

15. In the result, the petitions fail and are dismissed, but in view of the facts of the case the parties are left to bear their own costs throughout.

Ram Nath
and another
v.
Messrs Ram
Nath-Chhitar
Mal

B.R.T.

Chopra, J.

REVISIONAL CIVIL

Before D. Falshaw, J.

SHMT. CHANDER WATI ALIAS BATTO,—*Petitioner.*

versus

HARI CHAND AND OTHERS,—*Respondents.*

Civil Revision No. 114-D 1957.

Court-fees Act (VII of 1870)—Section 7(1) and (2)—Respective scope of—Suit for arrears of maintenance—How to be assessed for court-fee—Court—Whether can go beyond the way the plaintiff's claim has been stated in the plaint.

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March, 3rd

Held, that the statutes must be interpreted as a whole and in such a way that parts of them are not rendered superfluous or nugatory. The obvious interpretation of sub-sections (1) and (2) of section 7 of the Court-fees Act is that sub-section (2) applies in all cases where a claim to a right to maintenance is being sought to be set up and that sub-section (1) applies to claim for arrears of maintenance where the right to such maintenance has already been established.

Held, that the plea that in matters of Court-fee the Court cannot go beyond the way in which the plaintiff's claim has been stated in the plaint is true only to a limited extent and whatever form of words is used by the plaintiff the Court has to look at the case and see what is the real nature of the plaintiff's claim. In the present case the plaintiff has first to establish her right to receive maintenance from the defendants before she can claim the sum claimed by her as arrears and so must pay *ad valorem* court-fee as provided in sub-section (2) of section 7 of the Court-fees Act.

Petition under section 115, C.P.C. and Article 227 of the Constitution of India for revision of the order of Sh. Harbans Singh, Sub-Judge, 1st Class, Delhi, dated the 7th February, 1958, ordering that the suit must be valued at Rs. 12,000 over and above the present valuation.

R. S. NARULA, for the Petitioner.

RADHEY MOHAN LAL AGGARWAL, for the Respondent.

JUDGMENT

Falshaw, J.

FALSHAW, J.—The facts in this revision petition filed by Shrimati Chander Wati are as follows. The petitioner instituted a suit against her brother Hari Chand and the widow and adopted son of her other brother now deceased, Bulaqi Dass, claiming three reliefs:—

- (1) A declaration that under the will of her father she was entitled to reside in the family residential house left by her father where she was living and that the rent note executed by her husband was not binding on her.
- (2) An injunction restraining the defendants from interfering with her right to residence and enjoyment of the portion of the house under her occupation and from enforcing any right under the rent note.
- (3) A decree for Rs. 300 as arrears of maintenance at Rs. 100 per mensem for the three months prior to the suit.

It does not appear to have been contended that the first two reliefs have not been properly valued but the objection was raised by the defendants that the suit was not properly valued for purposes of

court fee and jurisdiction with regard to the third relief on which an *ad valorem* court fee had been paid on the Rs. 300 claimed as arrears of maintenance. On this point it was contended that the suit was not merely for arrears of maintenance, but was for maintenance, since plaintiff's right to maintenance and also the monthly rate to which she was entitled had first to be determined. The contention of the defendants was upheld by the lower Court which called upon the plaintiff to amend her plaint so as to value the relief at Rs. 12,000 and to pay the court fee thereon. The present petition was filed in this Court before the expiration of the period fixed.

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The relevant provisions of the Court Fees Act are contained in sub-sections (1) and (2) of section 7. Sub-section (1) reads—

“In suits for money (including suits for damages or compensation, or arrears of maintenance, of annuities, or of other sums payable periodically) according to the amount claimed:—

Sub-section (2) reads—

“In suits for maintenance and annuities or other sums payable periodically according to the value of the subject-matter of the suit, and such value shall be deemed to be ten times the amount claimed to be payable for one year.”

Since most suits for maintenance involve a claim for arrears of maintenance, it may at first sight seem rather strange that a distinction has been made between a suit for arrears of maintenance and a suit for maintenance, and evidently by a suit for maintenance is meant a suit brought

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for the purpose of establishing a right to receive maintenance, past or future, and also as was held in *Shanzadi Begam v. Mahbub Ali Shah and others* (1), when a suit is brought both to establish a right to maintenance and for a sum as arrears of maintenance an *ad valorem* court fee is payable on the sum claimed as maintenance as well as an *ad valorem* fee based on the amount ten times the amount claimed to be payable for one year on the claim to the right to maintenance.

