
(1901) 07 CAL CK 0023
In the Calcutta High Court

Kashi Prosad Singh

APPELLANT

Vs

Secretary of State For India In Council

RESPONDENT

Date of Decision : 12-07-1901

Acts Referred:

Court Fees Act, 1870 — Section 17

Citation : (1902) ILR (Cal) 140

Hon'ble Judges : Pratt, J;Ameer Ali, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Ameer Ali and Pratt, JJ.—These are several matters referred to us by the Deputy Registrar for the consideration of the question how the forty-three appeals preferred by the appellants in certain land acquisition oases decided by the Subordinate Judge of Bhagalpur should be dealt with under the circumstances which have happened.

2. It appeal"s that a large area of land belonging to the appellants was taken up for public purposes. The proprietors who are appellants, did not appear before the Land Acquisition Deputy Collector in time. The tenants appeared and accepted the award made by him, and so far as they are concerned the matter appears to have been concluded. But regarding the interest of the proprietors several references were made by the Deputy Collector to the Court, inasmuch as the lands acquired consisted of separate plots occupied not entirely by the same set of tenants, some, it is alleged, being held exclusively by the landlords. Those references came in due course before the Subordinate Judge, and on the 14th May 1900, the appellants put in a petition asking the Court to try them as analogous suits, inasmuch as the point in dispute in all of them was one and the same, and the evidence to be tendered was to be of one and the same nature. That prayer was acceded to, and the Court recorded the following order: "Petition filed. This case made analogous with case No. 1 of 1900. Statement of Government pleader made and preliminary issues framed in analogous case No.

1 of 1900." The cases seem to have been disposed of by the Subordinate Judge not satisfactorily to the appellants. Hence 44 appeals were preferred to this Court. The appellants then applied for and obtained from this Court a rule in these terms: "On the motion of Mr. Bill, let a rule issue calling upon the other side to show cause why the 44 references and the appeals arising out of them should not be amalgamated and the Court fee levied on the consolidated claim, or why the appeal out of reference No. 132 should not be treated as a test case, and all proceedings in the appeals arising out of the other references stayed until the decision of the said test appeal." That was on the 31st August 1900. By the word "amalgamated" we understand the learned Judges to mean consolidated.

3. The rule came on for hearing before a different Bench on the 31st January 1901, and the following order dealing with the subject of the rule was made by the learned Judges before whom the matter was discussed: "We think, after hearing learned Counsel on the one side and the senior Government pleader on the other, that the second part of the Rule ought to succeed, and that is this appeal out of reference No. 132 should be treated as a test case, and the proceedings arising out of the other references should be stayed, until the decision of the said test appeal. It must be understood that we do not now deal with the question, which we understand has been or will be raised, namely, whether the appeals arising out of the other references have been preferred to this Court upon proper and adequate Court fee stamps. That matter will be dealt with after the appeal in connection with reference No. 132 has been decided." It is quite clear from the phraseology of that order that no definite order was made with regard to the other 43 appeals. They were allowed to stand over for the time, and the question as to the sufficiency of stamps upon which the appeals were preferred was to be considered later on. The appeal from reference No. 132 was made a test case for the benefit apparently of the appellant, but reading the order as it stands, it does not seem to preclude the appellants from requiring the consideration of the Court with regard to the other appeals. The appeal out of reference No. 132 has been disposed of against the appellants, and they now apply that their other appeals should be taken up and heard, and that they should be allowed to make up any deficiency that there may be in the Court fee stamps, upon which the appeals have been preferred.

4. Mr. Donogh, who appears for the appellants, asks that these appeals may be consolidated, and that "his clients may be allowed to pay a court fee upon the consolidated amount, but if the Court is not inclined to grant that prayer he asks that after consolidation his clients may be allowed to pay court fees as required u/s 17 of the Court Fees Act, subject to the maximum limit provided for by Article I, Schedule 1 of that Act.

