

(2010) 03 AP CK 0023

In the Andhra Pradesh High Court

Case No : C.M.A. No's. 1589 and 1590 of 2008

Lakshminagar Housing Welfare Association

APPELLANT

Vs

Syed Sami @ Syed Samiuddin and Others

RESPONDENT

Date of Decision : 05-03-2010

Acts Referred:

Andhra Pradesh Court Fees and Suits Valuation Act, 1956 — Section 11, 21, 24, 26, 28
Civil Procedure Code, 1908 (CPC) — Order 7 Rule 10
Court Fees Act, 1870 — Section 7

Citation : (2010) 5 ALT 96

Hon'ble Judges : V.V.S. Rao, J;B.N. Rao Nalla, J

Bench : Division Bench

Advocate : V.V.N. Narasimham, rep. V. Venugopala Rao, for the Appellant; D.V. Srinivasa Rao, for Respondents 1 to 3 in C.M.A. No. 1589 of 2008 and Respondents 1 and 2 in C.M.A. No. 1590 of 2008 and M.S. Ramachandra Rao, for Respondents 4 to 5 in C.M.A. No. 1589 of 2008 and Respondents 3 and 4 in C.M.A. No. 1590 of 2008, for the Respondent

Final Decision : Dismissed

Judgement

V.V.S. Rao, J.—The appellant, M/s. Lakshminagar Housing Welfare Association, filed the suit being O.S. No. 1978 of 2006 (hereafter, first suit) on the file of the Court of VII Additional Senior Civil Judge, Ranga Reddy District. The suit was filed for cancellation of sale deed dated 22.8.2005 being registered document No. 6816 of 2005 with Sub-Registrar, Kukatpally, Ranga Reddy District, and consequential permanent injunction restraining defendants in the suit from interfering with peaceful possession and enjoyment of suit schedule property by the Association. The said Association also filed O.S. No. 1986 of 2006 (hereafter, second suit) before the same Court, seeking decree to cancel registered sale deed dated 22.8.2005 being registered document No. 6815 of 2005 with Sub-Registrar, Kukatpally, Ranga Reddy District, and consequential perpetual injunction against defendants therein. Defendants in the first suit filed I. A. No. 88 of 2008 under Order VII Rule 10 of the CPC 1908 (CPC) to return plaint for

presentation before jurisdictional Court. The same was allowed and the Court below directed return of plaint for presentation before proper Court and the Association was also directed to pay proper court fee as per the market value of the schedule property. Against the said order dated 25.11.2008, C.M.A. No. 1590 of 2008 is filed. Defendants in second suit also filed I.A. No. 60 of 2008 for return of plaint, which was also allowed on 25.11.2008 against which C.M.A. No. 1589 of 2008 is filed.

2. The matter was listed before a learned Single Judge, who referred the matter to the Division Bench for deciding correctness of decision in Allam Venkateswara Reddy Vs. Golla Venkatanarayana and Others, and an unreported decision in Mettu Neelamma v. Prithvi Constructions C.R.P. No. 5005 of 2005, dated 26.9.2005. Though the question is not specifically referred and the entire case is referred to this Bench, the point falls for consideration is the following.

In view of Sections 7 and 37(1)(a) of Andhra Pradesh Court Fees & Suits Valuation Act, 1956, in suits in respect of immovable-property or cancellation of document relating to such immovable property, whether court fee has to be paid on the market value of schedule property or on the value of the property for which document was executed?

