

1937

Present : Poyser S.P.J. and Soertsz J.

SINNAPPOO v. THEIVANAI *et al.*

15—D. C. Jaffna, 7,163.

Stamp duty—Value of an action—Certificate of decree in appeal—Failure to tender correct amount—fatal irregularity—Stamp Ordinance, Schedule B, Part II.

The value of an action for the purpose of fixing the stamp duty on the proceedings under Part II., Schedule B, of the Stamp Ordinance is determined by the aggregate value of the claim on the date the action is filed.

De Silva v. Lever (28 N. L. R. 435) and *Silva v. Fernando* (11 N. L. R. 375) followed.

Failure to tender the proper amount of stamps for the certificate in appeal is a fatal irregularity.

The defect cannot be cured by tendering the correct amount after the time limit.

Salgado v. Peiris (12 N. L. R. 379) followed.

PLAINTIFF filed an action for restoration to possession of a temple worth Rs. 500. He was ousted from possession in September and he claimed damages from the date of ouster at the rate of Rs. 10 per mensem. The action was filed in November.

H. V. Perera (with him *V. Manikavasagar*), for defendants, appellants.—The prayer is for ejectment and damages for two months. The stamps were calculated for the Rs. 500 class. The petition of appeal was stamped in that class. Actions must be classified according to the subject-matter. There may be incidental matter, but in valuing only the main claim must be taken into account. The Courts of Requests have jurisdiction where the subject-matter is under Rs. 300. At the same time a claim for damages can be added to the main action. The stamps too, then, must be according to that class. Under the Stamp Ordinance, 1909 (*vol. II. at p. 942*), actions in the District Court are put into different classes.

The amendment, the Stamp Ordinance, No. 19 of 1927 (*vol. V. p. 233*) is immaterial.

There are some explanatory words with regard to the classification for costs in the Civil Procedure Code, 1889; but there are none in the Stamp Ordinance. These words ought to be added to the Stamp Ordinance.

[POYSER S.P.J.—Has there been any case before this?]

None. The practice has not been uniform. There is a similar provision in the Courts Ordinance, 1889, with regard to the jurisdiction of the Courts of Requests (*Banda v. Menika*¹). Unless these words are added, there will be an anomaly, because a person has to pay less stamp duty if he brings the action immediately.

[POYSER S.P.J.—Some words must be read.]

Yes.

[SOERTSZ J.—The matter will be doubtful if those words are not added.]

Yes. The sentence is incomplete. There will be an anomaly with regard to stamps and costs unless the same rules are applied.

N. Nadarajah, C.C., for Attorney-General.—For the purposes of stamp duty the aggregate value must be considered. Chapter II. of the Stamp Ordinance, 1909, must be taken with Part II. of Schedule B. The value of the suit is taken into consideration and not one item of the claim. In India it was held that the value is the aggregate—*Court Fees and Valuation Acts by Basu, p. 46.*

The rates of costs and stamp duty are different (*de Silva v. Lever*¹).

For the purposes of jurisdiction, debt and damage are taken on the one hand and the title on the other. But when both are joined, the aggregate must be taken into account. *Banda v. Menika (supra)* does not apply where damages are tacked on to land.

Where petitions of appeal are under-stamped, the appeals are dismissed.

[POYSER S.P.J.—What about relief?]

It seems to be peremptory. (*Hurst v. The Attorney-General*²; *Salgado v. Peiris*³; *Attorney-General v. Karunaratne*⁴; *James v. Karunaratne*⁵.) In India there is relief under an express section. (*R. Subrao v. S. Venkatarao*⁶.) See section 36 of the Stamp Ordinance and section 756 of the Civil Procedure Code.

Rajapakse (with him *J. L. M. Fernando*), for plaintiff, respondent, relied on the argument for the Crown.

H. V. Perera, in reply, cited *Silva v. Fernando*⁷.

April 23, 1937. POYSER S.P.J.—

In this appeal the plaintiff claimed, *inter alia* to be restored to possession of a temple and for damages at the rate of Rs. 10 per mensem from the month of September, 1934. The plaintiff stated his interest in the said temple to be worth Rs. 500 and his plaint was filed in November, 1934.

The appeal has been listed for dismissal on the ground that the petition of appeal has been stamped on the basis of a claim “up to and including Rs. 500”, viz., that it was stamped on the assumption that the claim came within Schedule B, Part II, Class 1, of the Stamp Ordinance.

Mr. Perera, while conceding that the aggregate value of the claim is over Rs. 500, argued that the claim is really only for land of the value of Rs. 500 and the claim for damages is incidental. In support of that argument he referred to section 77 of Courts Ordinance which defines the jurisdiction of Courts of Requests.

The material parts of that section are as follows:—

“Every Court of Requests shall be a Court of record and shall have original jurisdiction, and shall have cognizance of and full power to hear and determine all actions in which the debt, damage, or demand

¹ (1927) 28 N. L. R. 435. at p. 436.

² (1917) 4 C. W. R. 265.

³ (1909) 12 N. L. R. 379.

⁴ (1935) 37 N. L. R. 57.