When, however, a suit is simply brought for a sum claimed as arrears of maintenance, as in the present case for three months at the rate of Rs. 100 per mensem, the question arises whether in the absence of any previously established right to the maintenance claimed the payment of an *ad valorem* court fee on ten times the annual value of the maintenance claimed becomes payable on the ground that the plaintiff cannot maintain the claim for arrears of maintenance without having established his right to maintenance at the rate claimed, and whether the plaintiff can be permitted to establish the right to maintenance, which would presumably operate as *res judicata* in future claims, under the guise of a suit simply for arrears of maintenance.

If a plaintiff can establish a right to future maintenance by simply bringing a claim for arrears of maintenance for two or three months, and paying a small *ad valorem* court fee on the sum so claimed, it seems to me that the provisions of sub-section (2) become superfluous and almost meaningless, since nobody who can establish a right of this kind by bringing a small claim for arrears will ever dream of trying to establish the right by a claim under sub-section (2) involving the payment of *ad valorem* court fee on ten times the amount payable annually.

(1) I.L.R. 42 All. 353

Statutes, however, must be interpreted as a whole and in such a way that parts of them are not rendered superfluous or nugatory, and to my mind the obvious interpretation of these sub-sections would appear to be that sub-section (2) applies in all cases where a claim to a right to maintenance is being sought to be set up, and that sub-section (1) applies to claims for arrears of maintenance where the right to such maintenance has already been established.

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Such is not the plaintiff's claim in the present case, in which her claim to maintenance at the rate of Rs. 100 per mensem appears to be shadowy on her own averments in the plaint, in which there are only very few references to the subject. In paragraph 7 she alleged that her brothers used to pay maintenance to her at the rate of Rs. 20 per mensem after the death of her father, and in paragraph 11 she mentioned a will of her father executed in 1926 in which a provision was made for her residence in the family house during her lifetime, and also for the payment of maintenance at an un-specified rate by her brothers as well as Rs. 5 per month for charitable purposes. Finally in paragraph 15 it was alleged that her brother and the other defendants were trying by foul means to get her out of the house, and that her brother had refused to pay her suitable maintenance for the last three months from June to August, 1957, which the plaintiff claimed at Rs. 100 per mensem.

It was argued on behalf of the plaintiff that in such matters the Court could not go beyond the way in which the plaintiff's claim had been stated in the plaint, but this is true only to a limited extent and whatever form of words is used by the plaintiff the Court has to look at the case and see what is the real nature of the plaintiff's claim

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There seems to be no doubt that in the present case the plaintiff has first to establish her right to receive maintenance from the defendants before she can claim the sum claimed by her as arrears.

The learned counsel for the petitioner relied on the decision of Wazir Hassan, J., in *Mt. Bhairon Dei v. Ram Sewak Lal* (1), in which it was held that when the plaintiff's case as laid in the plaint leads to no other relief than the arrears of maintenance, the Court fee payable would be according to the amount claimed, but since the facts in that case, although it was only for a small sum as arrears of maintenance, involved the plaintiff's establishing her right to receive maintenance, I am not sure that the decision was correct in the light of what I have observed above. In the circumstances I am of the opinion that the view taken by the Lower Court was correct and I accordingly dismiss the revision petition. The parties will bear their own costs and have been directed to appear in the Lower Court on the 31st of March, 1960.

B.R.T.

CIVIL MISCELLANEOUS

Before D. K. Mahajan, J.

THE NOVELTY TALKIES, BHATINDA,—*Petitioner.*

versus

THE PUNJAB STATE AND ANQTHET,—*Respondent.*

Civil Writ No. 72 of 1960.

1960
March, 27th

Punjab Cinemas (Regulation) Act (XI of 1952)—Sections 4, 5, 6 and 8 and Rules 3, 4, 5, 7, 8, 9 and 10—Power to

(1) A.I.R. 1927 Oudh. 623