RAJAGOPALA-SWAMI NAICKER v. PALANISWAMI CHETTIAR.

ask for a personal decree against fourth defendant and apparently do not want one, but it follows logically upon the argument that makes defendants two and three personally liable, and it must stand. Only the fourth defendant will not be liable to arrest. The appeal is dismissed with costs.

G.R.

APPELLATE CIVIL.

Before Mr. Justice Anantakrishna Ayyar.

1931, September 17.

IN RE PATURU VENUGOPALAYYA (PLAINTIFF), PETITIONER.*

Court-fee—Alternative reliefs—Court-fee payable in respect of one of, exceeding that payable in respect of other alternative relief—Higher court-fee payable in case of.

In the case of a plaint praying for alternative reliefs, if the court-fee payable in respect of any of the alternative prayers should exceed the court-fee payable in respect of the other alternative prayer, the plaintiff must pay the higher court-fee.

Held, therefore, in a case in which the plaint prayed for a declaration in respect of which a fixed court-fee of a certain amount was payable and in the alternative for another relief in respect of which an *ad valorem* court-fee of a much larger amount would ordinarily be payable, that the plaintiff was bound to pay the *ad valorem* court-fee payable in respect of the latter relief, although the plaintiff's valuation thereof was in fact lower than that of the relief for declaration.

PETITION under sections 115 of the Code of Civil Procedure (Act V of 1908) and 107 of the Government of India Act praying the High Court to revise the order of the Court of the Subordinate Judge of Nellore, dated 20th August 1931, and made in Original Suit No. 22 of 1931.

Ch. Raghava Rao for petitioner.

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* Civil Revision Petition No. 1181 of 1931.

JUDGMENT.

This civil revision petition has been filed by the plaintiff in an original suit pending on the file of the Additional Subordinate Judge of Nellore. Objection was taken by the defendants as regards the sufficiency of the court-fee paid by the plaintiff, having regard to the prayers contained in the plaint. The plaint was once amended and some of the reliefs originally claimed were deleted. As regards the prayers contained even in the amended plaint the defendants contended that proper court-fee had not been paid by the plaintiff. That preliminary question had to be decided by the learned Subordinate Judge, and after hearing parties he came to the conclusion that the court-fee paid by the plaintiff was not sufficient, and gave the plaintiff some time to pay the deficient court-fee. On the allegation that the court-fee already paid was sufficient, and that the learned Subordinate Judge's order was erroneous in so far as it directed the plaintiff to pay additional court-fee, the plaintiff has filed the present civil revision petition. There is also an application for stay of further proceedings in the suit in the lower Court.

To appreciate the arguments urged on behalf of the petitioner it is necessary to understand what exactly are the prayers contained in the plaint as amended. The plaintiff asks for two reliefs, the first relief being the main relief prayed for, and the second relief being an alternative relief claimed in case the Court should hold that the plaintiff is not entitled to the first relief. The reliefs claimed in the plaint are—

(1) Declaring the plaintiff's right after setting aside the sale in favour of the fifth and seventh defendants to the half-share of the properties in schedules A to E; or, in the alternative, (2) to the entirety of the properties in schedules A, B and C, with a right to account from

VENU-GOPALAYYA, *In re.*

the first defendant for the income thereof and collections thereunder from 1918, together with interest thereon, and for plaintiff's share of the movables in schedule E, to be ascertained on an accounting by the first defendant.

The first relief was valued at Rs. 49,986, and the fixed court-fee of Rs. 100 payable for a declaration was paid.

The second relief was valued at Rs. 47,022-0-9, but no court-fee was paid in respect of the same, though *ad valorem* court-fee has ordinarily to be calculated on that amount.

The plaintiff's contention is that as the valuation of the first relief is more than the valuation of the second relief, he is bound to pay only the court-fee of Rs. 100 payable in respect of the higher valued relief.

The defendants argued that the plaintiff should pay separate court-fee in respect of each of the reliefs. The learned Subordinate Judge overruled the defendants' contention, and he held that the case before him was one where alternative reliefs only were claimed, and that court-fee need be paid only in respect of the relief which appears to be of the higher value. In deciding the amount of court-fee to be paid he held that *ad valorem* court-fee should be paid on the valuation of the second of the reliefs claimed, and, as the court-fee payable in respect of that relief would be more than the court-fee paid in respect of the first relief, he directed, as I understand his order, the plaintiff to pay the difference.

Before me it was argued by the learned Advocate for the plaintiff (petitioner) that the value put on the first relief is higher than the value put in respect of the second relief, and that the fixed court-fee of Rs. 100 payable in respect of the first relief should be held to be the proper court-fee payable on the plaint.

The lower Court has held that the present is not a case coming under section 17 of the Court-fees Act. The lower Court has also held that the present is a case of *alternative* reliefs in respect of the *same cause of action.* The plaintiff should have no cause for complaint so far. The real question then is, how the court-fee is to be calculated in the case of alternative reliefs. My attention was drawn to the cases of *Kashinath Narayan* v. *Govinda Bin Piraji*(1), *Motigavri* v. *Pranjivandas*(2), *Mukhlal Gir* v. *Ramdheyan Rai*(3), *Dasarate Meshy* v. *Jay Chand Sutradhar*(4) and *Raja* v. *Muttalli*(5).

