SUJIR KESHAV NAYAK

v.

SUJIR GANESH NAYAK

DECEMBER 12, 1991

[K. JAGANNATHA SHETTY AND R. M. SAHAI, JJ.]

Kerala Court Fees and Suits Valuation Act, 1959: Section 36—Suit for dissolution of partnership and accounts—Court fee—Computation of—Defendant raising objection as to under-valuation of suit—Whether court can examine correctness of valuation and direct the suit to be properly valued—Court Fees Act, 1870: Section 7(iv)(f)—Civil Procedure Code, 1908: Section 15 and Order 7, Rule 11.

The appellant was carrying on business in partnership with the respondent. Consequent on differences between them, the appellant filed a suit for declaration that the partnership stood dissolved and the respondent was liable for rendition of accounts. The suit for purposes of court fee and jurisdiction was valued at Rs. 10,050. The respondent claimed that the appellant had withdrawn huge amounts from the account of firm at another place which the appellant was primarily looking after and, therefore, it was the respondent who was entitled for accounting to huge amount from the appellant. In replication, the appellant claimed that from the date of dissolution, a sum of Rs.28 lakhs was due to him. In view of this plea and on objection by respondent, an additional issue was framed about valuation of the suit.

The trial court held that in view of the appellant's claim that a sum of Rs. 28 lakhs was due to him on dissolution of partnership, it was obvious that the suit was under-valued. It, therefore, directed him to correct the valuation and pay the deficient court fee.

In revision, the High Court held that even though the Court was not ordinarily entitled to examine the correctness of the valuation shown by the plaintiff it has a duty to see whether the valuation so disclosed by the plaintiff was liable to be rejected as arbitrary and he could be compelled to give proper valuation and pay the court fee accordingly, and since from the claim made in the replication it was clear that the plaintiff had undervalued the suit by giving an arbitrary valuation, the order passed by the trial court was correct and the suit could be entertained only after the appellant-plaintiff corrected the valuation and paid the deficient court fee. Hence the appeal.

A Allowing the appeal, this Court,

HELD: 1. Where the question of court fee is linked with jurisdiction, a defendant has a right to raise objection and the court should decide it as a preliminary issue. But in those cases where the suit is filed in court of unlimited jurisdiction, the valuation disclosed by the plaintiff or payment B of amount of court fee on relief claimed in plaint or memorandum of appeal should be taken as correct. However, this does not preclude the court even in suits filed in courts of unlimited jurisdiction from examining if the valuation on averments in plaint is arbitrary. [415 C-D]

C *S.R.A.S.S.Sathappa Chettiar* v. *S.R.A.R.Ramanathan Chettiar*, [1958] SCR 1024; *Abdul Hamid Shamsi* v. *Abdul Majid and Ors*, [1988] 2 SCC 575; *R.S Jadhav Desai* v. *S.V.Jadhav Desai*, [1918] PC 188; *Meenakshisundaram Chettiar* v. *Venkatachalam Chettiar*, [1980] 1 SCC 616 and *Tara Devi* v. *Sri Thakur Radha Krishna Maharaj*, [1987] 4 SCC 69, referred to.

D 2.1 Various provisions of the Kerala Court Fees and Suits Valuation Act, 1957 or different sub-clauses of Section 7 of the Court Fees Act, 1870 contemplate three modes of valuation of the subject matter, namely, according to market value, or subject matter or estimate by plaintiff or according to which relief sought is valued. Payment of court fee on estimate by the plaintiff or on the relief sought is a method provided for E in such suits where the exact amount is not known or is not capable of being known till it has been adjudicated upon on evidence. [412H, 413A]

2.2 Sub-section (2) of Section 36 of Kerala Act amply safeguards the interest of revenue. Similar provisions exist in Central Act. But under Civil Procedure Code, plaint is liable to be rejected under Order 7 Rule F 11 if it is under-valued. To reconcile the two provisions, the one leaving it to absolute discretion of plaintiff to value the suit as he considers proper and the other to reject a plaint if it is under-valued, it is necessary to examine the scheme disclosed in the Civil Procedure Code relating to filing of suit. [413 F]

