(1961) 06 AP CK 0014

In the Andhra Pradesh High Court

Case No : Civil Revision Petition No. 1742 of 1959

Andugulapati Narasimha Rao and Others APPELLANT

Vs

Abbaraju Chenchamma and Others RESPONDENT

Date of Decision : 23-06-1961

Acts Referred:

Citation : AIR 1962 AP 408

Hon'ble Judges : Sanjeeva Row Nayudu, J

Bench : Single Bench

Advocate : N. Sitarama Sastry, for the Appellant; G. Venkatrama Sastry, for 1st Respondent, for the Respondent

Final Decision : Allowed

Judgement

Sanjeeva Row Nayudu, J.—This Civil Revision Petition is directed against the judgment and order of the Subordinate Judge''s Court, Bapatla, in I. A. No. 1259 of 1959 in O. S. No. 21 of 1954 on the file of the said Court, directing the plaintiffs to value the site, whose possession is asked for, at Rs. 300/- per cent, the value previously fixed by the Commissioner, on the basis of a house site.

2. The facts leading up to this revision may be briefly noticed:

The plaintiff-petitioners'' herein brought the aforesaid suit for possession of Ac. 6-68 cents of seri land, which has been given a full demarcation number 478/2 in the revenue Accounts and which has been assessed to a revenue of Rs. 16-11-0. They valued the suit u/s 7 clause (v) (b) and paid ten times the amount of revenue payable thereon, namely Rs. 166-14-0. They also valued the mesne profits due for the years 1951-52 and 1952-53 estimating the same at Rs. 1670/- per each year.

3. An objection was taken to the valuation by the plaintiffs on the around that the suit land was not being cultivated, that it was gradually converted into house sites and that the court-fees sought to have been paid on the market-value of the same, which, according to defendants, was worth Rs. 1,33,600/- excluding

the superstructures on the date of the suit, calculated at Rs. 200/- per cent.

4. The Court below dealt with the question of court-fee as a preliminary issue, appointed a Commissioner to value the suit property, and the Commissioner so appointed made a local inspection, and after necessary investigation, reported that on the date of his report the suit property was worth Rs. 300/- a cent. Based on this report, the learned Subordinate Judge directed the plaintiffs to amend the plaint by altering the valuation and pay court-fee on the basis of such amendment, adopting Rs. 300/- as the value for each cent of the land. Against this judgment and order of the Court below, a revision petition was preferred to this Court in C. R. P. No. 278 of 1956 which was dismissed. There was a reference in the order on that C. R. P. that although the plaintiffs did not ask for recovery of the house, they had also not asked for the demolition of the house and delivery of the land alone. Taking the clue from this observation of the teamed Judge, who dismissed the C. R. P., the plaintiffs applied to the Court below for an amendment of the plaint, praying that possession of the land be delivered to them after demolishing the house and super-structures, if any, standing thereon. The learned Subordinate Judge thought it fit to allow the amendment of the plaint but, strangely enough, while holding that the relief of demolition of the superstructures should be valued separately, also directed that the land itself should be valued at the rate of Rs. 300/- per cent. Hence the revision.

5. It must be borne in mind that the relief which a plaintiff chooses to ask in the plaint is his own concern. In the instant case, the plaintiffs have asked for possession of seri land. It is found that the land in respect of which the suit was brought is registered in the accounts as seri land and a separate demarcation number is given to this land. Further, the Government are collecting the revenue of Rs. 16-11-0 as per the assessment made by the officers concerned in respect of the land. It may thus be seen that the land in question forming the subject-matter of the suit, satisfies the requirements of S. 7(v)(b) of the Court-fees Act, which is in the following words:

In suits for the possession of land, houses, and gardens - according to the value of the subject-matter; and such value shall be deemed to be :

Where the subject-matter is land, and-

a) x x x

b) Where the land forms an entire estate, or a definite share of an estate, paying annual revenue to Government, or forms part of such estate and is recorded as aforesaid,

and such revenue is settled, but not permanently ten times the revenue so payable;

x x x

EXPLANATION: The word "estate" as used in this paragraph means any land subject to the payment of revenue, for which the proprietor or farmer or raiyat shall have executed a separate engagement to Government, or which, In the absence of such engagement, shall have been separately assessed with revenue.