3. At the outset, it is necessary to briefly refer to the allegations of the plaintiff in the suit, which we have taken from O.S. No. 1986 of 2006 pertaining to C.M.A. No. 1589 of 2008. The land admeasuring Acs.7.00 in survey No. 163 of Hydernagar village of Balanagar Mandal in Ranga Reddy District, formed part of item No. 38 of Schedule-IV in CS. No. 14 of 1958 on the file of High Court for partition. A preliminary decree was passed on 28.6.1963. Nizam of Hyderabad purchased undivided interest in the said property and transferred half share in favour of M/s. Cyprus Investments Private Limited, Bombay, who was impleaded as defendant in C.S. No. 14 of 1958. Survey No. 163 fell to the share of defendants 18,26 and 107 to 112, who sold the same along with M/s. Cyprus Investments to Kazim Nawz Jung. He transferred the same in favour of appellant Association under an assignment deed dated 30.10.1991. Appellant Association plotted about Acs.2.07 guntas and allotted to 36 members. These transactions are approved by the High Court. But on 22.8.2005, defendants 1 and 2 (respondents 1 and 2 in C.M.A) entered into sale transaction with defendants 4 and 5 and executed sale deed being document No. 6815 of 2005 to an extent of Acs.1.10 guntas. Therefore the suit was filed for cancellation of said document valuing the suit at Rs. 5,00,000/-. Be it noted in the other suit, the land demised under impugned sale deed admeasuring Acs.1.22 guntas was valued at Rs. 7,00,000/- and the court fee was paid accordingly. After receiving summons, defendants in both the suits filed interlocutory applications under Order VII Rule 10 CPC for rejection of plaint, as the Court of Senior Civil Judge lacks jurisdiction to entertain the suit in respect of sale deed pertaining to immovable property, which is more than Rs. 10,00,000/-. In the first suit, it was alleged that the suit schedule property is of the value of Rs. 69,75,000/-and in the second suit the

value is Rs. 56,25,000/-.

4. Learned VII Additional Senior Civil Judge, while ordering return of plaint and directing the plaintiff to pay court fee on market value of schedule property, made the following observations.

It is the version of the petitioner that as the respondent prayed for the relief of cancellation of entire sale deed, the market value of which is Rs. 56,25,000/-, the plaintiff has to value the suit u/s 37(a) of APCF and SV Act for the purpose of the court fee and jurisdiction. But not on the sale consideration mentioned in the said sale deed. It is the version of the respondent that value of the property means only the sale consideration mentioned in the said document, but not the market value of the property thereunder. It was observed in decision reported in 2003 (1) An.W.R. 62 (A.P.) : Maddi Bal Reddy and Others Vs. Merugu Anthamma and Others, in Maddi Bal Reddy and Ors. v. Merugu Anthamma and Ors. that:

Court fee has to be paid on the present value of the suit property but not on the value of the property on which court fee was paid in the suit, whose decree is sought to be set aside.

It was observed in My Palace Mutually Aided Housing Co-operative Society Limited Vs. State of Andhra Pradesh and Others, in My Palace Mutually Aided Housing Co-operative Society Limited v. State of A.P. and Ors. wherein it was held that:

A combined reading of Sections 7 and 11 of CF and SV Act makes it manifestly clear that the court shall determine the court fee payable on the plaint by looking at the market value of the property in dispute as on the date of presentation of the plaint.

In view of the observations made in the above decisions in the present case also the respondent/plaintiff has to value the property for the purpose of valuation of court fee and jurisdiction basing on the market value of the schedule property as on the date of the plaint, but not on the sale consideration mentioned in the said deed. Hence, the point is answered accordingly in favour of the petitioner.

5. The facts before us are not in dispute that if the market value of suit schedule property in both the suits is the basis, the Court of Senior Civil Judge has no jurisdiction to entertain the suits and they have to be filed before the Court of District Judge. There is also no dispute that the appellant paid the court fee on the total sale consideration for which the sale deed impugned in the suit was executed. As noticed supra, the Court below faulted the calculation and directed appellant association to pay the court fee as per the market value of suit schedule property as on the date of presentation and present the plaint before proper Court. While doing so; there is no dispute - the Court below relied on Sections 7 and 37(1)(a) of Andhra Pradesh Court Fees and Suits Valuation Act, 1956 (Court Fee Act or the Act), which read as under.

7. Determination of market value:

Save as otherwise provided, where the fee payable under this Act depends on the market value of any property, such value shall be determined as on the date of presentation of the plaint.

