

(1976) 05 RAJ CK 0003
In the Rajasthan High Court
Case No : Civil Revision No. 191 of 1973

Kaloo Singh

APPELLANT

Vs

Asstt. Mining Engineer (Recovery) Mines and Geological
Department and Another

RESPONDENT

Date of Decision : 12-05-1976

Acts Referred:

Rajasthan Court Fees and Suits Valuation Act, 1961 — Section 39(2)

Citation : AIR 1976 Raj 199 : (1976) RLW 245 : (1976) 9 WLN 204

Hon'ble Judges : P.D. Kudal, J

Bench : Single Bench

Advocate : M.D. Calla, for the Appellant; D.S. Shishodia, Additional Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

P.D. Kudal, J.—This is a revision petition u/s 115, CPC against the order of the learned Addl. District Judge No 2, Jodhpur dated March 15, 1973.

2. The plaintiff-applicant Kaloo Singh filed a suit against the Assistant Mining Engineer (Recovery) and the Mining Engineer, Mines and Geological Department, Jodhpur on 12-4-1971 before the learned District Judge, Jodhpur. The plaintiff prayed that the defendant is not entitled to recover the balance of the "theka" amount either under the provisions of the Rajasthan Land Revenue Act, or under the Rajasthan Public Demands Recovery Act, 1952. The plaintiff also prayed for issue of injunction restraining the defendants from effecting the recovery of the balance of the "theka" amount. On the pleadings of the parties, issues were struck by the learned District Judge.

3. Issue No. 6 reads as follows:

"Whether the court-fee paid by the plaintiff is insufficient?"

4. The case was transferred to the Court of the learned Additional District Judge

No. 2, Jodhpur, who decided issue No. 6 on March 15, 1973. The learned Additional District Judge held that the court-fee paid by the plaintiff was insufficient, and he was directed to make good the deficiency in the court-fee within a month.

5. The plaintiff-applicant feeling aggrieved by the order of the learned Additional District Judge has filed the present revision petition.

6. On behalf of the plaintiff-applicant, it was contended that the court-fee paid by the plaintiff was sufficient in View of the provisions of Section 39 (2) of the Rajasthan Court-fees and Suits Valuation Act, 1961. It was also contended that when the representations filed on behalf of the plaintiff-applicant were rejected by the Assistant Mining Engineer such rejection amounted to a summary decision as envisaged in Section 39(2) of the said Act. It was also contended that the word "decision" used in Section 39(2) of the said Act deserves to be interpreted in the context in which it has been used. It was also contended that any decision by a revenue authority either under the Rajasthan Land Revenue Act or under the Rajasthan Public Damands Recovery Act pertaining to recovery of any amount as arrears of land revenue is subject to the decision of a civil suit, and as such, such a decision by the revenue authority shall only be a summary decision. It was also contended that even the decision to issue a notice for recovery of a certain amount as arrears of land revenue shall constitute a summary decision.

7. On behalf of the State, it was contended that the Assistant Mining Engineer (Recovery) did not constitute a Court and as such, the present civil suit filed by the plaintiff-applicant is totally misconceived. It was also contended that the order of the Assistant Mining Engineer for recovery of the arrears as land revenue does not amount to a summary decision and the suit, therefore, is per se not maintainable. It was further argued that at any rate the plaintiff should pay ad valorem court-fee on the amount claimed by him. It was further contended that the suit filed by the plaintiff is a suit for declaration and injunction, and is not for setting aside a summary decision as envisaged in Section 39(2) of the Rajasthan Court-fees and Suits Valuation Act, 1961. It was also contended that under the provisions of Section 257B of the Rajasthan Land Revenue Act the entire money has first to be deposited with the Department concerned, and thereafter a suit may be filed for setting aside the summary decision of the recovery and for refund of the amount, so deposited. It was also contended on behalf of the State that there is no decision much less a summary decision and that the plaintiff-applicant has not filed any copy of such summary decision. It was, therefore, contended on behalf of the State that the suit filed by the plaintiff is totally misconceived, and that it is not covered under the provisions of Section 39(2) of the Rajasthan Court-fees and Suits Valuation Act, 1961. It was therefore, contended that the plaintiff has been rightly directed by the learned Additional District Judge to pay ad valorem court-fee. It was also contended that there is no case for interference on the revisional side.