G 2.3 Section 15 of the Civil Procedure Code provides that any suit shall be instituted in the court of the lowest grade competent to try it. What is a court of lowest grade and for what nature of suit has been determined and regulated by State enactments. Competency refers to jurisdiction territorial or pecuniary, of limited or unlimited limits. In courts of limited pecuniary jurisdiction valuation assumes great importance. A plaintiff H may over or under-value the suit for purposes of avoiding a court of a

particular grade. In the former, the plaint may be returned under Order 7 Rule 10 for presentation in proper court but in the latter it is liable to be rejected. Since under-valuation goes to the root of maintainability of the suit, a defendant is entitled to raise the objection irrespective of the nature of the suit. However, a defendant is not entitled to use it as a weapon to non suit the plaintiff. [413 G; 414 A,C]

2.4 Therefore, in suits for accounting or for dissolution of partnership and accounting filed in courts of limited pecuniary jurisdiction, the plaintiff must take every care to disclose valuation which is not arbitrary as the plaint is liable to be rejected on objection of the defendant. But in suits of such nature filed before courts of unlimited jurisdiction, the valuation disclosed by the plaintiff may be accepted as correct. This, however, does not mean that the court's power to examine the correctness of valuation is taken away. If on perusal of plaint the court is *prima facie* satisfied that the plaintiff has not been fair and valued the suit or relief arbitrarily it is not precluded from directing the plaintiff to value it properly and pay court fee on it. But the defendant has no right to raise such objection nor the court should dwelve into the matter after filing of written statement on evidence. [414 F-G; 415 B]

2.5 In the instant case, the claim made by the appellant-plaintiff was as counter blast to the claim made by the respondent-defendant. Whether this claim was correct could be decided only after evidence was led. Therefore, the High Court, in a suit filed in a court of unlimited jurisdiction, was not entitled to direct the appellant-plaintiff to revalue the suit and pay court fee on it.[416E]

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 4897 of 1991.

From the Judgment and Order dated 2.4.1991 of the Kerala High Court in Civil Revision Petition No. 1988 of 1990.

K.N.Bhat and Mukul Mudgal for the Appellant.

Joseph Vellapally, K.J.John and Ms. Dipa Dixit for the Respondent.

The Judgment of the Court was delivered by

R.M. SAHAI, J. The question of law that arises for consideration in this appeal directed against judgment of the Kerala High Court is if the court fee liable to be paid under Section 36 of Kerala Court Fees and Suits Valuation

A Act, 1959 (hereinafter referred to as 'the Act') in a suit for dissolution of partnership and accounting is to be computed on the value of the plaintiff's share in a partnership as estimated by him or as found by the Court.

Computation of court fee under the Kerala Act is governed by Chapter IV of the Act. Section 35 of it deals with suits for accounts and Section 36 suit
B for dissolution of partnership. Since this appeal is concerned with Section 36 only it is extracted below:

> "36. Suits for dissolution of partnership-(1) In a suit for dissolution of partnership and accounts or for accounts of dissolved partnership, fee shall be computed on the value of the plaintiff's share in
C the partnership as estimated by the plaintiff.
>
> (2) If the value of the plaintiff's share as ascertained in the suit exceeds the value as estimated in the plaint, no decree, or where there has been a preliminary decree, no final decree, shall be passed in favour of the plaintiff, no payment shall be made out of
D the assets of the partnership and no property shall be allotted as for the plaintiff's share, until the difference between the fee actually paid and the fee that would have been payable had the suit comprised the whole of the value so ascertained, is paid.
>
> (3) No final decree shall be passed, no money shall be paid and no
E allotment of property shall be made in favour of a defendant in any such suit as, for or on account of, his share of the assets of the partnership, until the fee computed on the amount or value of his share of the assets of the partnership is paid."

F The scheme followed in chapter IV of the Act is analogous to method of computation of court fee provided for by Section 7(iv) and its various sub-clauses of Court Fees Act of 1870. Clause (f) of Section 7(iv) reads as under :

> "(f) for accounts-
>
G
>
> according to the amount at which the relief sought is valued in the plaint or memorandum of appeal;"

Various sections of the Kerala Act or different sub-clauses of Section 7 of Central Act contemplate three modes of valuation of the subject matter,
H namely, according to market value, or subject matter or estimate by plaintiff or

according to the amount at which relief sought is valued. Payment of court fee on estimate by the plaintiff or on the relief sought is a method provided for in such suits where the exact amount is not known or is not capable of being known till it has been adjudicated upon on evidence. In *S.R.A.S.S.Sathappa Chettiar* v. *S.R.A.R. Ramanathan Chettiar*, [1958] SCR 1024 this Court, while examining the scheme of computation of court fee in suits falling under Section 7(iv) of 1870 Act, observed,

> "If the scheme laid down for the computation of fees payable in suits covered by the several sub-sections of S.7 is considered, it would be clear that, in respect of suits falling under sub-s.(iv), a departure has been made and liberty has been given to the plaintiff to value his claim for the purposes of court fees. The theoretical basis of this provision appears to be that in cases in which the plaintiff is given the option to value his claim, it is really difficult to value the claim with any precision or definiteness. ..... That is why legislature has left it to the option of the plaintiff to value his claim for the payment of court fees. It really means that in suits falling under S.7(iv)(b) the amount stated by the plaintiff as the value of his claim for partition has ordinarily to be accepted by the court in computing the court fees payable in respect of the said relief."

