

APPELLATE CIVIL

Before Prem Chand Pandit, J.

RAIBANS BEHARI LAL AND ANOTHER,—Appellants.

versus

JANKI DEVI,—Respondent.

S.A.O. 127-D of 1964.

Court Fees Act (VIII of 1870)—S 7 (iii) and S 7 (iv) (a)—

Suit for the recovery of share certificates—Court fee payable—Whether under S 7 (iii) or S 7 (iv) (a)—Share certificates—Nature of—

Whether have any market value.

1964

July, 29th.

Held, that in order to find out whether a suit has been properly valued for the purposes of court fee or not, one has to look to the allegations made in the plaint alone. In the present case, it was definitely alleged in the plaint that the shares belonged to the plaintiff and the share scrips were also in her name. It was further alleged that the defendants were in wrongful possession of those scrips and that is why a prayer for their recovery was made. The shares are not the same thing as the share scrips. The latter are merely documents of title, which show that the person concerned holds certain shares in a Company. They are of no value to a third party, who is in illegal possession of the same. It cannot be said that if somebody stealthily or wrongfully removes them from the custody of the real owner, then he becomes the owner of the shares in the Company and for the recovery of the share scrips the plaintiff would have to pay court-fee on the market value of those shares. It is only when the share-holder himself signs the transfer-deed with regard to those shares in favour of a third person, that the latter becomes their owner. Share scrips are undoubtedly movable property. Since they are merely documents relating to title and have no market value, therefore, a suit for their recovery would be governed by section 7 (iv) (a) and not section 7(iii) of the Court Fees Act.

Second Appeal from the order of Shri G. R. Luthra, Additional Senior Sub-Judge, Delhi, dated 5th day of March, 1964, reversing that of Shri K. C. Dewan, Sub-Judge, Delhi, dated 24th day of April, 1963, remanding the case for disposal of the suit according to law.

MOHAN BEHARI LAL, ADVOCATE, for the Petitioner.

CHAND BEHARI LAL, ADVOCATE, for the Respondent.

JUDGMENT

andit, J.

PANDIT, J.—Shrimati Janki Devi respondent, filed a suit for the recovery of share-certificates in respect of 2233 shares of the Delhi Cloth and General Mills against Rajbans Behari Lal and his wife, Daya Wati, appellants. Her allegations were that these shares belonged to her and the share certificates were also in her name, but the defendants, appellants were wrongly keeping them.

The suit was contested by the appellants, *inter alia*, on the ground that the plaint had not been properly valued for purpose of court-fee and jurisdiction and that the valuation should have been at the market value of the shares. It was also averred that the suit had not been filed in the proper form and the plaintiff should have claimed the value of the shares in the alternative.

As a result, the following two preliminary issues were framed by the trial Judge:—

- (1) Whether the plaint is properly valued for purposes of Court-fee and jurisdiction? If not, what is the correct value ?
- (2) Is the suit not in the prescribed form? If not, to what effect ?

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The trial Court accepted the contentions of the appellants and held that the suit should be valued according to the market value of the shares, which came to Rs. 1,00,710. According to it, the valuation for purposes of jurisdiction should be the same as for court-fee. The Court also found that since the property sued for had a market value, the plaintiff must in the alternative claim a decree for money ~~is~~ case the property in dispute was not restored to her. As a result of these findings, the plaintiff was given 15 days' time to correct the valuation and amend the plaint so as to bring it in the prescribed form. Since the deficiency in court-fee had not been made up within the fixed time and no request for further adjournment was made on behalf of the plaintiff in this respect, the plaint was rejected under Order 7, rule 11, Civil Procedure Code.

