

Gurdial Singh v. Balwinder Singh, etc. (Pandit, J.)

dismiss respondent No. 1's petition under Articles 226 and 227 of the Constitution of India.

(15) In view of the intricate law point involved, there will be no order as to costs.

MAHAJAN, J.—I agree.

R.N.M.

FULL BENCH

Before Prem Chand Pandit, Bal Raj Tuli and S. S. Sandhawalia, JJ.

GURDIAL SINGH,—Appellant.

versus.

BALWINDER SINGH AND OTHERS—Respondents.

Taxing Case re :—

Regular Second Appeal No. 1636 of 1970.

September 25, 1970.

Court Fees Act (VII of 1870)—Sections 7(iv) (c) and 7(v)—Land suits covered under section 7(iv) (c)—Plaintiff giving one value for purposes of Court-fee and another for jurisdiction—Value for Court-fee—Whether to be taken for jurisdiction as well—Court-fee—Whether to be paid at ten times the land revenue.

Held, that if a suit falls under section 7(iv) (c) of Court Fees Act, 1870, and one value is given for purposes of court-fee and another for jurisdiction, it is the value for purposes of Court-fees which has to be taken as the one for jurisdiction as well. The plaintiff cannot be compelled to adopt the jurisdiction value as value for purposes of court-fee and he has to be given the option to fix his own value. The amount at which he values the relief sought for purposes of Court-fees, determines the value for jurisdiction and not vice-versa. Hence in land suits covered by section 7(iv) (c) of the Act, the court-fee has to be paid at ten times the land revenue assessed on the land and not at thirty times. (Para 3).

Regular Second Appeal from the decree of the Court of Shri J. S. Chatha, Additional District Judge, Amritsar dated 13th July, 1970 reversing that of Shri H. S. Ahluwalia, Sub-Judge, Ist Class Ajnala dated 6th May, 1968 and decreeing the plaintiff's suit for possession of 5/11th share of the sum of Rs. 6,100 retained as charge on the property to the vendee.

ATMA RAM, ADVOCATE, for the appellant.

H. L. SIBAL, ADVOCATE-GENERAL (PUNJAB) WITH I. S. TIWANA, ASSISTANT ADVOCATE-GENERAL, for the respondents.

JUDGMENT

P. C. PANDIT, J.—The facts giving rise to this reference are these. One Harnam Singh had mortgaged his land for Rs. 6,100. Later, he sold it for Rs. 15,000 to Gurdial Singh and the mortgage amount was included in the sale consideration. After the death of Harnam Singh, his sons Balwinder Singh and others filed a suit for usual declaration that the mortgage and the sale were not binding on them, as both these alienations were without consideration and necessity. They were governed by custom and the property was ancestral. As a consequential relief, they prayed for possession of the said land. The suit was resisted by Gurdial Singh, defendant-vendee. It was dismissed by the trial Court, but on appeal, the plaintiffs were granted a decree for possession on payment of Rs. 6,100. The defendant then filed a second appeal in this Court.

(2) The Stamp Reporter raised an objection that the suit was covered by section 7(iv)(c) of the Court-Fees Act (hereinafter called the Act) and, consequently, according to the second proviso to this sub-section the court-fees on the appeal should be paid at 30 times the land revenue assessed on the land and not at 10 times as already paid by the appellant. The counsel for the appellant contested the position taken by the Stamp Reporter and, therefore, this point came up for decision before the Taxing Officer, who is the Registrar of this Court.

(3) After hearing the counsel for the appellant and the Stamp Reporter, the Taxing Officer came to the conclusion that the suit fell under section 7(iv)(c) and not 7(v) of the Act as contended by the counsel for the appellant. He, however, found that there was a conflict between two decisions of this Court about the amount of court-fees to be paid on the memorandum of appeal, even if the suit was covered by section 7(iv)(c) of the Act. D. K. Mahajan J., in *Khan Singh v. Gurdev Singh and others* (1), took the view that if a suit was governed by section 7(iv)(c) and the property involved was land assessed to land revenue and the settlement was not permanent, then the court-fees in such a case was leviable at 30 times the land revenue. The Taxing Officer observed that the correctness of this decision was doubted by Mehar Singh, C.J., in *The New Bank of India Ltd. v.*

(1) 1966 P.L.R. 689.