37. Suits for cancellation of decrees, etc.: (1) In a suit for cancellation of a decree for money or other property having a money value, or other document which purports or operates to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest in money, movable or immovable property, fee shall be computed on the value of the subject-matter of the suit, and such value shall be deemed to be:

(a) if the whole decree or other document is sought to be cancelled, the amount or value of the property for which the decree was passed or other document was executed;

6. The Court Fees Act is a consolidating law. It is the statute enabling levy of court fee in the nature of tax. It is trite it requires strict interpretation and the likelihood or possible hardship is no consequence. Chapter II contains provisions imposing liability to pay court fee. Section 11 of the Act throws an obligation on the Court to decide proper court fee payable on the plaint. While doing so, every Court shall decide the Court fee based on allegations contained in the plaint and materials furnished by the plaintiff. If the Court decides that the subject matter of the suit is not properly valued, the Court shall grant time for payment of deficit court fee and if there is a non-compliance, the plaint shall be rejected. It shall also be open to the Court to pass such orders as are deemed fit. Similar powers are vested in an appellate Court. While deciding whether proper court fee is paid or not, the Court besides considering the allegations in the plaint and materials furnished by the plaintiff, is also required to keep in view statutory guidance provided in the Act itself in Section 7 and other provisions contained in Chapters IV & V and Schedules I & II.

7. Reading Section 7 of the Act plainly, there cannot be any doubt that where the court fee payable depends on market value of the property, such market value shall be determined as on the date of presentation of the plaint. Sections 21, 24, 26, 28, 29, 30, 31 and 37 of the Act deal with various types of suits concerning immovable property and suits for various reliefs. Of these, except Sections 30 and 31, all others require computation of court fee based on the market value of property. Reading each of these provisions with Section 7 of the Act, it is clear that wherever a suit for any relief is in relation to immovable property, the court fee shall be computed on the market value of such property determined on the date of presentation of plaint. Section 37 of the Act also deals with suits for or concerning movable or immovable property. The absence of the term, "market value on (sic. of) the property" in Section 37 of the Act gives scope for the argument that the market value has to be determined not with reference to market value as on the date of the plaint but with reference to the market value mentioned in the document pertaining to plaint schedule property. But on a careful scrutiny of Section 37 of the Act, such argument cannot be sustained.

8. On an analysis of Section 37 of the Act, the following would emerge. Section 37 deals with three categories of suits, which are:

Category - A: Suits for cancellation of decree for money,

Category - B: Suits for cancellation of decree for (in relation to) movable or immovable property, and

Category - C: Suits for cancellation of documents, which create, declare, assign, limit or extinguish the right or title or interest in presenti or in futuro.

9. We will deal how the Section 37(1) of the Act operates in relation to these categories of suits, after noticing the purport of Section 37(1) of the Act. Section 37(1) stipulates that if the suit is for cancellation of a decree or other document wholly, the court fee shall be paid on the amount or value of the property. Section 37(1)(b) of the Act stipulates that if the suit is for part of the decree or other document, court fee shall be paid on such part of the amount or value of the property. Section 37(1)(b) of the Act does not in any manner support the appellant's contention that the court fee is payable on the amount or value of the property for which the document is executed. Section 37(1)(a) of the Act cannot be read de hors first part of Section 37(1) of the Act itself. So read, the situation that would emerge is as follows.

10. In category-A suits dealing with cancellation of decree for money, without any doubt the subject matter of the suit will be the money liable to be paid under the said decree. Therefore the court fee has to be paid on the value or money mentioned in the decree. For instance, if a suit is filed for cancellation of a decree for money of Rs. 1,00,000/-, court fee shall be payable on Rs. 1,00,000/-, which is certainly the subject matter of suit for cancellation of decree.

11. Category-B and category-C suits deal with cancellation of decree and/or a document for property or a document, which creates or declares a right. In these categories of suits, the subject matter of the suit is the property and not money value. As the subject matter of the suit i.e., suit for cancellation of decree/document is immovable property, such market value has to be determined on the date of presentation of plaint. Any other interpretation of Section 37(1) of the Act would amount to ignoring the fact that Section 37(1) of the Act deals with three categories of suits as noticed supra and there cannot be same formula for determining court fee payable on category-A suits on one hand and categories-B and C suits on the other hand.

12. The above view is supported by a Full Bench decision of Madras High Court in Kolachala Kutumba Sastri Vs. Lakkaraju Bala Tripura Sundaramma and Others, Before considering this precedent, we need to reiterate that the High Court of Judicature, Andhra Pradesh, is a Court established by merger of Andhra High Court and Hyderabad High Court. Andhra High Court being one carved out of Madras High Court, which is a Court of record, all its decisions prior to establishment of Andhra High Court are binding on High Court of Andhra

Pradesh, subject of course to other rules of doctrine of precedent.