Same reasoning applies to suits filed for dissolution of partnership and accounting under Section 36 of Kerala Act.

The question however is if the disclosure of valuation is in absolute discretion or option of the plaintiff or it can be objected to by the defendants and adjudicated upon by the Court, and if so in what cases. It was left open in *Chettiar's* case(supra). Provisions of Central and State Act have already been extracted earlier. Sub-section (2) of Section 36 of Kerala Act amply safeguards the interest of revenue. Similar provisions exist in Central Act. But under Civil Procedure Code plaint is liable to be rejected under Order 7 Rule 11 if it is under-valued. How to reconcile the two provisions, the one leaving it to absolute discretion of plaintiff to value the suit as he considers proper and the other to reject a plaint if it is under-valued. For this it is necessary to examine the scheme disclosed in the Civil Procedure Code relating to filing of suit. Section 15 of the Civil Procedure Code (hereinafter referred to as 'C.P.C.'). provides that any suit shall be instituted in the court of the lowest grade competent to try it. What is a court of lowest grade and for what nature of suit has been determined and regulated by State enactments. Competency refers to jurisdiction territorial or pecuniary, of limited or unlimited limits. In courts of

A limited pecuniary jurisdiction valuation assumes great importance. A plaintiff may over or under-value the suit for purposes of avoiding a court of a particular grade. In the former the plaint may be returned under 0.7 R.10 for presentation in proper court but in latter it is liable to be rejected. Since under-valuation goes to the root of maintainability of the suit a defendant is entitled to raise the objection irrespective of the nature of the suit. That is why this Court in *Abdul* B *Hamid Shamsi* v. *Abdul Majid And Ors.*, [1988] 2 SCC 575 while upholding the right of the plaintiff to value the suit for accounting according to his own estimate held that he "has not been given the absolute right or option to place any valuation whatever in such relief." But that was a case of limited pecuniary jurisdiction in which the defendant could object as arbitrary under-valuation could result in rejection of the plaint. Such right should be denied in suits of C unlimited jurisdiction for more than one reason. A defendant, as observed by the Privy Council in *R.S.Jadhav Desai* v. *S.V.Jadhav Desai*, 1918 PC 188, is not entitled to use it as a weapon to non suit the plaintiff. Then, by very nature of the suit a defendant is, normally, interested in delaying its adjudication which at times may frustrate the very purpose of the suit. Further, the provisions in Central Act and State enactments ensure that interest of State may D not suffer by providing that no decree shall be passed or executed unless the court fee is paid on difference between the valuation disclosed and amount for which the suit is decreed. In *Meenakshisundaram Chettiar* v. *Venkatachalam Chettiar*, [1980] 1 SCC 616 it was observed that even though in suit for accounting the loss of revenue is ensured by statutory provision yet a plaintiff has a duty to give a fair estimate of the amount for which he sues. Reason for E it obviously was insistence on being honest and just when approaching a court of law. The observation was made because of the duty cast on court by 0.7 R.11 of C.P.C. But there is no indication if the suit was filed in a court of limited pecuniary jurisdiction. It can thus be resolved that in suits for accounting or for dissolution of partnership and accounting filed in courts of limited pecuniary F jurisdiction the plaintiff must take every care to disclose valuation which is not arbitrary as the plaint is liable to be rejected on objection of the defendant. But in suits of such nature filed before courts of unlimited jurisdiction the valuation disclosed by the plaintiff may be accepted as correct. This, however, does not mean that the courts power to examine the correctness of valuation is taken away. If on perusal of plaint the court is *prima facie* satisfied that the plaintiff G has not been fair and valued the suit or relief arbitrarily it is not precluded from directing the plaintiff to value it properly and pay court fee on it. In *Tara Devi* v. *Sri Thakur Radha Krishna Maharaj*, [1987] 4 SCC 69 this Court observed, "It is now well settled by the decisions of this Court in *Sathappa Chettiar* v. *Ramanathan Chettiar* and *Meenakshisundaram Chettiar* v. *Venkatachalam Chettiar* that in a suit for declaration with consequential relief falling under H Section 7(iv)(c) of the Court Fees Act, 1870, the plaintiff is free to make his