5. We have also heard the Government Pleader on the other side. He contends that the application upon which the Rule was originally granted on the 31st August 1900 was in the alternative, namely, that, if the appeals should not be amalgamated and the Court fee levied on the value of the consolidated claims,

the appeal arising out of reference No. 132 may be treated as a test case and as the order of the 30th January 1901 allowed the appeal out of reference No. 132 to be treated as a test case, it must be taken that the other prayer was refused, and that, therefore, the present application for consolidation must be regarded as practically *res judicata*. He also contends, that the plots which have been taken up for public purposes being separate and being in the occupation of separate tenants were properly treated as subjects of separate references, and that therefore the references and the appeals therefrom fall properly u/s 17 of the Court Fees Act, and the fee leviable upon the appeal, or appeals, if they are all consolidated, should be covered by the provisions of that section.

6. It appears to us, however, that the appellants are not precluded by the order of the 30th January from asking this Court again to consolidate the appeals pending in this Court. The learned judges then do not seem to have expressly refused the prayer for amalgamation. They say that, after hearing Counsel on both sides, the second part of the Rule ought to succeed, and one case treated as a test case, leaving the other cases to be dealt with subsequently. It would follow from the phraseology of the order in question that it was left open to the judges, before whom the other matters would come, to exercise their discretion in dealing with any question, which may be raised, regarding those appeals. Had they intended to make the result of that test case binding on the appellants with respect to all the appeals, they would have expressed themselves in that way. Apparently what was present in the minds of the learned judges was that one case should be taken as a test case; if it was favourable for the appellants, the matter might possibly be concluded without putting the parties to the expense of a trial in the other cases. But there is nothing to show that the intention was to preclude the appellants from having a determination of the other appeals, or from asking that those appeals, having regard to the nature and circumstances of the case, may be consolidated. There seems to be no reason in principle why we should not in these cases make an order consolidating them, so as to enable the appellants to have any benefit to which they may be entitled u/s 17 coupled with the proviso of Article 1, Schedule I, to which we have already referred. S. 17 declares that, if there are distinct subjects involved in a plaint or in an appeal, the court fee payable was to be calculated on "the aggregate amount of the fees to which the plaints or memorandum of appeal in suits embracing separately each of such subjects would be liable under this Act." Mr. Donogh on behalf of the appellants contends that the subject-matter of these different references are practically one and the same. We are not prepared to give effect to that contention. The plots are different; they are occupied by different tenants, the references were separate, and no application was made in the Court below for consolidation. The application to the Subordinate Judge was simply for the purpose of treating the cases as similar in their nature, and therefore we think that we ought not to treat them as all referring to one subject-matter. So far we are at one with the learned Government Pleader.

7. But we also think that the maximum Court fee payable by the appellants upon

the consolidated appeals should not exceed the sum of Rs. 3,000. This view was taken in the case of Raghobir Sing v. Dharam Kuar I. L. R (1880) All. 108, unanimously by a Full Bench of the Allahabad High Court where the very question which the learned Government Pleader has put before us presented itself to the mind of the learned Chief Justice and was disposed of by him. The learned Government Pleader said that the proviso refers to the subject-matter of a single plaint or memorandum of appeal, and that where there were different subjects contained in one plaint or in one memorandum of appeal there should be no such limitation as is contained in the proviso referred to. The Chief Justice first of all puts forward the contention and then says: "But this view of the Court Fees Act would in many cases work so extravagantly as to make the court fee payable under it rather in the nature of a penalty as remarked by Straight, J., than as reasonable stamp duty, and I therefore willingly support the opinion of my colleagues on the point"; and Mr. Justice Straight's judgment, which deals with the question at length, clearly shows the principle upon which Courts of Justice should act in these matters.

8. The parties in these cases are the same, the evidence is the same, only the plots happen to be different and the tenants, owing to whom separate references were made in the Court below, are not parties to these appeals. No provision of the CPC has been brought to our notice precluding us from making the order for consolidation, and we think that in the interests of justice it is expedient that we should make such an order. We accordingly direct that the appeals be consolidated, and that the appellants do pay Court fees upon the value of the consolidated appeals u/s 17 of the Court Fees Act, subject to the limitation under Article 1, Schedule I of that Act, namely, Rs. 3,000. The references will be confined to the landlord's interests, that is two-thirds of the value of the land. We allow the appellants time until Monday, the 15th instant, to put in the requisite Court fee.