

Puvadi Chayanna Vs. Nanjappa and ors.

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Court : Karnataka

Decided On : Jan-19-1951

Reported in : AIR1951Kant111; AIR1951Mys111; (1952)30MysLJ20

Judge : Mallappa and ;Vasudevamurthy, JJ.

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

Appeal No. : Second Appeal No. 485/50-51

Appellant : Puvadi Chayanna

Respondent : Nanjappa and ors.

Advocate for Def. : M.R. Janardhanam and ;M.V. Raghunathan, Advs.

Advocate for Pet/Ap. : V. Krishnamurthi, Adv.

Judgement :

1. The question before us at present in this second appeal is as to the amount of court-fee payable on the memo of appeal. The pltfs. filed a suit for redemption of a mortgage with possession evidenced by a deed of mortgage for Rs. 800. They claimed to do so as purchasers of the mortgaged properties from defts. 1 to 6. Deft. 7, who is the appellant before us, pleaded that the pltfs. were not entitled so to redeem as the sale in their favour was nominal & collusive & was not meant to convey any title at all & that he himself had subsequently purchased the properties from defts. 1 to 6 in pursuance of a prior agreement of sale of which the pltfs. had notice. He also pleaded that he had spent monies for re-building & improving the first item mortgaged which is a house, as it had fallen down, that he had also paid some taxes & that in any event he was entitled to receive these sums aggregating Rs. 3,506-8-0 before the pltfs. could redeem him. The pltfs. paid a court-fee of Rs. 80 on the plaint under Section 4 (ix), Mysore Court fees Act, which runs in the same terms as the corresponding Section 7(ix). Indian Court-fees Act, as follows:

'To redeem: ix. In suits against a mortgagee for the recovery of the property mortgaged... according to the principal money expressed to be secured by the instrument of mortgage:'

2. The learned Munsiff passed a decree holding that the pltfs. were entitled to redeem deft. 7 but that they were bound to pay Rs. 2,960 to him including the mortgage money as being the value of the improvements made & taxes paid by him. Against that decision the pltfs. preferred an appeal in R. A. No. 151/48-49 on the file of the

Additional Subordinate Judge at Kolar complaining that the amount decreed as payable to deft. 7 was much too high. Deft. 7 also preferred an appeal in R. A. No. 153/48-49 against the portion of the decree declaring that the plffs. were entitled to redeem. The Subordinate Judge allowed the plffs' appeal R. A. No. 151/48-49 in part. He held that deft. 7 had failed to prove that he had effected improvements & therefore, reduced the sum payable to him to Rs. 949-12-0 including the mortgage amount. He upheld the plffs', right to redeem & dismissed the appeal R. A. No. 153/48-49 preferred by deft. 7. Deft. 7 has preferred two appeals to this Court.

3. The first is against the concurrent decisions in R. A. No. 153/48-49. He has in that appeal paid a court-fee of Rs. 80 under Section 4 (ix) as in the suit & the same has been accepted as correct. He has filed this second appeal in respect of the decision in R. A. no. 151/48-49 & has paid on the appeal memo, a court-fee of a similar sum of Rs. 80 as payable under the same section of the Mysore Court-fees Act. The office called upon him to pay court-fee ad valorem on the difference between the amount awarded in his favour by the Munsiff & that awarded by the Subordinate Judge. The appellant questions the correctness of that demand & has brought up the matter before us.

4. Mr. V. Krishnamurthi, the learned Advocate for the appellant, contends that though Section 4 [IX] purports to apply to suits the principle in it is also applicable to appeals in those suits; that the court-fee he has paid in this second appeal is really more than what was really payable by him & that he need not have paid any court-fee at all in this second appeal in respect of the amounts claimed by him as he had already paid court-fees under s. 4 [ix] in the other second appeal where the question of the right to redeem was raised; that his client was forced to file two second appeals as there were two decrees passed by the Subordinate Judge & that his client cannot be compelled to pay court-fees in both the appeals merely on that account. There have been quite a large number of decided cases on this subject & they are not uniform and it is not quite easy to reconcile all of them, or to deduce any common general principle. But in *Pachayakkal v. Shanmugavelayudhasami*, A. I. R. (30) 1943 Mad. 146, Happeil J. has sought to do so and observed that in assessing court-fee it is not the form but the substance of appeal that has to be considered, & has held that if an appeal against a decree in a suit brought for redemption relates only to the amount payable & not to the right of redemption, the court-fee must be paid ad valo. rem on the amount claimed to be payable. If the appeal purports to dispute both the right of redemption & the amount payable but in substance relates only to the amount payable, again court-fee must be paid ad valorem on the amount claimed; but if the right of redemption and the amount payable are disputed in appeal & both grounds are grounds in substance & not merely in form, the court-fee payable will be as if in a suit, under Section 7 [ix]. In the present case it is only the first of the alternatives that were concerned with; & in such cases the practice of this Court also appears to be to demand court-fees on that principle. That such a principle is correct is supported by the rulings of the several High Courts which we may consider.

5. In *Sekharam Nair v. Kongat Eacharan Nair*, it has been observed that in a case where in an appeal by the plff. or the deft, against a decree in a redemption suit the only question is as to the amount payable, the existence of a right to redeem cannot be said to be the subject-matter in dispute in the appeal memo, for the existence of that right is not disputed (as in the present appeal); the subject-matter in dispute is a definite amount & the memorandum falls under Article 1 of Schedule I for the purpose of computing court-fee; that is, court-fee is calculated ad valorem on the

subject-matter of the appeal.