⁵ (1935) 37 N. L. R. 154.

⁶ A. I. R. (1918) P. C. 188.

⁷ (1908) 11 N. L. R. 375.

shall not exceed three hundred rupees, and in which the party or parties defendant shall be resident within the jurisdiction of such Court, or in which the cause of action shall have arisen within such jurisdiction, and all hypothecary actions in which the amount claimed shall not exceed three hundred rupees, and the land hypothecated or any part thereof is situated within the jurisdiction of such Court, and also all actions in which the title to, interest in, or right to the possession of any land shall be in dispute, and all actions for the partition or sale of land, provided that the value of the land or the particular share, right or interest in dispute or to be partitioned or sold shall not exceed three hundred rupees and the same or any part thereof is situated within the jurisdiction of such Court”

That section has been judicially interpreted by a Full Bench in the case of *Banda v. Menika*¹ and it was held that “the test of jurisdiction in a land case is the value of the land or interest in dispute irrespective of any damage or other relief claimed in the cause of action. Any claim for damages is only incidental and subsidiary, and does not affect the question of jurisdiction of the Court. Where the action involves a mere money claim such as an action sounding in damages only, the continuing damages are not incidental but are part of the cause of action and must be reckoned in determining the monetary jurisdiction of the Court”.

Bertram C.J. stated in the course of his judgment “it is no doubt a singular result that it should be possible to bring in conjunction a claim to land worth Rs. 300, and a further incidental monetary claim to the same amount but there is nothing in the section to prevent such claims from being combined”.

I do not however consider that this decision affects the present case, for the section in question gives the Court of Requests specific jurisdiction in cases where the value of the land in dispute does not exceed Rs. 300 and does not exclude such cases where there is an incidental claim for damages.

There are no explanatory words in the Stamp Ordinance in regard to Part II. as in the Civil Procedure Code, Schedule III., which deals with costs.

The practice in similar cases is stated to have varied, some proctors stamping documents according to the value of the land only and others aggregating the value of the land and damages claimed.

Of the authorities that were cited the following are the most in point. (*de Silva v. Lever*²), in which Schneider J. held “The rates or scales of costs and charges in Schedule III. of the Civil Procedure Code, and the tables containing the duties on law proceedings in Schedule B of the Stamp Ordinance, No. 22 of 1909, which is the Ordinance now in force are not based upon identical monetary limits. One common element there is, that is, that the ‘division between class and class in both enactments turns upon a monetary limit, but the classification of the limits are different’. The Stamp Ordinance is silent as to what the sum of money mentioned at the head of each class represents. Obviously it refers to the same thing as the Civil Procedure Code does. The Civil

¹ (1919) 21 N. L. R. 279.

² (1927) 28 N. L. R. 435.

Procedure Code (Schedule III.) says that the sum is the value of 'the cause of action title to land or property' or of the 'estate or subject-matter of the action'. Costs do not mean stamp duty alone".

In *Silva v. Fernando*¹, Wendt J. held, "In the absence of such statement I think we ought to appraise the "subject-matter", meaning thereby the thing (whether land, chattel, money, or interest in one of these, or right or status) which the Court in deciding the action has to determine the ownership of, not merely 'relief' in the sense of that which the plaintiff expressly asks for and the decree expressly grants. If therefore, plaintiff says defendant trespassed on his land, and removed part of that land, to wit, plumbago worth Rs. 10 and prays for judgment for the Rs. 10, and defendant says the land is his own, but the Court finds plaintiff is the owner and gives him judgment for Rs. 10, in that case the subject-matter dealt with by the Court is not the Rs. 10 only but the land in addition, and if plaintiff has reason to suppose that defendant's act was done in assertion of a claim to the land he ought to have stamped his plaint according to the aggregate of the value of the land and of the plumbago.

These cases certainly support the argument on behalf of the Attorney-General and the respondent that you cannot read into the Stamp Ordinance provisions contained in the Civil Procedure Code or the Courts Ordinance, and I am of the opinion that in the absence of any explanatory words in the Stamp Ordinance the words "up to and including Rs. 500" must mean the aggregate value of the claim, and if that is so, the contention of the Attorney-General and respondent must succeed.

There is one further point, viz., whether this appeal must be dismissed or whether the defect can now be cured. There seems no doubt that the Court must dismiss the appeal and this point is settled by authority. In this connection I would refer to two cases, viz., *Salgado v. Peiris*², a Full Bench case, in which it was held a petition of appeal in insolvency cases must bear a stamp of Rs. 2.50 at the time it is presented to the Court. The Court has no power to allow it to be stamped after the time for appealing has expired. In the course of the judgment of Hutchinson C.J. at page 380 of the following passage occurs "In my opinion the effect of the Stamp Ordinance is that a petition of appeal in insolvency cases must bear a stamp of Rs. 2.50 and that the Court has no power to allow it to be stamped after time for appealing has expired".