6. Taking these provisions into consideration, it is clear that the land forms part of an estate paying annual revenue to the Government that it is thus subjected to the payment of revenue and separately assessed. All the requirements of Section 7(v)(b) are fulfilled in the case of the land in respect of which the suit has been brought. In the circumstances, it would not be open to the defendants to claim that the property should be valued on the basis of actual physical market-value, because the sub-section of the Court-fees Act declares the valuation arrived at in the manner provided in sub-clause (b) as the value of the subject-matter. For instance, if the suit were for possession of the houses and gardens, the value of the subject-matter as determined by Sec. 7 clause (v) (e) would be the market-value of houses or gardens, whereas in the case of land which comes within the definition of S. 7(v)(b), the value of the subject-matter has been declared by the legislature to be ten times the assessment and that is all the valuation for the purposes of court-fees, and court-fee is payable ad valorem thereon on the valuation so arrived at. I have, therefore, no difficulty in holding that the plaint in this case, as originally framed, has been properly valued and proper court-fee has been paid thereon.

7. The further question that would fall to be considered is, whether the plaintiffs should revise their valuation just because the defendants have chosen to claim, for reasons best known to themselves, that the suit land was fit for house-sites and therefore it should be valued as if it were a purely house site, ignoring the provisions contained in Section 7(v)(b). The view taken by the learned Subordinate Judge that the valuation of the land should be made on the basis of a house site and not as a revenue paying land separately assessed in the accounts and forming part of an estate and coming within the scope of Section 7 clause (v) (b), is wrong. In this connection, the valuable observations of Viswanadha Sastri, J., in C. R. P. No. 1024 of 1954 (Andh) should be noticed :

He was of the opinion that the appellants before him should pay court-fee on the basis of the market-value of the property ascertained in the manner prescribed by Section 7 clause 5(c). In order to determine the market-Value of the property, he directed the appointment of a Commissioner. In my opinion, the order of the learned Judge cannot be sustained. There can be no market-value for a graveyard as such and it cannot be valued on the basis that it is an urban site lying vacant but capable at being used for construction of buildings or other purposes. The case of the plaintiffs is that the entire extent at Ac. 1-72 cents is a graveyard. Therefore, according to them, there can be no market-value for the entire extent of Ac. 1-72 cents comprised in S. No. 479/6. Court-fee is payable on the plaint taking the allegations therein to be correct for the purpose of levying the court-fee payable thereon. The case of the plaintiffs being that the entire extent of Ac. 1-72 cents is a graveyard, whether they succeed is establishing this case or not at the trial or at the hearing of the appeal, they cannot, in anticipation of an adverse decision against them, be asked to pay court-fee on the market-value of the property and on the basis that the entire extent is not a graveyard. If the property is found to be not a grave yard on the hearing of the appeal, the plaintiffs'' suit would be liable to be dismissed on that ground. If, however, the plaintiffs'' contention is upheld, then the Court-fee paid by the plaintiffs on the memorandum of appeal would have been sufficient. In the circumstances, there was no occasion for the appointment of a Commissioner for assessing the market-value of the salt property.

