Motilal J. Boal Vs. U.R. Ramachar and anr.

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Court : Karnataka

Decided On : Feb-14-1952

Reported in : AIR1952Kant80; AIR1952Mys80; ILR1952KAR344

Judge : Vasudevamurthy, J.

Acts : Court-fees Act, 1870 - Sections 1 and 7 - Schedule - Article 11; Mysore Court-fees Act - Sections 4

Appeal No. : Civil Revn. Petn. No. 350 of 1951-52

Appellant : Motilal J. Boal

Respondent : U.R. Ramachar and anr.

Advocate for Def. : Mirle N. Lakshminaranappa, Adv.

Advocate for Pet/Ap. : S.K. Venkataranga Iyengar, Adv.

Judgement :

ORDER

1. The plaintiff has brought a suit in the Court of the Subordinate Judge, Bangalore, in effect for a declaration that he is entitled to enforce against defendant 1 and defendant 2 (who is said to have purchased the property from defendant 1 'pendente lite' certain restrictive covenants fixed by the Bangalore City Municipality at the time of ' sale by them of the vacant sites in the area in question in Gandhlnagar as to leaving of certain open spaces in their own site between his own and the defendants' property as well as in front of their own building and the nature of the building to be constructed on their own site; and for a permanent injunction directing the defendants to remove certain structures which the latter had constructed on their own site as being contrary to or in breach of those restrictive covenants.

The plaintiff valued the reliefs for purposes of jurisdiction and Court-fee at Rs. 3080 under Section 4(iv) (c) of the proviso to Mysore Court-fees Act. He valued at its market value the area of what he called 'the disputed area', that is the open spaces on which he objected to the defendants' building and paid court-fee on half the same. The defendants objected to this method of valuation and pleaded that the Court-fee paid was insufficient and that the subordinate Judge had no jurisdiction to try the suit. After hearing arguments the learned Subordinate Judge was of the view that 'the ambit' of the plaintiff's prayer embraced the entire structure on the site belonging to the defendants and

'that it was patently clear that the relief sought was with reference to the defendants' building constructed on the said site.'

He, therefore, held that the suit fell within the proviso to Section 4(iv)(c) and that the valuation for purposes of Court-fee should not be less than half the market value of 'the defendants' building over which the rights are claimed. This revision petition has been faded by the plaintiff against that order.

2. It is contended by Mr. S. K. Venkataranga Iyengar, learned counsel for the petitioner, that the market value of the defendants' building is entirely irrelevant for the purpose of determining either the rights between the parties or the valuation for purposes of court-fee and jurisdiction; that the proviso to Section 4 (iv)(c) which lays down that in suits coming under Sub-clause (c), viz. to obtain a declaratory decree or order where consequential relief is claimed can only apply to cases where the relief sought is 'with reference to any immovable property' and that his suit is not with reference to any immovable property according to the construction placed on those words by certain decided cases to which he has referred. For this position he relics on a case reported in 'GURUNATHA CHETTIAR v. SECY. OF STATE', AIR 1936 Mad 201. where Varadachariar J. (as he then was) held that the 'prima facie' interpretation of the expression 'relief sought is with reference to immoveable property' is that the dispute in some sense should relate to immoveable property. That learned Judge has In his judgment referred to the view of Jackson, J., in 'VENKITA KRISHNA FATHER', In re : AIR1927Mad348 , that the proviso should be read with the clause so as to make 'with reference' to mean involving possession of land, houses or gardens.

3. The nest case cited for the petitioner is the one in In re : K. J. V. NAIDU' AIR 1946 Mac! 235, in which Somayya, J., referred to and relied on 'GURUNATHA CHETTIAR v. SECY. OF STATE', AIR 1936 Mad 201. That was a suit for a declaration that the plaintiffs had the customary and mamool rights, viz., to graze cattle and to take leaves and manure, to cut and take wood required for fuel and other building and domestic purpose etc., free of charge from a forest area belonging to another. It was held that it not being a suit relating to any title to immovable property, fell under Section 7, Clause (iv) (c) of the Court-fees Act and not under Section 73. Clause (iv) (c) which corresponds to Sub-clause (c) ot the same section. Somayya, J., then observed:

'The only decision on the point is that of Vara-dachariar, J., in AIR 1936 Mad 201 : 59 Mad 962 and, in my opinion, that is the correct view to take. It is preposterous to say that where a plaintiff wants a right of passage across his neighbour's land the plaintiff should be called upon to pay Court-fee on half of the full value of the neighbour's land. There are other difficulties in the way of accepting the petitioner's argument. Obviously such cases come under Section 7, Clause (iv) (e) and that result is achieved by confining the Madras Amendment to cases where title to possession of immovable property is involved.....'

4. '18 Mys. L J. 489' is the next case on which reliance is placed for the petitioner. That ease related to a suit for declaration that the plaintiff was the manager of a Mosque and by virtue of his office entitled to receive rents of some shops attached to it and for a permanent injunction restraining the defendants from interfering with the exercise of his rights. The trial Court held that the court-fee was to be calculated on half the market value of the Mosque and the shops under Sec. 4 (iv) (c) of the Mysore Court-fees Act and that the same valuation would also govern the jurisdiction of the

Court. On revision, it was held toy this Court that the suit was one where it was not possible to estimate in money value the subject matter of the dispute and was not otherwise provided for by the Act and that the relief for a declaration which the plaintiff wanted was not one capable of valuation. Consequently court-fee was to be levied under Article 11 (b) of Schedule II of Court-fees Act. Mr. Venkataranga Iyengar represents that it may be that his suit does not fall under Clause (iv) (c) at alt so that the proviso will have no application but really under Clause (iv) (e) as a suit to enforce the right to some benefit not otherwise provided for and arise out of land. In such a suit the plaintiff was entitled to value the relief he sought and pay court-fee on such valuation.

