

Shankar Ojha And Anr. vs Mt. Jotia on 27 October, 1950

Equivalent citations: AIR1952ALL605, AIR 1952 ALLAHABAD 605

JUDGMENT

Wali Ullah, J.

1. This is an appeal under Section 6, U.P. Court fees Act filed by the defts. & it is directed against an order passed by the lower appellate Court dated 2-6-1948, directing the appellants to pay the court, fee on the valuation of the appeal.

2. It appears that a suit for maintenance was instituted by one Mt. Jotia against the defts.-appellants. She was allowed to sue in forma pauperis. She was successful in the Court of first instance. Against the decree passed by the Court of first instance, the appellants went up in appeal to the lower appellate Court. A question of the sufficiency of court-fee payable on the memorandum of appeal arose on the report of the Inspector of Stamps. The learned Judge, who was seised of the appeal, decided that the report of the Inspector of Stamps was correct. He accepted it and ordered the appellants to pay court fee according to the value of the appeal. Against the order of the learned Civil Judge, the appellants have now come up in appeal to this Court. At the time of decision of the appeal under Order 41, Rule 11, Civil P.C., the learned Judge, Bind Basni Prasad J. expressed some doubts about the correctness of the decision in Shambhu Singh v. Mt. Parmeshwara Kuar, F.A.F.O. 21 of 1947, decided on 13-4-1949, by Seth J. He accordingly directed that this appeal be listed before a Division Bench. The view taken by the learned Single Judge, Seth J, in the case of Shambhu Singh v. Mt. Parmeshwara Kuar (ubi supra) is exactly the same as was expressed by him in the case of Chief Inspector of Stamps v. Brij Raj Singh, A.I.R. (37) 1950 ALL. 55. We shall deal with this case later in the course of this judgment.

3. We have heard learned counsel for the appellants in support of the appeal. Learned counsel has contended that the appellants could not be legally called upon to pay a higher court-fee than the amount of court fee payable by the plaintiff in the Court of first instance.

4. Section 7, Court-fees Act, provides for the manner in which court-fee in certain suits has to be computed. Section 7, as amended by the U. P. Legislature, stands thus:

"The amount of fee payable under this Act in the suits next hereinafter mentioned shall be computed as follows: (i) 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; (ii) (a) In suits for maintenance & annuities or other sums payable periodically according to the value of the subject matter of the suit & such value shall be deemed to be ten times the amount claimed to be payable for one year. . . .

Provided that in suits for personal maintenance by females or minors, such value shall be deemed to be the amount claimed to be payable for one year"

The rest of the provisions are not material for purposes of the present case.

5. In the Court of first instance, the plff. respondent was allowed to sue in forma pauperis. The question of giving the benefit of the proviso to the plff. therefore, did not arise. As mentioned above, the plff. was successful in the Court of first instance. When the defts. preferred an appeal in the lower appellate Court, the question of court-fee was raised. It was contended on behalf of the appellants that they were entitled to the benefit of the "proviso" appended to Sub-section (ii) of Section 7 inasmuch as the appeal arose out of a suit for personal maintenance by a female. The learned Civil Judge, however, repelled this contention as he held that the "proviso" was intended for the benefit of females & minors only.

6. The learned counsel for the appellants has contended that, in the first instance, the benefit of the proviso is available to females & minors when they sue for personal maintenance. When an appeal is filed against the decision given in such a suit, the benefit of the proviso is available to the appellant, be he the plff. or the defendant. Learned counsel has contended that in order to construe the proviso properly, it is necessary to bear in mind the definition of the word "suit" as given in Section 2 (iv) of the Act. Section 2, as amended by the U. P. Legislature, reads thus:

"In this Act unless there is anything repugnant in the subject or context :

(i) "Appeal" includes a cross-objection.

* * * * *

(iv) "Suit" includes a first or second appeal from a decree in a suit and also a Letters Patent Appeal."

