Onkar Mal And Ors. vs Ram Sarup And Ors. on 28 April, 1954

Equivalent citations: AIR1954ALL722, AIR 1954 ALLAHABAD 722

Author: V. Bhargava

Bench: V. Bhargava

JUDGMENT

Hari Shankar, J.

1. This is a court-fee matter in a second appeal by the plaintiffs.

2. In order to appreciate the question of court-fee raised before us it is necessary to state a few facts. The plaintiffs brought a partition suit in respect of a house in which they claimed a moiety share. It was alleged in the plaint that the plaintiffs were in joint possession of their half share ever since its purchase on 11-1-1937, from the father of the defendants for a sum of Rs. 1,500/-

3. The above suit was contested by the defendants-respondents. They denied the fact that the plaintiffs were co-owners of the house. They further denied that the plaintiffs were in possession of the share claimed by them. The question whether the plaintiffs were in joint possession of the house was the subject-matter of issue No. 3, which, ran thus:

"Are the plaintiffs in possession of the house? If not, what is the effect?"

Both sides led evidence on this issue. On the evidence produced in the case the trial Court held that the plaintiffs had not established their joint possession over the house,

4. On the question of title also, the trial court held that the plaintiffs had failed to establish that they were co-owners in the property in suit.

5. Dissatisfied with the decision of the trial Court the plaintiffs went in appeal before the District Judge of Sitapur, who dismissed the appeal and affirmed the findings of the trial Court.

6. The plaintiffs have now come up in second appeal. On the presentation of the memorandum of appeal the Stamp Reporter of this Court made a report about the deficiency in court-fee not only in this court but in the two Courts below also.

In the report it was pointed out, on the basis of the findings of the two Courts below, that as the

plaintiffs were not in joint possession of the house and as the title to the house was also denied, the case falls under the second part of Sub-section (vi-A) of the Court-fees Act, which requires the payment of 'ad valorem' court-fee on the full value of the share claimed. Since the plaintiffs had paid court-fee on one-fourth value of the share claimed under the first part of Sub-section (vi-A) of Section 7 a deficiency of Rs. 414/67- was found due against the plaintiffs as the total deficiency payable by them in the three Courts.

7. When the report was placed before the Taxing Judge of this Court, it was urged on behalf of the appellants that the question whether the plaintiffs were in joint possession of the share was still an open question to be decided in second appeal, and until that question was decided the plaintiffs could not be asked to pay 'ad valorem' court-fee on the full value of the plaintiffs' share.

In support of this contention the appellants relied on the case of -- 'Parmeshur Din v. Hargobind Prasad', AIR 1939 Oudh 90 (A).

Learned counsel for the State, however, relied on a later decision in -- 'Muneshwar Bakhsh v.

Har Prasad', AIR 1945 Oudh 207 (B) for the contrary proposition that where on the finding of the two Courts below it appears that the plaintiff was out of possession of the share claimed in a partition suit, he should be asked to pay 'ad valorem' court-fee on the full value of his share before the appeal could be admitted for hearing on merits.

In view of the general importance of the question the Taxing Judge referred the matter for consideration by a Pull Bench.

8. It is not disputed that the question of court fee in this partition suit is governed by Sub-section (vi-A) of Section 7, Court-fees Act, which was inserted by Section 11 of the U. P. Amending Act 19 of 1938, which runs thus:

> "7. The amount of fee payable under this Act in the suits, next hereinafter mentioned shall be computed as follows :
>
> (vi-A) In suits for partition..... according to one quarter of the value of the plaintiffs share of the property, and according to the full value of such share if on the date of presenting the plaint the plaintiff is out of possession of the property of which he claims to be a coparcener or co-owner, and his claim to be a co-parcener or co-owner on such date is denied. 'Explanation'. The value of the property for the purposes of this sub-section shall be the market value which in the case of immovable property shall be deemed to be the value as computed in accordance with Sub-section (v), (v-A) or (v-B) as the case may be."