MELVILL J. remarked in *Motigavri* v. *Pranjivandas*(2) as follows :—

> " As regards the alternative relief sought, the larger of the two reliefs sought must determine the amount of the stamp."

The learned Advocate for the petitioner argued that the valuation of the first relief is larger than the valuation of the second, and as the plaintiff has paid proper court-fee in respect of the first prayer he contended that, under the ruling of MELVILL J. that "the larger of the two reliefs sought must determine the amount of the stamp", the court-fee already paid is correct. I have read the rulings referred to by the learned Advocate, but I am not satisfied that the contention raised on behalf of the petitioner is correct. If the plaintiff in the present suit had asked for the second relief only, then it is clear (and this was admitted by the learned Advocate for the petitioner) that the plaintiff will have to pay *ad valorem* court-fee on the valuation of that relief. Merely because the plaintiff has asked in the plaint another alternative relief also (in the present case the first relief) in respect of which the

(1) (1890) I.L.R. 15 Bom. 82. (2) (1882) I.L.R. 6 Bom. 302.
(3) (1917) 44 I.C. 143. (4) (1924) 78 I.C. 530; A.I.R. 1925 Pat. 193.
(5) (1926) 96 I.C. 826.

VENU-GOPALAYYA, *In re.*

court-fee payable is less, I fail to see how the plaintiff gets exemption from paying the court-fee payable in respect of the former relief for which he has to pay a higher court-fee. If section 17 of the Court-fees Act should apply, then the plaintiff will have to pay the *aggregate* amount of the fees chargeable in respect of each of the subjects which the suit embraces ; but where section 17 does not apply, the plaintiff need not pay separate court-fee in respect of each of the reliefs claimed in the plaint, if the reliefs claimed are only in the alternative ; so long as any relief is claimed, whether solely or in the alternative, the plaintiff will have to value the same ; that is, he will have to value each of the reliefs to decide the court-fee due in respect of each ; but, as he does not get all the reliefs claimed, he has to pay only the highest amount of court-fee chargeable in respect of any of the alternative reliefs. If the court-fee payable in respect of one prayer is x Rs. while that payable in respect of another prayer is $2x$ Rs., the plaintiff will have to pay a court-fee of only $2x$ Rs. He is not bound to pay x Rs. plus $2x$ Rs. or $3x$ Rs. ; and it would not be sufficient if he pays a court-fee of only x Rs. so long as another alternative prayer in respect of which a court-fee of $2x$ Rs. is payable is contained in the plaint.

Ordinarily the court-fee payable in respect of the larger of the two reliefs would exceed the court-fee payable in respect of the smaller of the two reliefs ; and that was all that was presumably meant by the learned Judge in *Motigavri* v. *Pranjivandas*(1).

In *Raja* v. *Muttalli*(2) the learned Judges held that, where a plaint prays for one of the two reliefs in the alternative based on one cause of action, the larger of the two reliefs determines the value of the claim.

(1) (1882) I.L.R. 6 Bom. 302. (2) (1926) 96 I.C. 826.

In *Dasarate Meshy* v. *Jay Chand Sutradhar*(1) the Court held that, where two reliefs are identical in actual money value but different in respect of the court-fee leviable on each, then the amount of court-fee payable is to be determined on the relief carrying the higher court-fee.

The difficulty arises because, in respect of some reliefs, only a fixed court-fee is payable whatever might be the valuation, whereas, in respect of other reliefs, court-fee is payable *ad valorem*. Calculating court-fee according to the provisions of the Court-fees Act, we have to see what is the court-fee payable in respect of each of the alternative reliefs claimed in the plaint. The plaintiff need not pay the total (aggregate) of these court-fees as the prayers are only alternative. If the court-fee due in respect of each prayer be the same, he will have to pay only one set of court-fee; but, if the court-fee payable in respect of any of these alternative prayers should exceed the court-fee payable in respect of the other alternative prayer, then the plaintiff will have to pay the higher fee.

One can imagine a case where a declaration is prayed for in a suit in the Munsif's Court (the court-fee for which would be Rs. 15), and also an alternative relief for payment of Rs. 60 (for which the court-fee would be only Rs. 6–11–0). In such a case, if the petitioner's contention be upheld, the plaintiff need not pay court-fee as for the declaration but need pay a court-fee of Rs. 6–11–0 only.

The principle applicable in such cases would seem to be that the greater should be taken to include the less, and, when the higher court-fee payable in respect of any of the reliefs prayed for in the plaint has been

(1) (1924) 78 I.C. 530; A.I.R. 1925 Pat. 193.

VENU-GOPALAYYA, *In re.*

paid, the lower court-fee ordinarily payable in respect of the other relief need not be also paid, if the reliefs are prayed for only in the alternative.

I do not consider that in arriving at this conclusion the principle that taxing statutes should be strictly construed, and, in cases of doubt, in favour of the subject and against the Government, is contravened; for in the present case where only alternative reliefs have been asked, the plaintiff is not asked to pay court-fee on each of the prayers, but is only asked to pay the court-fee due on one of the reliefs, and he is excused from paying any court-fee on the other on the ground that, as he has paid the larger court-fee, he need not pay any further court-fee.

In this view, as I understand the order of the lower Court, the plaintiff should have no grievance, and the order directing payment by the plaintiff of the excess court-fee is in my opinion right. I accordingly decline to interfere with the lower Court's order and dismiss the revision petition.

A.S.V.