of the shops standing on the plots in the vicinity and on a portion of the plot in dispute. Hence, I shall have to determine the value of the land on the rental basis of the hypothetical constructions believed to be standing on the land in suit."

This may or may not be a correct method, of determining the actual market value for the purposes of sale of the property, but certainly it is not the method recognised by Section 7(v)(1)(c) for the purposes of determining the court-fee.

What the Commissioner did may briefly be stated below. He took a portion of the area in dispute which is marked A, B, C, P. Relying on a certain judgment of the Rent Control Officer he accepted the price of this piece of land as Rs. 30/- per square yard. He calculated the price of the structure standing on that area at Rs. 4/8/- per square foot. Then he added the aforesaid two sums found out by him and fixed the total price of the land as well as the structure at Rs. 4,191/-. He worked out the annual net income after making a deduction of 25 per cent. on account of repairs, depreciation and taxes and fixed the income at Rs. 990/-. Therefrom he drew a conclusion that the rent yielded a return of 24 per cent. per annum, on the capital outlay. Having arrived at this conclusion, he took up another piece of land and found out the rent of the shops which stood on that piece of land. Having determined the income from the shops standing on that piece of land at Rs. 2,925/- and acting on the assumption that this was the yield at the rate of 24 per cent. per annum on the capital cost, he calculated the capital cost of the land as well as the buildings. Thereafter he made another assumption, viz., that the cost of building was Rs. 5/- per square foot.

Thus he determined the cost of the buildings standing on that land and, deducting the cost so found out from the capital value determined according to the above calculation, he fixed the price of the land. This procedure was very unsatisfactory. It was based on too many assumptions which may or may not be correct. In any case, this is not the method prescribed by the Court-fees Act. When the statute lays down a special method for calculating the value for a particular purpose, that method and that alone is to be followed.

11. The learned Judge has pointed out that in proceedings under Section 145, Cr. P. C. which, took place before the institution of the suit the appellant had made an admission in the course of a petition presented to that Court to the effect that the property in question was worth about Rs. 30,000/-. Reliance was placed on this admission and it was urged that since the figure contained in this admission is higher than the figure found out by the Commissioner, the appeal should be dismissed. This argument has no force. When the appellant said that the property in question was worth about Rs. 30,000/-, obviously she meant that the property (which included a portion of the construction also) could be sold in the market for that sum.

But the price which a property may fetch in the market by sale is not necessarily the same as the price calculated for the purposes of court-fee under Section 7(v)(1)(c), Court-fees Act. When the appellant made that admission in the petition aforesaid, she did, not mean to admit that for the purposes of court-fee also the value of the property was Rs. 30,000/-. I am, therefore, of opinion, that this admission does not stand in the appellant's way. Since the Commissioner has not correctly recorded the value of the subject-matter of the suit and the entire approach of the Commissioner and the Court below has been erroneous, this appeal must succeed.

12. The order of the Court below is set aside. The case is remanded to the Court below with directions that it shall proceed afresh to determine the value of the subject-matter of the suit in accordance with law. The costs of the appeal shall abide the result. The cross-objection is dismissed with costs.