Aggrieved by this decision, the plaintiff filed an appeal before the learned Additional Senior Subordinate Judge who reversed the findings of the trial Court, set aside its judgment and decree and remanded the case to it for disposal according to law. The learned Judge held that the case was governed by section 7(iv) (a) of the Court-fees Act, because the plaintiff was only demanding the recovery of the share certificates from the defendants who were in unlawful possession of the same. These scrips had no market value in the hands of the appellants, because they were in the name of the respondent and, as such, they could not be sold by them. Consequently, the case was not governed by the provisions of section 7(iii) of the Court-fees Act. Against this order the present appeal has been filed by the defendants.

The sole question for decision is whether the present suit is governed by the provisions of section 7(iii) or section 7(iv) (a) of the Court-fees Act.

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It is conceded by both the sides that there is no direct authority of any Court on this point. The relevant portions of section 7 are as under :—

“S. 7. The amount of fee payable under this Act in the suits next hereinafter mentioned shall be computed as follows:—

* * * *
* * * *

(iii) In suits for movable property other than money where the subject-matter has a market value— according to such value at the date of presenting the ~~com~~plaint:

(iv) In suits—

(i) for movable property where the subject-matter has no market-value, as, for instance; in the case of documents relating to title,

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according to the amount at which the relief sought is valued in the plaint or memorandum of appeal.

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 thirteen rupees.

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It is common ground that the share scrips are in the name of the plaintiff-respondent. It is undisputed that in order to find out whether a suit has been properly valued for the purposes of court-fee or not, one has to look to the allegations made in the plaint alone. In the present case, it was definitely alleged in the plaint that the shares belonged to the respondent and the share scrips were also in

her name. It was further alleged that the defendants were in wrongful possession of those scrips and that is why a prayer for their recovery was made. It must be borne in mind that the shares are not the same thing as the share scrips. The latter are merely documents of title, which show that the person concerned holds certain shares in a Company. They are of no value to a third party, who is in illegal possession of the same. It cannot be said that if somebody stealthily or wrongfully removes them from the custody of the real owner, then he becomes the owner of the shares in the Company and for the recovery of the share scrips the plaintiff would have to pay court-fee on the market value of those shares. It is only when the shareholder himself signs the transfer-deed with regard to those shares in favour of a third person, that the latter becomes their owner. Share scrips are undoubtedly movable property. Since they are merely documents relating to title and have no market value, therefore, a suit for their recovery would be governed by section 7(iv) (a) and not section 7(iii) of the Court Fees Act. The Legislature has specifically provided that the "documents relating to title" in matters of court-fee would be covered by the provisions of section 7(iv) (a). That being so, the plaintiff had rightly valued the plaint according to her own choice at Rs. 500.

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Learned counsel for the appellants placed his reliance on the definition of the word "goods" in section 2(7) of the Indian Sale of Goods Act, which included "shares" as well. His argument was that since "shares" were "goods", they had a market value and, consequently, the present suit would be governed by section 7(iii).

As I have already mentioned above, 'shares' are not the same thing as 'share scrips' and besides the latter are of no value in the hands of a person, who is in wrongful possession of the same and have, therefore, no market value.

Learned counsel then relied on *Jamshedji Naoroji Gabadia v. Manalal Bankeylal and Company* (1), *Kanambra Nayar Veetil Valia Ammakutti Neithiar's son Kunhunni Elaya Nayar Avergal v. P. N. Krishana Pattar and others* (2), *Albert Judah Judah v. Rampada Gupta and another* (3), and *Chet Singh v. Mul Singh* (4). It may at

(1) A.I.R. 1925 Bom. 314.

(2) A.I.R. 1943 Mad. 74.

(3) A.I.R. 1959 Cal. 715.

(4) 10 P.R. 1871.

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once be stated that barring the last authority, the first three do not deal with the court-fee matter at all. As regards the fourth, certain bonds were involved therein, some of which had, admittedly, been sold by the plaintiff in favour of the defendant. Therefore, this authority is of no help to the appellant. Besides the two provisions, with which we are concerned in the present case, have not been referred to and discussed in this authority.

The result is that this appeal fails and is dismissed. In the circumstances of this case, however, I will leave the parties to bear their own costs in this court.

BRT.