13. In *M. Subbarayudu and Others Vs. The State*, Full Bench comprising Chief Justice, Koka Subba Rao, and Bhimasankaram and Satyanarayana Raju, JJ (as they then were) was constituted to decide the question, "whether and to what extent Andhra High Court is bound by the decisions of Madras High Court delivered before 05.7.1954." The Bench unanimously held that, "High Court shall follow the Madras decisions in the same manner that the Madras High Court follows its own decisions and subject to the same limitations." The relevant reasoning as summarized in Head-note (a) in the reported judgment is as follows.

The Andhra High Court is in a real sense an offshoot of the Madras High Court exercising the same jurisdiction and administering the same laws, which the Madras High Court had exercised before 5.7.1954, in the territories included in the Andhra State. To use a convenient terminology, the Andhra High Court may be treated as one succeeding to the High Court of Madras and exercising all the powers and administering the same law which the Madras High Court exercised in the territories comprised in the Andhra State. The Andhra High Court and the Madras High Court prior to 5.7.1954 are therefore Courts of coordinate jurisdiction. Even if the two High Courts are deemed to be not Courts of coordinate jurisdiction the Andhra High Court shall follow the Madras decisions on two (sic. the) principle of "stare decisis" in the same manner that the Madras High Court follows its own decisions and subject to the same limitations.

Bhimasankaram, J in the concurrent opinion held:

Where territories under the jurisdiction of one High Court are divided into two, each to be under the jurisdiction of a separate High Court, it seems to me that the principle underlying the rule of precedents requires the continuity of case-law to be maintained, because there is no reason at all why the certainty of the law should be affected. The Andhra High Court is in one sense, new of course but its jurisdiction is a jurisdiction which was once subject to one High Court and until 5.7.1954 governed by the case law as laid down by that High Court. A Court should be reluctant to favour innovations unless they are indispensable.

14. It is trite to mention that as per the principle of stare decisis, Full Bench decision of the High Court is binding on Division Bench as well as Single Bench. It is also trite to mention that law decided or declared by Full Bench is the law of the State and any subsequent decision by a coordinate Bench or a Division Bench or Single Bench in ignorance of the Full Bench decision is a decision rendered per incuriam and cannot be considered. If there is any disagreement with the Full Bench view, the same can be modified or overruled only by another Full Bench of large number of Member judges. Therefore, if Madras High Court in *Kutumba Sastri* (3 supra) has taken a view with regard to computation of court fee in a suit for cancellation of a document, the same law will apply in the State of Andhra Pradesh till Madras view is overruled. Learned Counsel for appellant does not dispute any of these principles.

15. Whether in a suit for cancellation of deed of conveyance and for possession of property, plaintiff should value his relief in accordance with provisions of Section 7(iv)(a) or Section 7(v) of Court Fees Act, 1870. This question was considered by Full Bench of Madras High Court in Kutumba Sastri (3 supra). Section 7(iv)(a) was in relation to suits dealing with cancellation of deed/document/decreed whereas Section 7(v) related to court fee on suits for possession. In *Dantuluri Venkatanarasimha Raju v. Dantuluri Chandrayya* (1927) 14 AIR Mad 825 : (1926) 53 MLJ 267 , a Division Bench took the view that Section 7(iv)(a) did not contemplate the market value on the immovable property, which is subject matter of challenged decree or deed. The said view was again given by Division Bench in *Paluri Venkatasiva Rao Vs. Bodapati Venkatanarasimha Satyanarayanamurthy and Others*, However in *Jonnnavaram Balireddi Vs. Khatipulal Sab alias Abdul Satar and Others*, a learned Single Judge, Venkata Subba Rao, J, held that proper method of calculation of value of subject matter of a suit filed u/s 7(iv)(a) was the market value. This view was followed by another learned Judge in *Venkatakrishnayya v. Sheik Ali Sahib* AIR (1938) Mad 921 : 48 LW 277.