9. The aforesaid sub-section contemplates two modes of valuation.

If in a partition suit, the plaintiff is in joint possession of his share in the property, he has to pay a court-fee equivalent to one-fourth of the value of the plaintiff's share. If, however, the plaintiff is out of possession of the property and if his claim to be a co-sharer or his title as coparcener or co-owner is denied, then the plaintiff is required to pay court-fee on the full value of his share. It is not disputed that if this case falls under the second part, then the plaintiffs have to pay the court-fee on the full value of their share which is Rs. 1500/-.

10. Learned counsel for the appellants has challenged the correctness of the report of the Stamp Reporter. His contention is that the question relating to the payment of court-fee must be governed by the allegations and prayers in the plaint and, on the allegations made in the plaint, the court-fee is payable on the basis of the first part of Sub-section (vi-A) of Section 7.

In support of this contention learned counsel for the appellants relied upon the case of -- 'Asa Ram v. Jagan Nath', AIR 1934 Lah 563 (FB) (C), where it was held that in determining the provisions of the Court-fees Act applicable to a particular suit the allegations made by the plaintiff alone must be considered and the pleas raised by the defendant do not affect the question. The decision arrived at in the aforementioned Lahore case cannot be of such assistance, as in the case before us we have to consider the applicability of the particular provision in the Court-fees Act which was inserted by the U. P. Amending Act 19 of 1938.

11. As regards the general rule that the Courts must base their decision as to the court-fee pay-able on the allegation and prayers in the plaint it seems to us that there is a certain amount of mis-apprehension as to the true meaning and real Scope of this general rule. It is, therefore, necessary to consider the real import of the general rule that the court-fee should be made payable on the allegations and prayers as contained in the plaint.

12. An examination of the law of Court-fee will reveal that when a plaint is presented, two questions ordinarily arise for scrutiny. In the first place, the plaint has to be examined to find out the real nature of the suit, that is to say, as to under which of the several categories of suits mentioned in the Court-fees Act the particular suit falls, This is what is generally called the classification of the suit in the first instance.

After this is done, the next stage is to find out the relevant provision in the Court-fees Act for the purpose of computation of court-fees. No difficulty arises in those classes of cases where a fixed fee has been provided in Schedule II, but if a suit is of the category where 'ad valorem' court-fee is leviable, as in the present case, the court will proceed to value the subject-matter according to the rules for computation, as set out in the various parts of Section 7.

13. Coming back to the contention of learned counsel for the appellants, the general rule that the Court must base its decision as to the court-fee payable on the allegations and prayers in the plaint is correct only to this extent that the general rule is invoked primarily for the purposes of classification of suit; in other words, in order to find out the nature of the suit and the category it belongs to, the Court must examine the allegations and reliefs claimed in the suit for the simple reason that it is the allegations made in the plaint which determine the nature of the suit. In making

this classification about the category of the suit it is not permissible to call in aid the allegations made in the written-statement. See --'Safdar Husain v. Mt. Achcham Begam', AIR 1943 Oudh 456 (D).

The general principle, which is a rule of prudence, is followed strictly in the matter of determining the category of the suit and for that purpose attention must be confined within the four corners of the allegations in the plaint. Even in the matter of classifying the suit the general rule is ignored where it appears, on the construction of the plaint, that the real relief sought is something different than what is asked for in the disguised form. The Court must then intervene and ignore the ostensible form and language adopted in the plaint.

14. In the matter of computation of court-fee the aforesaid general principle cannot have so wide a scope as it has in determining the nature of the suit. After the category of the suit has been ascertained, the Court has to find out whether the plaintiff has correctly valued the relief for purposes of court-fees in the manner laid down in Section 7 of the Court-fees Act. This process also involves the examination of the plaint allegations and, if there is nothing to indicate otherwise, the plaintiff's valuation 'prima facie' is accepted as correct. Ordinarily, the Court would accept court-fee paid in the first instance as correct, but if it transpires subsequently that an allegation of fact on the basis of Which the court-fee was computed is not correct, then it is within the power of the Court to demand additional court-fee before the judgment is pronounced.

Section 6, Court-fees Act directs that no document (which term includes a plaint) which is not properly stamped shall be received unless it bears proper court-fee paid according to the provisions of the Court-fees Act. It was with a view to recognise the power of a Court to realise additional court-fee that the Legislature thought it proper to enact Order 7, Rule II (c) as also Section 149, Civil P. C. Take for instance a case in which the plaintiff sues for possession of a house which he values at its. 500/-. If the defendant contests this valuation, the Court must first determine the market value of tile house in the manner laid down in Section 10, Court-fees Act, and if it comes to the conclusion that the market value of the house for the purpose of court-fee is Rs. 1,000/-, it has the power to demand the additional court-fee which if not paid would entitle the Court to reject the plaint.