5. Mr. Lakshminaranappa, learned Counsel for respondent 2, argues that 'with reference to immovable property' means concerning or pertaining to, and is sufficiently wide to include any claim for relief however short it may be to actual possession of or title to it, and has relied on the ordinary dictionary meaning of the word 'with'. He has referred to a case reported in 'THE KING v. WILLIAM JONES', (1929). 1 K B 211, where Avory, J, described 'with reference to' as equivalent tc 'affecting' and to the observations of Lord Hewart C. J., about the scope of the words 'with reference to.' He has also referred to 'DURHAM & SUNDER. LAND RLY. CO. v. WALKER', (1842) 114 E R 364 at p. 374, where it is observed that the word 'with' must be taken to mean and as 'incidental thereto'.

He has also cited 'SHRINATH SINGH v. KASHI NATH RAO' : AIR1951All570 , Which was a suit for an injunction restraining the defendants from interfering with the plaintiffs' user of the land in dispute and where it was observed that though there was no doubt that the plaintiffs did not claim any proprietary rights in the immovable property, the immovable property itself was involved in or affected by the relief sought by the plaintiffs and under explanation I the market value of such property had to be ascertained as laid down by Section 7, Clause (v) of the Court-fees Act. That judgment, beyond saying that

'the immovable property involved in or affected by the relief or which is referred to in the relief is the land itself and it is the value of that land that has been taken into account by the Court below.'

does not furnish any further reasons for that conclusion, and I am not inclined to accept) that reasoning. He also contends that it is not open to the plaintiff to put his own arbitrary valuation on the declaration or injunction which he seeks and that the Court can in a proper case direct him to make a proper valuation.

6. I am not impressed with the reasoning of the Court below that in a case like the present the valuation for purposes of court-fee should not be less than half the market value of the defendants' building. No rights are claimed as against that building as the plaintiff is only claiming that certain rights of his own should be preserved and left inviolate and not interfered with. This has no relation or reference either to any claim to possession or ownership by the plaintiff over the defendants' land, much less their building. To hold otherwise and compel the plaintiff to pay court-fee on his plaint according to the value of the building which the defendants are putting up on their own site may make it impossible for even an honest and poor litigant to join issue with his neighbour with reference to his own rights.

We are concerned with a fiscal enactment and unless it is quite clear I think the

Courts ought to hold more in favour of the subject than of the State when there is room for real doubt as to whether very much heavier or lesser court-fee is to be collected though, if it is clear that the plaintiff's case falls under any specific provision of the Court-fees Act, he cannot be allowed to escape paying the court-fee due by him merely on any ground of kindness. In the present case the plaintiff does not and cannot object to the defendants putting up a building of whatever value they like on their own property. Possibly a decent or artistic building suited to the area may even enhance the value of the plaintiff's property. All that he is concerned with is to see that his own interests are not jeopardised and that his own building does not lose any value and that it gets the necessary light and air and is not deprived of the amenities which are inherently due to it based on the place where it is located, and the general laws, and the sanitary or health rules governing the construction of houses in the area.

7. It is urged that the petitioner is only concerned with the non-construction of the defendants' building on the portions of the defendants' site which they are bound to keep vacant and on the kind of building which they can lawfully put upon it, that the nearest way in which he can value his suit, even if it is held to fall under Section 4 (iv) (c) is by valuing the vacant site and that he has so valued it. I think there is considerable force in this contention. I would, however, think that this case really falls under Sec. 4 (iv) (e) as one to secure a right to some benefit not otherwise provided for in the Court-fees Act to arise out of the land as contemplated in In re: 'K. J. V. NAIDU'. AIR 1946 Mad 235. Even in such a case the plaintiff can state the amount at which he values the relief sought.

8. Mr. Lakshminaranappa has in this connection referred to a case in 'MIR AKHTAR HOS-SAIN v. GUBUPADA HALDAR', ILR (1940) 2 Cal 33. where it was held that the value of the relief claimed would be the amount which represents the difference between the value of the property on the assumption that the injunction claimed by the plaintiff could be obtained and its value without such injunction and the suit should be valued accordingly. With great respect to that learned Judge who decided that case, I think that method of valuation perhaps is difficult and impracticable. In fact he himself has observed at page 36 of his judgment there might be some difficulty in arriving at a proper valuation in connection with a matter of that sort, taut he does not think that would be impossible to do so as the people acquainted with the land would probably be in a position to estimate at its approximate value as it stands at present and as it would be if the plaintiff succeeded in obtaining a permanent injunction in respect thereof.

It is also difficult to agree with the argument of respondent 2's counsel that the fall in the value of the plaintiff's house if the injunction is not granted or if the defendants are allowed to build in the way they like should be investigated and the plaintiff should be made to pay court-fee on that sum. This I think is equally difficult and impracticable. I think if the Court embarked upon an elaborate enquiry in matters of this sort it would be losing itself in deciding merely on a question of court-fee rather than concentrating on the merits of the case.

9. In the result I allow this petition and set aside the order of the Court below and direct the Court below to accept the valuation and court-fee as furnished by the petitioner as correct and proceed with the case in accordance with law as the defendants have nowhere stated that the market value of the open space is under-estimated. The parties will bear their own costs of this petition.

10. Revision allowed.