8. The respective contentions of the learned counsel for the parties have been

considered and the record of the case carefully perused.

9. The learned counsel for the plaintiff-applicant relied on Kapoor Chand and Another Vs. The State and Others, , wherein it has been held that suit for cancellation of certificate u/s 20 of the Public Demands Recovery Act was in substance a suit for setting aside the decision of the Collector, which was that of a revenue Court, and the decision of the Collector was held to be a summary decision. In this case, this Court differentiated the decision taken in Samdu Khan Vs. The Rajasthan State and Others, .

10. Reliance was placed on M. Kallianikutti Amma on behalf of herself and all other creditors of P.K. Manavedan alias Anujan Raja Avl. Vs. Puthiya Veettill Kunhilakshmi Amma and P.K. Thekkeketu Tavazhiyil Manavedan alias Anujan Raja Avl., , wherein it has been held that where a decree-holder institutes a suit under Order 21, Rule 63, Civil P. C. to set aside an order in favour of the claimant, the fact that to the claim to set aside such an order is added some other relief, for example, a declaration that mortgage and a deed of assignment in favour of the claimant are void as against the plaintiff, does not necessarily affect the substantial character of the suit and the appropriate Article which applies to the suit is Article 17(1) and not Article 17-A.

11. Reliance was placed on Udai Chand Lal Vs. Firm Pannalal Champalal and Others, , wherein it was held that a suit under Order 21, Rule 63 by the claimant who was defeated in proceedings under Order 21, Rule 58, Civil P.C., for a declaration of his title and a permanent injunction restraining the defendant from taking delivery of possession of the suit property and preventing him from taking any illegal action to the detriment of the plaintiff falls within the purview of Schedule 2, Article 17 (1), Court-fees Act. No ad valorem court-fee is necessary.

12. Reliance was placed on Mahabir Prasad v. Shyam Behari Singh AIR 1925 Pat 44 holding that a consequential relief can be insisted upon only when the plaintiff will not get any redress by having merely a declaratory decree. For instance, when the property is in possession of the defendant, the plaintiff will not be allowed to seek merely a declaration of his title but must pray for recovery of possession as consequential relief. But where a mere declaration is sufficient to give the plaintiff full relief, a further declaration will be deemed to be redundant, and the fact that the plaintiff asked for a redundant relief will not alter the nature and scope of the suit and make the suit one for a declaration with consequential relief.

13. Reliance was placed on Venkataramaiya's Law Lexicon, 1971 Edition wherein the word "decision"" has been explained as under:

"The word "decision" is not a word of art. It is a word having broad connotation. It may include a decree or an order within the meaning of the provisions of the Code of Civil Procedure; it may also include an award in some cases. In some cases it may include neither of them. Whether it includes any one of them in Sub-section (1) of Section 381 of the Na-gar Mahapalika Act will depend not merely

upon that expression, but upon its collocation."

14. In Stroud's Judicial Dictionary of Words and Phrases, the word "decision" has been explained as under:

" "Decision" is a popular, and not a technical word and means little more than a concluded opinion. It does not, by itself, amount to JUDGMENT or ORDER."

15. Reliance was also placed on *Purushottamdas v. The Collector, Jhunjhunu*, 1967 RLW 209, wherein it has been held that before the stringent provisions of this section can be properly called into application, the particular demand must fall within the four walls of Section 256 or Section 257, and where such a foundation is lacking, the provisions of Section 257-B cannot possibly be availed of. Where it is impossible to hold on the material which has been placed on this record that the demand notice issued against the petitioners falls under any clause of Section 256 there is no alternative but to allow this application and quash the order and the further proceedings by which the petitioners' objection repudiating their liability was turned down.