7. The contention of the learned counsel is that, if the "proviso" to Sub-section (ii) of Section 7 be read along with the definition of the word "suit," it would appear that not only in suits for personal maintenance by females & minors, but also in all appeals arising out of such suits, benefit of the proviso has to be given to the appellant, whichever be the party who prefers the appeal. In support of his contention, learned counsel has referred us to a very recent decision of a learned single Judge of this Court in the case of Chief Inspector of Stamps v. Brij Raj Singh, A.I.R. (37) 1950 ALL 55. In that case, a suit was brought in forma pauperis for personal maintenance by a wife against her husband. No court-fee was paid. It was successful. Against the decision of the Court of first instance, the defendant preferred an appeal to the lower appellate Court. He paid court fees on the amount payable for one year to the plff. in accordance with the proviso to Section 7(ii)(a). The Chief Inspector of Stamps objected to the amount of court-fee paid, but his objections were overruled by the lower appellate Court. Thereupon the Chief Inspector of Stamps came up in revision to this Court. The revision also was dismissed. It was held :

"There is no separate provision for the assessment of court-fees payable in appeals arising out of such suits as distinct from the article providing for the payment of court-fees in the suit in such cases. There is, however, Section 2 (iv) according to which 'suit' includes a 'first' or 'second appeal' from a decree in a suit. Applying the definition of 'suit' to the 'proviso' to Section 7(ii)(a), the proviso would mean an appeal arising out of a suit Instituted for maintenance by a female or minor & therefore the value of the subject matter of the appeal would be deemed to be the amount payable for one year irrespective of the fact that it was filed by the male deft."

8. We have carefully examined the provisions of Section 7(ii)(a) as well as the provisions contained in the proviso, bearing in mind the definition of the word "suit" as given in Section 2 (iv), (as amended by U. P. Act XIX [19] of 1938 and U. P. Act IX [9] of 1941). It seems to us that by enacting Section 7(ii)(a), the Legislature clearly intended that in suits for maintenance & annuities, or other sums, payable periodically 'court-fee should be calculated according to the value of the subject matter of the suit, and such value, in an ordinary case was to be deemed to be ten times the amount claimed to be payable for one year. The "proviso" to the sub-clause was added by Section 6, U.P. Act XIX [19] of 1938. By adding the "proviso," the Legislature seems to have intended that females and minors suing for their personal maintenance should be given a substantial concession in the matter of the payment of court-fee. Both these classes of persons are obviously persons who require special consideration in the matter of court-fee & the Legislature has shown that consideration by appending the "proviso." The benefit of the proviso must, therefore, it seems to us be confined to females & minors. In their case--and in their case alone--it seems to us, the value of the subject-matter of the suit, if it is a suit for personal maintenance, is to be the amount claimed for maintenance for one year. Beyond these two classes of persons, we think, the Legislature never intended to give any benefit of the proviso to anyone else.

9. We have also carefully considered the definition of the word "suit" as contained in Section 2 (iv). The effect of the definition of the word "suit" in Sub-clause (iv) of Section 2 is that, unless there is anything repugnant in the subject or context, whenever the word "suit" occurs in the body of the Act, it has to be understood as not only a "suit" strictly so called, but also a "first" or a "second" appeal from a decree in a suit as well as a "Letters Patent appeal."

10. Reverting to the proviso to Section 7(ii)(a), we find that the words are : "Provided that in suits for personal maintenance by females & minors, such value....." From the definition of the word "suit" it follows that we may, if occasion arises, read for the word "suit" in the proviso, the words "first appeal" or "second appeal" or even "Letters Patent appeal." Such appeal must necessarily be an appeal arising out of a suit for personal maintenance by a female or a minor. When the proviso is sought to be applied to an appeal, it seems to us clear that the appeal must also be filed by a female or a minor. Since the word "suit" includes appeal, the expression "by females & minors" must also refer to appeals instituted by them. If that be a correct interpretation of the "proviso," in the light of the definition of the word "suit," as we are inclined to think that it is, it would follow that the definition of the word "suit" does not really help the appellants, for the benefit of the proviso would be available only to females & minors when they either institute a suit or file a first or a second or even a Letters Patent appeal arising out of suits for personal maintenance.

11. In this view of the matter, with great respect, we are not able to share the views expressed by the learned single Judge in the above mentioned case.

12. The result, therefore, is that the appeal has no force & it is dismissed with costs.