(1926) 07 BOM CK 0017

In the Bombay High Court

Narayan Kalu Chambhar APPELLANT

Vs

Bayaji Appa Sanawane RESPONDENT

Date of Decision : 02-07-1926

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 46
Court Fees Act, 1870 — Section 20

Citation : AIR 1927 Bom 17

Hon'ble Judges : Madgavkar, J;Fawcett, J

Bench : Full Bench

Judgement

Fawcett, J.—The Subordinate Judge of Baramati has referred to us two questions under Order 46, Civil P.C. The first in brief is, whether the Revenue Authorities have legal power to recover, as expenses of sale, under Rule 9 of Schedule III, Civil P.C, fees on the scale which applies in the case of sales under the Land Revenue Code. The second question is whether this Court is competent to direct the Revenue Authorities to refund such charges. The Subordinate Judge refers to Government Resolutions : (1) No. 7828, dated June 25, 1923, and (2) No. 4603, dated April 3, 1924. The first of these, in effect, is based on the view that the cost of paper, printing, postage and clerical and other labour in connexion with the sales of land by the Revenue Authorities has. gone up for the past years and that the fees hitherto enforced should be raised, and Government by the resolution doubled the fees previously enforced. The result is the levy of charges at the rate of 0-0-6 in a rupee, calculated on the amount of the sale proceeds realized by the sale of immovable property. The second Resolution of 1924 arose out of complaints from Mamlatdars that the expenditure they incurred on sales in execution of civil Court decrees was in excess of the sums put at their disposal, and the Collector of Belgaum said that, in his opinion, it would not be inequitable, if the expenses of sale were recovered at some uniform scale to cover the cost to Government of the travelling allowances payable to the officers deputed to carry out the execution proceedings. He proposed that the same rate should be made applicable to sales of property sold in the execution of the civil

Court decrees as that enforced in regard to land revenue sales. The Commissioner, Southern Division, supported this proposal, and Government held that such fees could be levied as charges incurred by the Collectors under Sub-rule (2) of Rule 9 of Schedule III. The Collectors were instructed to act accordingly in future.

2. Mr. Limaye, who has appeared in support of the reference, has contended that the fees levied by the Revenue Department were legal, but that the additional levy of poundage under the scale of process fees, etc., prescribed in the table at pages 204 and 205 of the High Court Manual of Circulars should be hold to be illegal. The Government Pleader, on the other hand, contends that both sets of fee are legal. Our attention has been drawn to a case, in which a somewhat similar question arose: Vana Khushal Patil Vs. Ratilal Bhaidas, . That was a case in which a sale was held through the Collector, who deducted a sum of Rs. 546-14-0 for expenses of sale at the rate of 0-0-6 per rupee, as directed in the Government Resolution No. 4603, Home Department, dated April 3, 1924. When the balance of the sale proceeds reached the civil Court, the Court deducted from it Rs. 180 as poundage. The appellant in that case objected to that double deduction. But the execution Court overruled the objection. On appeal, it was held by the learned Chief Justice and Coyajee, J., that levy of poundage was entirely independent of the deduction of expenses of sale by the Collector, and that the appellant could not claim that the poundage should be deducted from such expenses of sale. In my opinion, as regards the fee of 0-0-6 in a rupee levied by the Collector, I can see no adequate reason for holding that such a charge is not permissible under Rule 9 of Schedule III, Civil P.C, as part of the charges incurred by the Collector in the exercise and in the performance of the powers and duties conferred and imposed on him. The fact that a specific estimate of such charges is not made in each case that arises, but there is a prescribed general rate covering such expenses, does not, I think, invalidate the levy of such fees. It is in accordance with the principle adopted by the civil Courts, as well as by the Revenue Department in regard to land revenue sales, and obviously it saves labour to have a uniform rate that will on the average cover all such expenses rather than to have a detailed account in each and ovary case. I think also that, if there was a clear illegality in regard to such fees, that would have attracted the notice of the Court in Vana Khushal Patil Vs. Ratilal Bhaidas, .

3. Then, as regards the levy of poundage, this is under the Table imposed in the case of every sale of moveable or immovable property. There is no restriction that the sale must be held by the civil Court which levies the charge, and the authority given by Section 20 of the Court Pees Act of 1870 covers the making of rules charging fees for executing processes issued by the civil Courts. In a case of this kind the actual process for the sale is issued by the civil Court, but it is executed ,not by the Court but by the Collector. Therefore, I think that no legal objection can be taken to the levy of poundage also in such a case. Whether it is desirable that there should be this double levy, seems to me to be a matter to be

dealt with administratively and not to be a question that can be judicially determined. In fact, this Court has already taken steps to move Government in the matter. Therefore, I would answer the first question put by the Subordinate Judge in the affirmative, and the second in the negative.

Madgavkar, J.

4. I agree. In regard to the levy of poundage under the High Court Circulars we are bound by the authority of Vana Khushal Patil Vs. Ratilal Bhaidas, , where it was held as lawful, although the same argument was used there, as in the present case, viz., that a double levy was unlawful. In regard to the Collector''s charge, the charge itself is authorised by law u/s 9 of the Third Schedule of the Code of Civil Procedure. The only doubtful points is whether the actual charges in each case can be standardised in the manner proposed by the Government Resolution.

5. How far this double levy works hardly on litigants and the amount and manner of its levy are administrative matters in which we are not now called upon to give an opinion.