5a. In Reference under Court-fees Act, 1870, 29 Mad. 36T, Sir Arnold White C. J. & Subrahmania Ayyar J. held that Section 7(e) Clause (ix) of the Court-fees Act applies only to suits & not to appeals & in the case of appeals in mortgage suits, Article 1 of Schedule I of the Act applies. The court-fee in such cases is payable on the value of the subject-matter in dispute in the appeal and not on the subject-matter in dispute in the suit. Though their observation that Section 7(e), Clause [ix] applies only to suits & not to appeals may be rather broadly stated, viewed in the light of other & more recent cases of other High Courts & even of the Madras High Court itself (vide A. I. R. (30) 1943 Mad. 146) that case is an authority for the position that the court-fee payable by a mortgagee in such circumstances as the present is to be calculated with reference to the amount in dispute in the appeal.

6. In re Tiruvangalath Nellyton Paidal Nayabi, 92 I. C. 624, it is observed that the principle of the Court-fees Act is that the pltf. should pay court-fee in proportion to the value of relief he seeks. That was a suit for redemption of a kanom & a decree for possession was passed on payment of the amount of the mortgage & the value of improvements. An appeal was filed which related only to the value of improvements payable. It was held in that case that Section 7(ix) of the Court-fees Act was inapplicable & that court-fee was payable on the memo, of appeal & not on the mortgage amount but ad valorem on the amount in dispute in appeal under Article 1 of Schedule I of the Court-fees Act.

7. In Nepal Rai v. Debi Prasad, 27 ALL. 447, in a suit for the redemption of the mortgage the pltff. obtained a decree for redemption conditional on the payment by him of a sum fixed in the decree. The pltff. appealed on the ground that such sum was in excess by a specified amount of the sum rightly payable by him for redemption. It was held that the court-fee payable on the memo, of appeal was to be calculated according to the sum which the appellant claimed to have deducted from his decree & not as in the case of a suit for redemption according to the principal sum secured by the mortgage.

8. In Mahadeo Prasad v. Gorakh Prasad, 30 ALL. 547, which follows 27 ALL. 447, it has been held that in the case of an appeal from the decree allowing the debt, mortgagor to redeem the mortgage on payment of a sum named therein based upon the ground that the mortgage debt has been satisfied out of the usufruct of the mortgage & nothing whatever was due from him, the proper court-fee payable was ad valorem fee upon the total amount of the decree under appeal.

9. In Bajilal v. Gobardhan Singh, 31 ALL. 265, in a suit for foreclosure a decree was passed in favour of the pltff. conditionally on redeeming a prior mortgage on payment of Rs. 5,914-6-5. The pltff. appealed assailing the validity of the prior mortgage & stamped his memo, of appeal with an ad valorem court-fee on the amount of the principal sum of money secured by the prior mortgage. It was held that the proper amount of court-fee payable was an ad valorem court-fee on the amount which the pltf. had been ordered to pay to the prior mortgagee.

10. Raghbir Prasad v. Shanker Bux, 36 ALL. - 40 it is pointed out that the criterion laid down in Section 7(ix) of the Court-fees Act, 1870, for determining the court, fee payable in respect of a suit for redemption or foreclosure of a mortgage does not apply to the appeal in such a suit.

11. In Harlal v. Siri Ram, A. I. R. (18) 1931 Lah. 633, it has been held that the court-fee payable on a memo of appeal is determined by the value of the subject-matter of the appeal & that if a redemption suit is decreed & the deft -appellant merely challenges the right, to redeem, the court-fee payable on the memo, of appeal has to be computed in accordance with the provisions of Clause (ix) of Section 7; while if a plfff. or deft, in appeal merely challenges the amount to be paid on redemption without questioning the right to redeem, the court-fee payable on the memo. of appeal ought to be on the subject-matter in dispute, that is on the additional amount claimed or the amount in respect of which the Appellant seeks to avoid liability.

12. In Sangat Baksh v. Rawat Dijdeo, A.I.R. (9) 1922 Oudh 82 this subject of court-fee payable under Clause (ix) of Section 7 is discussed in detail & it has been observed that it does not follow that where plaints are chargeable under Clause (ix) of Section 7 the memo, of appeals filed against decrees passed in such suits are invariably chargeable in the same manner for, it is said the suit may change its nature in appeal & though the original suit may be for redemption or foreclosure the appeal may be merely in respect of the amounts made payable by the original Court. In such a case the subject-matter in dispute in the appeal would clearly not fall under the provisions of Clause (ix) of Section 7. This case has been followed in Sant Baksh v. Dildar Hussain, A. I. R. (11) 1924 Oudh 170 where it has been held that a mortgagee in appeal claiming a larger amount than that awarded by the decree of the lower Court allowing redemption, must pay ad valorem fee on his memo of appeal calculated on the difference between the amount found due by the lower Court & that claimed by him in appeal.

13. With regard to Mr. Krishnamurthi's contention that merely because he has been forced to file two appeals he should not be compelled to pay court-fee on both of them, reference may be made to Shib Dayal v. Meharban, 43 ALL. 56 wherein it has been observed that the court-fees Act does not provide for the consolidation of appeals & therefore, if there are two appeals in the same suit & when one party files two second appeals, one against each decree in first appeal, the appellant will have to pay full court-fee on each of his appeals.

14. In the present appeal, the appellant is seeking to obtain a decree for the higher amount which was awarded to him by the Munsiff & which has been partly cut down by the Subordinate Judge. The extent of the difference which he claims now is the subject matter of this appeal. The proper provision of the Court-fees Act applicable to an appeal like the present one is not Section 4 (ix) of the Act but Article 1 of Schedule I which prescribes that on a memo, of appeal not otherwise provided for ad valorem court-fee according to the scale prescribed in col. 3 of that article & calculated on the subject-matter in dispute must be paid.

15. We are, therefore, of the opinion that the appellant is bound to pay ad valorem court fee on the amount in respect of which he has preferred this second appeal & we order accordingly. Time for payment one month.