Richhpal Singh and others (2), and he referred this point to a Division Bench. Subsequently, however, the said revision was dismissed on some preliminary objection and this point remained unsettled. According to the Taxing Officer, there was another decision also which was given by Harbans Singh, J., in *Bawa Bir Singh v. Ali Niwaz Khan* (3), wherein it was held that if a suit fell under section 7(iv) (c) and one value was given for purposes of court-fee and another for jurisdiction, then it was the value for purposes of court-fees, which had to be taken as the one for jurisdiction as well. The plaintiff could not be compelled to adopt the jurisdictional value as value for purposes of court-fees and he had to be given the option to fix his own value. This view was, obviously, contrary to the one taken by D. K. Mahajan, J. The Taxing Officer referred to a decision of the Supreme Court also in *S. Rm. Ar. Sp. Sathappa Chettiar v. S. Rm. Ar. Rm. Ramanathan Chettiar* (4), where it was observed that the amount at which the plaintiff had valued the relief sought for purposes of court-fees determined the value for jurisdiction in the suit and not *vice-versa*. In view of this conflict, the Taxing Officer referred the case to the learned Chief Justice for constituting a Division Bench for deciding this point. The learned Chief Justice, however, referred the same to a Full Bench and this is how the matter has been placed before us

(4) The point in controversy has been settled by the Supreme Court in *Sathappa Chettiar's case* (4). It is somewhat strange that this authority was not brought to the notice of either Harbans Singh J., or D. K. Mahajan J., when they decided the two cases referred to above. It is also surprising that the decision in *Bawa Bir Singh's case* (3) was not cited before D. K. Mahajan, J., in *Khan Singh's case* (1); because if he was taking a different view, he would have in that eventuality referred the point to a larger Bench. After the decision given by the Supreme Court in the above mentioned case, this point is not open to argument any longer. It may be stated that the decision of Harbans Singh, J., is in accord with that of the Supreme Court while that of D. K. Mahajan J., is not so. In *Sathappa Chettiar's case* (4), the Supreme Court was dealing with clause (b) of section 7(iv) of the Act, and the principle enunciated therein admittedly covers section 7(iv) (c) as well. The relevant portion of section 7(iv), as amended by Punjab Acts XIX of 1957 and XXXI of 1953, reads thus:

(2) C.R. 859 of 1967.

(3) I.L.R. (1964) 1 Pb. 403.

(4) A.I.R. 1958 S.C. 245.

“7. Computation of fees payable in certain suits—

The amount of fee payable under this Act in the suits next hereinafter mentioned shall be computed as follows:

* * * *
* * * *

(iv) In suits—

* * * *

(b) to enforce a right to share in joint family property—
to enforce the right to share in any property on the ground that it is joint family property.

(c) for a declaratory decree and consequential relief:—

To obtain a declaratory decree or order where consequential relief is prayed.

In all such suits the plaintiff shall state the amount at which he values the relief sought:

Provided that the minimum court-fee in each case shall be the suit and not *vice versa*.”

Provided further that in suits coming under sub-clause (c), in cases where the relief sought is with reference to any property, such valuation shall not be less than the value of the property calculated in the manner provided for by clause (v) of this section.”

While dealing with this matter, the Supreme Court held:

“What would be the value for the purpose of jurisdiction in such suits is another question which often arises for decision. This question has to be decided by reading section 7(iv) of the Act along with section 8 of the Suits Valuation Act. This latter section provides that, where in any suits other than those referred to in Court-Fees Act, section 7, paras

5, 6 and 9 and para 10, clause (d), court-fees are payable *ad valorem* under the Act, the value determinable for the computation of court-fees and the value for the purposes of jurisdiction shall be the same. In other words, so far as suits falling under section 7, sub-section (iv) of the Act are concerned, section 8 of the Suits Valuation Act provides that the value as determinable for the computation of court-fees and the value for the purposes of jurisdiction shall be the same. There can be little doubt that the effect of the provisions of section 8 is to make the value for the purposes of jurisdiction dependent upon the value as determinable for computation of court-fees and that is natural enough. The computation of court fees in suits falling under section 7(iv) of the Act, depends upon the valuation that the plaintiff makes in respect of his claim. Once the plaintiff exercises his option and values his claim for the purpose of court-fees, that determines the value for jurisdiction. The value for court-fees and the value for jurisdiction must no doubt be the same in such cases; but it is the value for court-fees stated by the plaintiff that is of primary importance. It is from this value that the value for jurisdiction must be determined. The result is that it is the amount at which the plaintiff has valued the relief sought for the purposes of court-fees that determines the value for jurisdiction in the suit and not *vice-versa*."

(5) According to the Supreme Court, therefore, in cases, which are covered by section 7(iv)(c) of the Act, the court-fees has to be paid at 10 times the land revenue assessed on the land and not at 30 times.

(6) The decision given by us in this case will govern the connected reference in Regular Second Appeal—*Amar Singh v. Sarna* as well, because as a matter of fact the main reference was made by the learned Chief Justice in the latter case.

BAL RAJ TULI, J.—I agree.

SANDHAWALIA, J.—I agree.

K.S.K.