own estimation of the reliefs sought in the plaint and such valuation both for the purposes of court fee and jurisdiction has to be ordinarily accepted. It is only in cases where it appears to the court on a consideration of the facts and circumstances of the case that the valuation is arbitrary, unreasonable and the plaint has been demonstratively undervalued, the court can examine the valuation and can revise the same." But the defendant has no right to raise such objection nor the court should dwelve into the matter after filing of written statement on evidence. The law on this aspect, thus, should be taken to be as under:

> (1) Where the question of court fee is linked with jurisdiction a defendant has a right to raise objection and the court should decide it as a preliminary issue.
>
> (2) But in those cases where the suit is filed in court of unlimited jurisdiction the valuation disclosed by the plaintiff or payment of amount of court fee on relief claimed in plaint or memorandum of appeal should be taken as correct.
>
> (3) This does not preclude the court even in suits filed in courts of unlimited jurisdiction from examining if the valuation, on averments in plaint, is arbitrary.

Coming to the facts the dispute arose between plaintiff and defendant who are real brothers who had been carrying on business in partnership since 1953. The share of plaintiff was 7/16 whereas that of the defendant was 9/16. In consequence of differences that arose the plaintiff-appellant filed suit for permanent injunction in which the defence taken was that the partnership had come to an end in March 1981. Therefore, the plaintiff filed the present suit for declaration that the partnership stood dissolved and the defendant was liable for rendition of account. The suit for purposes of court fee and jurisdiction was valued at Rs. 10,050. It was also mentioned that in case the amount found due in favour of plaintiff is more he shall pay the court fee on that. In written statement the defendant claimed that the plaintiff had withdrawn huge amounts from the account of firm at Bombay which the plaintiff was primarily looking after and, therefore, in fact it was the defendant who was entitled on accounting to huge amount from plaintiff. In reply to it the plaintiff in replication claimed that from the date of dissolution, i.e., from March 1981, a sum of Rupees Twenty Eight lakhs was due to the plaintiff. In view of the plea raised in replication and on objection raised by defendant additional issue was framed about valuation of the suit. The issue was decided as a preliminary issue. The trial court held that the plaint was silent as to which of the relief was valued

A under Section 36 of the Act. The court, however, held that from the plaint it was clear that the declaratory relief and the relief for rendition of account were valued under Section 36 of the Act. The trial court found that in view of the replication filed by the plaintiff that a sum of Rupees Twenty Eight lakhs was due to him on dissolution of partnership it was obvious that the suit was under-valued. Consequently it directed the plaintiff to correct the valuation within one B week and pay the deficient court fee. In revision the High Court held that even though the Court is not ordinarily entitled to examine the correctness of the valuation shown by the plaintiff it has a duty to see whether the valuation so disclosed by the plaintiff was liable to be rejected as arbitrary and he could be compelled to give proper valuation and pay the court fee accordingly. It held that since from the claim made in the replication it was clear that the plaintiff C had under-valued the suit by giving an arbitrary valuation the order passed by the trial court was correct and the suit could be entertained only after the plaintiff corrected the valuation and paid the deficient court fee. Relevant allegation in replication in this regard is extracted below:

> D "The plaintiff is entitled to realise from the defendant an amount of Rs. 28,00,000 at the time of settlement of accounts towards the loss and damages sustained by the plaintiff from 14-3-1981 which date can be taken as the date of dissolution of the firm as detailed below....."

E This was as counter blast to the claim made by the defendant. Whether this claim was correct could be decided only after evidence was led. In our opinion, the High Court in a suit filed in a court of unlimited jurisdiction was not entitled to direct the plaintiff to revalue the suit and pay court fee on it.

Before parting we may observe that the suit was filed in 1983 but the F defendant by raising objection and the court entertaining it has succeeded in delaying the suit for nine years only on preliminary issue. That is why we have construed the provision in Section 36 of the Kerala Act in a manner so as to avoid such recurrence.

In the result this appeal succeeds and is allowed. The order of the courts below directing the appellant to revalue the suit and pay the court fee on it is set aside. The trial court should now proceed to decide the suit in accordance with law. The appellant shall be entitled to his costs throughout.

N.P.V. Appeal allowed.