8. There is only one other point that requires to be considered, and that, is, whether the relief introduced by the amendment should be separately valued as directed by the Court below. It must be noticed that the plaintiffs asked for possession of land which they claim to be cultivable land assessed to revenue by the Government, and registered in the accounts in a separate number. If the defendants have raised any superstructures thereon and it ultimately it is found that they have no right to do so, obviously it would amount to an act of trespass and the plaintiffs could take legitimate action against them, in that event it would be adding insult to injury for the defendants to demand, having unauthorisedly raised the constructions on a land which did not belong to them, and to insist on the further court-fee being paid on the relief of demolition, which is not a separate relief but is merely a relief which flows from the relief of possession. When the plaintiffs are found to be entitled to possession of the land, it would be open to them to ask for the relief that the defendants be directed to demolish the superstructures if they chose, so that the land alone may, after clearing of the superstructures, be delivered to the plaintiffs as prayed for by them in their plaint. If, however, the defendants do not demolish the superstructures it would be open to the plaintiffs to have the same demolished through Court and recover the costs thereof in execution. Hence, I am clearly of opinion that in a case of this description, no separate court-fee need be paid on the relief of demolition which is not an independent relief.

9. In Ramaswami v. Gundappa, 7 Mad LJ 49 the plaintiff valued the suit on the basis of the land alone, although be prayed for the recovery of the land after removing the buildings illegally erected thereon by the defendant, and it was laid down therein that the value of the building sought to be removed need not be taken into consideration for valuing of the suit. In Abdul Ghani Vs. Vishunath, , a similar case, it was held that it was open to the applicant to remove the obstruction himself before the suit was decreed or even before the possession over the land was delivered to the opposite party in execution of the decree, and that so long as the applicant was not prevented from removing it, if he so desired, it would not be said that it was included within the scope of the suit and that its price should be added to the price of the land to arrive at the valuation for purposes of Jurisdiction and court-fee.

10. Mr. Srinivasa Sastri, the learned counsel for the respondents, relied on a decision of the Allahabad High Court reported. In Mt. Kulsumunn-isan Vs. Khushnudi Begum and Another, which is a decision of a Single Judge, Whereas the decision reported in Abdul Ghani Vs. Vishunath, is a Division Bench decision. In the former case, the learned Judge who decided that case, while observing that the relief in question in that case was a prayer for possession without demolition and accordingly while holding that in that case the value of the building should be excludes from consideration, it was held that separate court-fee must be paid for the relief of demolition. I regret I am unable to agree with the conclusion reached by the learned Judge in that case, which is clearly contrary to the later decision of the same High Court.

11. Reliance is also placed by Mr. Sastry, the learned counsel for the petitioners on a decision reported in Narayana Swamy Kone v. I. Gopayamma, 1957 2 AWR 203, wherein the question arose whether the removal of the superstructures, which was also prayed for as incidental to the relief of possession, would be separately valued. It was held by Chandra Reddy, J. (as he then was) that in a suit for a declaration that the plaintiff is entitled to the plaint schedule properties and for possession, there was also a prayer that the defendant should be directed to remove the structures, the court-fees need not be paid on the value of the structures also. The following observations may be quoted with advantage:

In this revision petition the same contentions are raised by Mr. Ramachandra Rao namely, that in valuing the relief for injunction the structures have to be taken into account; and secondly the relief of injunction being the main, court-fee ought to have been paid under clause (c) and not under (d) as thought by the Trial Court. Both the submissions have to be rejected. There is no scope for the contention that the value of the structures should also be included for the reason that the plaintiff wanted vacant possession of the site and she does not put forward any claim to the properties that were standing on the land. When the suit is for recovery of the vacant site, after removal of the structures thereon by the plaintiff the court-fee payable is on the value of the vacant site and does not take in the value of the buildings that were put upon it.

The reason for not valuing the relief of demolition or removal of structures is, because that was not part of the relief, which the plaintiff wanted, although that was incidental to the complete granting of the relief to the plaintiff. I am, therefore, clearly of opinion that it is completely unnecessary to have a separate valuation for the relief of demolition of the structures. As a matter of academic interest, it may be noticed that the relief of demolition obviously gives no added benefit to the plaintiff apart from the relief he had already asked in the plaint, namely, vacant possession of the land in question. It is not understood why the former relief should be valued at all under the Court-fees Act. The matter need not be pursued further, in view of the findings already reached by me.

12. In the result, the petition is allowed with costs.