It is thus evident that the general rule that the payment of the court-fee must abide by the allegations in the plaint in all circumstances cannot be accepted as correct. Where the court has reason to think on the material placed before it that the plaintiff has made false or incorrect allegations with a view to avoid payment of Court-fee, the Court has power to intervene and realise court-fee at any stage of the proceedings in the case. If, however, the mistake is not detected by the trial Court and also by the appellate Court, the power of the High Court to require payment of the court-fees that should have been paid in the lower Courts is expressly recognised in the second part of Section 12, Court-fees Act. It is, therefore, not correct to say that even in the matter of computation of court-fee, plaint allegations should be accepted as the last word on the question of the payment of court-fee.

15. Coming to the case before us, the allegations in the plaint show that it is a partition suit which is governed by Sub-section (vi-A) of Section 7, Court-fees Act for computing the proper court-fee. The

court-fees paid by the plaintiffs was accepted as correct because the plaintiffs had asserted in the plaint that they were in joint possession of the property to the extent of their share. In the initial stage it could not be said with any certainty whether the allegation was false or correct. The defendants having denied this assertion of the plain-tills, a specific issue on the question of joint possession of the plaintiffs was framed in the case. The Court, after evidence was gone into, recorded a finding that the plaintiffs were not in the joint possession of the property. In view of this finding it was open to the first Court to demand court-fee under the second part of Sub-section (vi-A) of Section 7, Court-fees Act before pronouncing final order in the case. It appears, however, that it escaped the notice of the trial Court to demand court-fee under the second portion of the aforesaid sub-section.

When the matter went up before the first appellate Court, it appears that the point that the plaintiffs should be asked to pay the court-fee under the latter part of Sub-section (vi-A) was not pointed out and therefore no court-fee was charged in that Court also. In view of the findings' of the two Courts below it cannot be disputed for the purposes of court-fee that the plaintiffs were out of possession of their share at the date when they brought the suit, and as such the court-fee should have been levied according to the valuation prescribed under the latter part of Sub-section (vi-A) of Section 7.

16. Learned counsel for the appellants has relied upon the general proposition of law that possession of one co-sharer is in the eye of law the possession of all the co-sharers in the property. Even this presumption is not available to the plaintiffs as the two Courts below have found against them on the question of their, title to a share in the house.

We do not, however, consider it proper to enter into this question at this stage because this will be a matter for consideration when the appeal comes up for hearing on merits. At present for the purposes of court-fees, we must accept the finding of the two Courts below which is to the effect that the plaintiffs were out of possession of their share at the date when the suit was brought.

17. Now remains the second question whether the deficiency in court-fee as reported by the office can be demanded before the appeal is decided, it has been urged before us that the question whether the plaintiffs were in joint possession of their share or not at the date of the suit is a question which will have to be decided in second appeal and until the appeal is decided on merits the appellants should not be asked to pay the Additional court-fees.

We find it difficult to accept this contention. Learned counsel for the appellants has relied on the following observation in -- 'AIR 1939 Oudh 90 (A)':

> "The plaintiff was not liable to make good the alleged deficiency in the court-fee until the question of joint possession was not finally settled in appeal."

It may be pointed out with advantage that the aforesaid case was decided before the Court-fees Act was drastically amended by the U. P. Amending Act 19 of 1938, and as such the above remarks cannot be of any assistance in deciding the question before us.

18. The point which has been raised in this case came up for decision before a Bench in --'AIR 1945 Oudh 207 (E)'. The facts in that case were on all fours with the facts of this case. It was argued that the realisation of the deficiency should be postponed as the question whether the plaintiffs were in joint possession or not was a matter to be decided in the appeal.

The learned Judges rejected the contention and made the following observations :

> "The decision of the lower Court on the question of possession for the purpose of court-fee under the circumstances must be regarded as 'prima facie' 'correct and the appellants must pay the deficiency according to the full value of the share which they claim on partition."