The other case is *Hurst & Another v. The Attorney-General*³ in which Ennis J. held at page 265—"Objection has been taken that the petition of appeal in this case is not correctly stamped. It is stamped with stamps to the value of Rs. 101 instead of Rs. 107. This appears to be correct, and, on the authority of the cases of *Sinnatamby v. Thangamma* and *Salgado v. Peiris* (*supra*) the appeal must be dismissed with costs. I would add that section 36 of the Stamp Ordinance prohibits the Court from acting upon the instrument and there is no proviso or any provision in the Stamp Ordinance allowing the defect to be cured other than possibly section 43".

For the above reasons this appeal must be dismissed with costs.

¹ (1908) 11 N. L. R. 375.

² (1909) 12 N. L. R. 379.

³ (1917) 4 Cey. Weekly Rep. 265.

⁴ I. C. A. C. 151.

There were two other appeals, viz., 251, D. C. Kurunegala, No. 13,943 and 77, D. C. Galle, No. 35,107 in which exactly the same point arose and it was conceded by Counsel appearing in these cases that the aggregate claims as in this case, exceeded Rs. 500 and that those cases should be decided by the decision in this case. Consequently those appeals also will be dismissed with costs.

SOERTSZ J.—I agree.

[It was later brought to the notice of the Court that the petitions of appeal in 15 D. C. Jaffna and S. C. 77, D. C. Galle, were correctly stamped according to Part II. of Schedule B of the Stamp Ordinance, as amended by Ordinance No. 19 of 1927. The cases were listed again for argument.]

H. V. Perera, K.C. (with him H. W. Thambiah), for defendants appellants in S. C. 15.—Damages accrued are Rs. 30. The claim is for Rs. 530. The petition of appeal and the certificate in appeal come under the District Court proceedings. By the amendment of 1927, class I is deleted. Class 2 is made class I with an upper limit of Rs. 1,000. Hence the stamp fees for the petition of appeal and the certificate are correct.

The judgment of the Supreme Court appears in the Supreme Court proceedings. The old classification remains but the headings of the various classes are changed so as to make them mutually exclusive. The stamp fee paid is Rs. 3 but since the value of the action is Rs. 530, a fee of Rs. 6 ought to have been paid.

E. A. L. Wijeyewardene, S.-G. (with him H. H. Basnayake, C.C.), as *amicus curiae* stated the facts.

P. A. Senaratne (L. A. Rajapakse with him), was not called upon.

H. V. Perera, K.C. (with him P. A. Senaratne), for plaintiff, appellant in S. C. 77, D. C. Galle, 35,107.—The value of the subject-matter is Rs. 2,500. The plaintiff claimed damages at the rate of Rs. 15 per mensem from the date of the plaint. For the petition of appeal and the certificate in appeal, the appellant has paid Rs. 12 and for the judgment of the Supreme Court Rs. 15. The stamp duties had been paid correctly.

E. A. L. Wijeyewardene, S.-G. (with him H. H. Basnayake, C.C.), as *amicus curiae*.—The plaint was dated July 22, 1936, but it was filed on July 23, 1936. When he came into Court, some damages had accrued. Date of filing is the date of action.

E. B. Wickremenayake (with him N. E. Weerasooriya), for the defendants, respondent, had no objection for the case to be listed for argument.

H. V. Perera, K.C. (with him C. Seneviratne), for defendants, appellant, in S. C. 215, D. C. Kurunegala, 13,943.—There is a deficiency in the stamp fees.

E. A. L. Wijeyewardene, S.-G. (with him H. H. Basnayake, C.C.), as *amicus curiae*.—The deficiency had been tendered after the appealable time.

Croos Da Brera (with him Corea), for plaintiff, respondent, was not called upon.

September 28, 1937. POYSER J.—

Several weeks after our judgment had been pronounced in this case, it was brought to our notice that the Stamp Ordinance had been amended in regard to duties on law proceedings by Ordinance No. 19 of 1927. The argument had proceeded on the basis that the duties in the Ordinance of 1909 applied. Counsel state that they were not aware of the amendments effected in 1927 and our recollection did not serve us on this point. The result of the amendments now brought to our notice is to show that the petition of appeal and the certificate in appeal had been provided with sufficient stamps, but the stamps supplied for the judgment of the Supreme Court were insufficient. There is a deficiency of three rupees.

The order dismissing the appeal, therefore, stands, and so does the principle enunciated in our judgment in regard to the assessment of the value of a claim made in a case for the purpose of fixing the correct stamp duty.

Two other cases, in which the same question arose, were disposed of by us in accordance with the principle stated by us in this case. These cases were—(1) S. C. No. 77—D. C. Galle, No. 35,107 and (2) S. C. 251—D. C. Kurunegala, No. 13,943.

In view of the amendments referred to above, the former of these cases was wrongly dismissed. The proceedings appear to have been duly stamped. We therefore direct that this case be listed for argument in due course. It is not necessary that it should be listed before us.

In regard to the latter case, the order of dismissal stands, for although the petition of appeal has been stamped in accordance with the amended schedule of the Stamp Ordinance, the stamps for the certificate in appeal and for the Supreme Court judgment are insufficient.

SOERTSZ J.—I agree.
