

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 27.08.2018

Pronounced on : 05.09.2018

Coram

THE HON'BLE Ms.JUSTICE P.T.ASHA

C.R.P.(NPD) No.129 of 2003
and C.M.P.No.1394 of 2003

DharmaselviPetitioner/1st respondent

Vs.

1. Minor Sangeetha
represented by her father
natural guardian and
next friend M.Kannan
2. Assistant Executive Engineer,
CADB,
Thiruvavarur.

... Respondents/Petitioner & 2nd Respondent

Prayer: Civil Revision Petition is filed under Section 115 of Civil Procedure Code, against the order passed by the Principal District Judge, Nagapattinam, returning an unregistered appeal by order dated 08.10.2002 as against the judgment and decree dated 16.04.2002 and passed in O.P.No.211 of 2000 under the Indian Succession Act on the file of the Subordinate Judge, Thiruvavarur.

For Petitioner : Mr.R.Gururaj

For R2 : Mr.A.Dev Narendeer,
Government Advocate (CS)

For R1 : No appearance

O R D E R

The only short issue for consideration in the above Civil Revision Petition is whether the order of the learned Principal District Judge, Nagapattinam directing the revision petitioner to pay Court-fees as per Schedule I, Article 4 on an application for grant of Succession Certificate is correct or not or on ad valorem value?

2.The facts in brief are as follows:

The first respondent herein had filed a petition in O.S.No.25 of 2000 on the file of Principal Sub Judge, Nagapattinam for issuance of Succession Certificate in respect of the terminal benefits of her adopted father M.Deva. The petitioner had valued the securities at Rs.2 lakhs and paid a Court fee of Rs.10/-. After contest, by order dated 16.04.2002 the succession certificate was granted to the first respondent.

3. The Revision Petitioner took this above order on appeal to the Learned Principal District Judge, Nagapattinam and paid a Court fee of Rs.10/- as per Section 16 of the Tamil Nadu Court Fees and Suit Valuation Act.

4. The Office of the District Judge returned the papers for amending the decretal order and for paying Court Fees as per schedule 1, Article 4 of Court Fees Act. The revision petitioner without complying with the order of return, represented the same stating that under Section 16 of the Court Fees Act it would suffice that he pays the same Court Fees as paid in the suit. The matter was called in open Court and the revision petitioner herein had submitted authorities in support of his stand that the Court Fee payable was that is the same as the amount paid in the suit. The said argument was rejected by the learned Principal District Judge, Nagapattinam by order dated 08.10.2002 and the revision petitioner was granted a month's time as a last chance.

5. Mr.Gururaj appearing on behalf of the revision petitioner would submit that the provision of Article 4 of Schedule 1 would not apply since the same would come into play only when the duty became payable. He would argue that duty payable under Article 4 of Schedule I is different from the Court Fees payable on a petition on a plaint and Schedule I deals with the duty payable. Whereas, Schedule II deals with Court Fees payable. He would therefore contend that the Court Fees is payable only under Article 11 (k) of the Schedule II of the Court Fees Act.

6. In support of his arguments, he would rely upon the judgment reported in AIR 1964 SC Page 457 State of Maharashtra Vs. Mishrilal Tarachand Lodha and others wherein, the Hon'ble Supreme Court has held that where the pendente lite interest is not challenged, Court Fee need not be paid on the amount of interest.

7. He also relied upon the judgment reported in (1976) 3 SCC Page 800 Diwan Bros Vs. Central Bank of India, Bombay and others wherein the Hon'ble Supreme Court has held that orders of the Tribunal not be decree under Section 2(2) of

the Civil Procedure Code. Schedule 2 Article 11 of the Court Fees Act would apply and not Schedule 1 of Article I.

8. Heard the learned Counsel appearing for the petitioner. The reading of the note given to Schedule I of the Court Fees Act would indicate that the Fees details therein is payable after the issue of certificate. Whereas, Schedule II deals with the Court fees that is payable at the time of filing of the petition. The provisions of Schedule II Article 11 of the Court fees Act deals with petition for probate and Letters of Administration. There is no specific provision with regard to petitions for grant of Succession Certificate.