16. The Full Bench being in agreement with the view in *Bali Reddy* (7 supra) and while overruling the view in *Dantuluri Venkatanarasimha Raju* and *Venkatasiva Rao* (5 and 6 supra), held that when a suit is filed for cancellation of a deed, court fee must be based on the value of the property at the time of presentation of suit and not on the amount stated in the conveyance deed. The reasoning of the Full Bench is as follows:

When adding para (iv)(a) to Section 7, the Legislature did not say that in a suit falling within the new paragraph the valuation of the subject-matter should be arrived at in accordance with the method indicated in para (v). It said that a suit within para (iv)(a) should be valued according to the value of the property, unless there is an indication to the contrary, must mean its market value. By the amending Act of 1922, para (iv)(c) was also amended. Before the amendment this paragraph provided that in a suit to obtain a declaratory decree or order, where a consequential relief was prayed, the value should be according to the value of the relief sought by the plaintiff. The Amending Act inserted the proviso to the effect that in a suit coming under this paragraph in a case where the relief sought is with reference to immovable property the valuation shall not be less than half the value of the immovable property calculated in the manner provided for by para (v). There the Legislature expressly provided that the method of calculation was to be in accordance with para (v) but in adding para (iv)(a) no such direction was given. The court-fee is to be calculated on the amount or the value of the property and to give the wording of para (iv)(a) its plain meaning the valuation must be the valuation based on the market value of the property at the date of the plaint.

17. In *Ram Kumar and Others Vs. Damodar Das and Others*, Allahabad High Court while considering scope of Section 7(iv)(a) of Court Fees Act, 1870,

followed the view in Kutumba Sastri (3 supra), and it was held as follows.

It is clear that the determination of such value has been divided into two parts, firstly, according to the amount for which the decree has been passed or the instrument executed and secondly, with respect to the value of the property in respect of which the decree was passed or instrument executed. It seems to us, on a reading of the entire section, that the amount refers to those decrees which are for money or to those instruments which secure money, while the value of the property in respect of which the decree was passed or instrument executed, refers to those cases where the decree was for other property having a market value or the instrument was for securing other property having such value. This seems to us to be the proper and natural interpretation to be put on this section.... We are, therefore, of opinion that where the decree is for money or the instrument secured money, the value of the subject-matter is the amount of the decree or the amount of the money secured by the instrument. Where, on the other hand, the decree is for other property having a market value or the instrument secures other property having such value, the value of the subject-matter for the purposes of court fee is the value of the property in respect of which the decree was passed or in respect of which the instrument was executed.

18. In Kothandarama Reddiar Vs. Chokkammal and Others, , Sengoda Nadar Vs. Doraiswami Gounder and Others, , T.S. Rajam Ammal Vs. V.N. Swaminathan and Others, Kappurama Mudaliar Vs. The Government of Tamil Nadu and Others, and S. Rajasekaran Vs. K. Sargunam, Madras High Court consistently held that, "when the subject matter of impugned deed is immovable property, the court fee has to be paid on the market value on the date of the suit."

19. In P.K. Vasudeva Rao v. K.C. Hari Menon AIR 1982 Ker 35, a Division Bench of Kerala High Court took the same view. In T. Tharamma v. T. Ramachandra Reddy 1969 (1) An. W.R 162 and G. Bhoom Reddy v. Madamma (1970) 2 APLJ 41, two learned Single Judges also took the similar view. In an unreported judgment in Mettu Neelamma (2 supra), a learned Single Judge referring to Allam Venkateshwara Reddy (1 supra) held that,

"in a suit for cancellation of deed, the court fee has to be computed on the face value for which the deed was executed, but not on the present market value, as held by the Court below." This decision does not refer to Full Bench decision of Madras High Court in Kutumba Sastri (3 supra). Therefore, being rendered per incuriam it is not a binding precedent.

20. The Full Bench view of Madras High Court in Kutumba Sastri (3 supra) is a binding precedent, which governs the position. Therefore, we hold that in a suit filed for cancellation of sale/conveyance deed, the court fee shall have to be computed on the market value of immovable property (subject matter of the suit) as on the date of filing of the suit. In that view of the matter, learned VII Additional Senior Civil Judge was right in returning the plaint to appellant with a direction to pay court fee as per the market value of suit schedule property as on

the date of presentation of plaint and present it before proper Court. The order impugned is unassailable.

21. In the result, for the above reasons, both the civil miscellaneous appeals are dismissed with costs.