The prohibition against the reception of a document which is not properly stamped is contained in Sections 4 and 6, Court-fees Act. The result of this prohibition is that unless a plaint or a memorandum of appeal is properly stamped, no Court can proceed to dispose of the case on merits. To enable the Court to consider the appeal on merits the memorandum of appeal must be a document which is properly stamped. It follows, therefore, that the question whether a memorandum of appeal is properly stamped or not must be decided first before the appellant can claim a hearing on merits.

Apart from this, the levy of court-fee is a sort of tax, which the State requires a litigant to pay before his cause can be heard and decided. If the contention of the appellants is accepted, then it would amount to giving a decision on merits without payment of proper court-fee.

We might usefully refer to Clause (3) of Section 6 of the Court-fees Act, which runs thus:

> "If a question of deficiency in court-fees in respect of any plaint or memorandum of appeal is raised by an officer mentioned in Section 24-A the Court shall, before proceeding further with the suit or appeal, record a finding whether the court-fee paid is sufficient or not. If the court finds that the court-fee paid is insufficient, it shall call upon the plaintiff or the appellant, as the case may be, to make good the deficiency within such time as it may fix, and in case of default shall reject the plaint or memorandum of appeal."

This clause was inserted with a view to make it clear that it was the bounden duty of Courts to decide all questions of court-fee as a preliminary question before entering into the merits of the case. The question of court-fee therefore, has to be decided on the basis of facts, as they stand at the time when the memorandum of appeal is filed in the Court. The decision of the two Courts below that the plaintiffs were never in joint possession must be accepted as correct for levying the proper court-fee, and in view of the finding of the Courts below it cannot be doubted that the case is covered by the second part of Sub-section (vi-A) of Section 7. The report relating to deficiency is correct, and the deficiency must be made good first before the memorandum of appeal can be admitted.

19. We, therefore, accept the report of the Stamp Reporter and direct the appellants to pay the deficiency in court-fee of Rs. 414-6-0 within three months from to-day. If the deficiency is not made good within the time allowed, the memorandum of appeal shall stand rejected.

V. Bhargava, J.

20. I have had the benefit of reading the judgment of my brother Hari Shankar J., and I entirely agree with him but I would like to add a few comments on the question of applying the general rule that the courts must base their decision as to the court-fee payable on the allegations and prayers in the plaint.

It is obvious that this general rule can only be applied in cases where the language of the Court-fees Act does not expressly or impliedly require that, besides the allegations and prayers in the plaint, the court-fee should be determined on other considerations also. Section 7(vi-A), Court-fees Act, which prescribes the court-fee in suits for partition, has two parts:

> There is the general rule that the court-fee is payable according to one-fourth of the value of the plaintiff's share of property but this is qualified by the second specific rule that the court-fee is payable according to the full value of such share if, on the date of presenting the plaint, the plaintiff is out of possession of the property of which he claims to be co-parcener or co-owner, and his claim to be a co-parcener or co-owner, on such date is denied.
>
> To apply this second alternative, courts have to go into the question whether the plaintiff is or is not out of possession on the date of presenting the plaint and whether his claim to be a coparcener or co-owner on such date is denied. It is obvious that the legislature could not have intended that on these points, the plea taken by the plaintiff must be accepted finally for purposes of working out the valuation to determine the court-fee payable because if that were so, the plaintiff in every case could make this clause ineffective by pleading in the plaint that he is in possession, or, by alleging that his claim to be a co-parcener or co-owner is not denied.
>
> The language used clearly indicates that it is not the plaintiff's assertion on these points which must be accepted. In such cases, therefore, though the court-fee may initially be accepted as correct according to the allegations made by the plaintiff in the plaint, the court is required to revise its opinion and ask for the requisite court-fee under the second part of that clause on coming to the view that the plaintiff is out of possession of the property and that his claim to be a co-parcener or co-owner is denied. The general rule of ascertaining the valuation, for purposes of court-fee, from the allegations and prayers in the plaint must, therefore, in such cases, be modified and I agree with my brother Hari Shankar, J., about the procedure that the courts should adopt in order to do so.
>
> Malik, C.J.

21. I agree and have nothing to add.