16. "Court" has been defined in Section 3(ii) of the Rajasthan Court-fees & Suits Valuation Act, 1961 as under :

"Court" means any Civil, Revenue or Criminal Court and includes a Tribunal or other authority having jurisdiction under any special or local law to decide questions affecting the rights of parties."

17. The plaintiff-applicant filed objections on March 25, 1971. The learned counsel for the plaintiff-applicant has not filed any certified copy of the order showing what action was taken by the Assistant Mining Engineer on that representation. The learned Addl. Government Advocate, when called upon, has shown the order which the Assistant Mining Engineer has passed. He has simply stated "disagree" on the margin of the objection petition. In *Kapoor Chand and Another Vs. The State and Others*, , it was contended that issue of certificate amounts to a summary decision of a Revenue Court, and falls within the terms of Article 17 (1) of Schedule 2 of the Court-fees Act. The learned Divisional Bench held that the contention is well-founded, and the court-fee payable by the appellant is sufficient for the purposes of this appeal. In *Purushottamdas v. The Collector, Jhunjhunu* 1967 RLW 209, this Court held that unless the demand falls within the four corners of Section 256 of the Rajasthan Land Revenue Act, the recovery proceedings are without jurisdiction. The decision of the Revenue Court for making recoveries of certain amount as land revenue is subject to a Civil suit as contemplated in Sub-clause (3) of Section 257B. This right to institute a suit is further subject to a right as contained in Section 257-B (4). The learned Additional Government Advocate has, however, argued that the suit is prima facie barred by Section 257-B (3) of the Rajasthan Land Revenue Act, as the amount due against the defaulter has not been deposited.

18. At the moment, we are only concerned to see whether the court-fee as paid

by the plaintiff was sufficient, or not? Section 39(2) of the Rajasthan Court-fees & Suits Valuation Act, 1961 reads as under :

"39 (2). In a suit to set aside any summary decision or order of a Civil or Revenue Court, if the subject-matter of the suit has a market value, fee shall be computed on one-fourth of such value, and in other cases, fee shall be payable at the rates specified in Section 45.

Explanation--For the purpose of this section, the Registrar of Co-operative Societies shall be deemed to be a Civil Court."

19. This section provided that in a suit to set aside any other summary decision or order of a Civil or Revenue Court, the court-fees payable shall be at the rate of 1/4 of the value of the subject-matter of the suit.

20. In Section 257A, it has been provided that the application, certificate, statement of account or other document referred to in Sub-section (1) shall, for the purpose of recovery in accordance with the provisions of this chapter, be conclusive evidence of the existence of the arrear payable to the officer or authority signing the same, of the amount of such arrear and of the person who is the defaulter.

21. In *Purushottamdas v. The Collector, Jhunjhunu* 1967 RLW 209 , it has been held that the demand must fall within the four walls of Section 256 or Section 257 of the Rajasthan Land Revenue Act. In view of these circumstances and keeping in view the ratio decidendi laid down in *Kapoor Chand and Another Vs. The State and Others*, and *Purushottamdas v. The Collector, Jhunjhunu* I have no hesitation in holding that the decision to make recovery tantamounts to a summary decision within Section 39 (2) of the Rajasthan Court-fees and Suits Valuation Act, 1961.

22. For the reasons stated above, the revision petition filed by the plaintiff-applicant is hereby allowed, and the order of the learned Additional District Judge under revision is hereby set aside. The court-fee paid by the plaintiff-applicant is found to be sufficient.

23. The State shall, however, be free to raise an objection about the maintainability of the suit as the plaintiff-applicant (defaulter) has not first deposited the amount which was due against him as contemplated in Sub-clause (3) of Section 257B of the Rajasthan Land Revenue Act. Looking to the facts and circumstances of this case, the parties are left to bear their own costs.