9. In the judgment reported in AIR 1989 Madras Page 111 a division Bench of this Hon'ble High Court has held as follows:

"We have already seen that when the proceeding becomes contentious, it does not become a suit, as such, as contemplated under the Civil Procedure Code, and that it is considered to be a suit only in form and not in substance. Therefore, as long as there is no suit in the eye of law, this provision for payment of court-fee cannot be invoked. We have also noticed that there is no provision anywhere in the Succession Act or in the Court-fees Act to register a petition under the Succession Act as a suit. When there is no such specific provision in any of these Acts, it is not open to the State to demand court-fee as if it is a regular suit, on such a petition at any stage of the proceedings."

10. In a judgment of this Court reported in AIR 1991 Madras 284 Dr. (Mrs.) Ruth Annamalai vs Mrs. Valliammai Achi this Court was called upon to decide on the question of payment of Court Fees on conversion of an original petition into a testamentary suit [T.O.S] and whether Court fee becomes payable under the provision of Schedule II, Article 11(K) of the Tamil Nadu Suit Valuation and Court Fees Act. The argument that was advanced in this case was that unless there is a suit, there is no liability to pay Court Fees under proviso to Article 11(K) of Schedule II of the Tamil Nadu Suit Valuation and Court Fees Act. This Court after referring in great detail to the various enactments namely Tamil Nadu Suit Valuation and Court Fees Act, Indian Succession Act, Original Side Rules, Letters Patent and the Code of Civil Procedure Code besides relying on the plethora of judgment has held that ad valorem Court Fees was payable at half the scale prescribed on the plaint in the T.O.S.

11. A Full Bench of Kerala High Court in the judgment reported in AIR 1982 Kerala Page 214 Kuriyan Vs. Aluru Ouseph and others was called upon to pass judgment on the Court Fees payable on a memorandum of appeal in an application for probate in a case where no caveat was entered and the proceedings were not tried as a suit. The full bench had also stated that merely because Court Fee payable in the first instance in an application for issue of succession certificate was not ad valorem, it did not follow that Article 1 Schedule I would not apply to an appeal from that order, despite the specific provision in Article 4 of Schedule I of the Court Fees Act. The Bench observed as follows:-

"Because court-fee payable on a succession certificate application is not ad valorem it does not follow that Art. 1 Schedule I cannot apply to court-fee payable on a memorandum of appeal despite the specific provision in Article 4."

"Therefore, irrespective of the question of correctness of the view of the Division Bench, to agree with which we have certainly reservations, even according to the learned Judges of the Division Bench in the case of a probate application the court-fee payable in an appeal is under Article 4 Schedule I. The contention urged before us by the learned counsel, nevertheless, is that court-fee payable should be governed by Section 52 and if so since he has paid court-fee other than ad valorem in the court below that should be the case in the appeal also. We need not go into the question whether he should have paid ad valorem court-fee in the court below, which, at the moment, we are not called upon to decided. But we find that irrespective of that question in this appeal the court-fee payable by him is that prescribed under Article 4 of Schedule I of the Kerala Court-Fees and Suits Valuation Act. That shall be paid within a period of one month."

12. This judgment was relied upon with approval in a subsequent judgment by the Division Bench of Kerala High Court reported in AIR 1999 Kerala 415 C.P.Paul Vs. C.P.Susan and others. The Bench observed:

"In view of the presence of Article 4 of Schedule 1 in the Court Fees Act, the application of Article 3 of Schedule II of the Court Fees Act stands excluded. We therefore hold that the appellant is bound to pay Court fee under Article 4 of Schedule I of the Kerala Court Fees and Suits Valuation Act. The stand adopted by the Taxing Officer is hence upheld."

13. Therefore the order of the learned Principal District Judge, Nagapattinam directing payment as per Schedule 1, Article 4 of the Tamil Nadu Court Fees and Suit Valuation Act, 1955 is in order. The judgment relied upon by the learned counsel for the petitioner does not deal with the issue on hand and therefore is not considered.

14. In the result, the Civil Revision Petition is dismissed. The order passed by the Learned Principal District Judge, Nagapattinam is confirmed. The revision petitioner is given two months time, from the date of receipt of a copy of this order to comply with the order of the learned Principal District Judge, Nagapattinam. No costs. Consequently, connected Miscellaneous Petition is also closed.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

To

1. The Principal District Judge, Nagapattinam.
2. The Subordinate Judge, Thiruvarur

copy to:

The Section Officer,
VR Section,
High Court, Madras.

+1cc to Additional Pleader(CS) sr.no.61543

Order made in
C.R.P.(NPD) No.129 of 2003

sai(co)
nr 23/10/2018