

(1993) 07 KAR CK 0007
In the Karnataka High Court
Case No : M.F.A. No. 1200 of 1989

Papabai

APPELLANT

Vs

Assistant Commissioner

RESPONDENT

Date of Decision : 26-07-1993

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 33 Rule 11 (1), Order 33 Rule 11 (2), 35

Citation : (1993) ILR (Kar) 3293 : (1994) 1 KarLJ 577

Hon'ble Judges : R.V. Raveendran, J;M. Ramakrishna, J

Bench : Division Bench

Advocate : C.S. Kothavale, for the Appellant; R.I. D'sa, Government Advocate, for the Respondent

Judgement

M. Ramakrishna, J.—The appellant who was the owner of land in R.S.No. 1627/2A to an extent of 2 acres 2.7 guntas situated in Athani, Belgaum District, being aggrieved by the judgment and award dated 5.9.1988 made by the learned Civil Judge, Athani, has approached this Court in this Appeal seeking higher compensation for the land acquired.

2. We have heard the learned Counsel on both sides.

3. The undisputed facts as disclosed by the judgment under Appeal are that by a Preliminary Notification dated 27.10.1975 published on 6th November, 1975, the land in question came to be acquired for a public purpose, to wit, construction of Government Quarters for Judicial Department. The Land Acquisition Officer awarded compensation in a sum of Rs. 1,500/- per acre by his award dated 28.8.1981. Not being satisfied with the award, the appellant filed an application u/s 18 of the Land Acquisition Act, 1894 (the Act for short) for reference of the matter to the Civil Court for determination. The learned Civil Judge on receipt of the reference application held an enquiry and proceeded to award compensation in a sum of Rs. 40,000/- per acre. This award was the subject matter of Appeal in M.F.A.No. 997 of 1982 filed by the State before this Court and this Court allowed the Appeal, set aside the judgment and award and remitted the matter

for reconsideration. Thereafter, the learned Civil Judge, after providing opportunity to both the parties of being heard, reconsidered the evidence on record and proceeded to pass the judgment and award under Appeal awarding compensation of Rs. 4,500/- per acre plus 15% solatium and interest at 5% per annum on the enhanced compensation. Hence this Appeal by the owner of the land.

4. Sri Kothavale, learned Counsel for the appellant, having taken us through the findings and the reasons given by the learned Civil Judge for awarding the compensation as aforesaid argued:

(i) that the reliance placed by the learned Civil Judge on Ex.R1, a certified copy of the sale deed dated 4.1.1980 for concluding that the market value of the acquired land was Rs. 4,500/- per acre, cannot be sustained;

(ii) that, having regard to the potentialities of the land for building sites the market value calculated on the basis of Ex.P-13, a certified copy of the sale deed dated 26.5.1980 in respect of a site measuring 40" X 60" sold in the vicinity at the relevant point of time referred to by the learned Civil Judge, will give a correct figure to reach a just conclusion on the market value of the land in question;

(iii) that the learned Civil Judge ought to have considered the location and the potential value of the land acquired; and

(iv) that considering the observations of the learned Civil Judge that the land acquired is situated close to the Inspection Bungalow of Athani within the limits of the Municipality, the market value should have been certainly higher than what was awarded as compensation in the instant case.

On these grounds, the learned Counsel for the appellant submits that this is a fit case for allowing the Appeal and awarding compensation at the rate sought by the appellant.

5. Opposed to this argument, Sri D'Sa, learned Government Advocate, urged that the learned Civil Judge was justified in relying upon the sale deed, Ex.R-1, relating to a similar land. He submitted that even taking into consideration the location and the potential value of the acquired land for building sites, the compensation awarded for it cannot be said to be on the lower side.

6. To drive home the point sought to be made out, the learned Counsel for the appellant relied on the following Decisions to contend that agricultural land with potential for non-agricultural use should be valued accordingly and not a mere agricultural land:-

Saraswathi Sundaram and Another Vs. The Assistant Commissioner and Land Acquisition Officer, Bangalore,

The Collector, Raigarh Vs. Harisingh Thakur and Another,

He also relied on the Decision of the Supreme Court in *Mehta RAVINDRA RAI AJITRAI, DECEASED BY L.R. and Ors. v. STATE OF GUJARAT* AIR 1969 SC 2051 to contend that distress sale shall not be the basis for fixing market value and that Ex.R1 related to distress sale.

7. At the out-set, it is seen that the land in question is said to be acquired for construction of Government Quarters for the Judicial Department. Secondly, it is not in dispute that the land is situated within the Municipal limits of Athani and close to the Inspection Bungalow of Athani Town where a combined Court of Munsiff & J.M.F.C., is functioning. Nextly, in the course of the discussion of the evidence on record, the learned Civil Judge has observed that there is no acceptable evidence to hold that as on the date of the preliminary notification the property had any potential value for house sites, but in the next breath he records a finding in the very paragraph that it is no doubt true that even on the date of acquisition, the Inspection Bungalow was situated close to the land acquired. These observations of the learned Civil Judge make it clear that the land though being a bagayath land raising dry crops as on the date of the acquisition, had the potential of being formed into building sites having regard to the location. Therefore, we have to conclude that the land in question had certainly potential for non-agricultural purpose and hence we have to consider its value accordingly for the purpose of awarding just compensation.

8. Among the several documents produced, what may be relevant is Ex.R-13, a certified copy of the sale deed dated 26.5.1980, It is seen therefrom that a site measuring 40" X 60" in the adjoining Sy.No. 1627/2B was sold for a sum of Rs. 3,000/-. Based upon this document, the learned Counsel for the appellant made an attempt to urge that if we take into consideration the price of Rs. 3,000/- paid by the purchaser for a small site of 40" X 60" intending to put-up a residential house, which works out to Rs. 1- 25 per sq.ft., the value of one acre will work out to be Rs. 27,225/- (i.e., Rs. 1-25 per sq.ft., for 43,560 sq.ft., less 50% towards amenities and cost of development). But if we adopt the correct principle in a case of this type, we will have to deduct 53% for roads, civic amenities and the cost of development, in which event, the value of one acre will be Rs. 25,592/- (i.e. Rs. 54,450/- less Rs. 28,858/-).

9. It is not in dispute that the land came to be acquired by issuing a preliminary notification in the year 1975 and that the sale deed, Ex.P-13, is of the year 1980. Normally a sale deed relating to a period, five years after the preliminary notification, will not be considered. But in this case, we are constrained to refer to such a sale deed in view of the circumstances: (a) acceptable evidence relating to sales around the time of preliminary notification is not adduced by either side and (b) it is not in dispute that there has been no sudden spurt in prices in that area between 1975 and 1980. Therefore, we will base the market value on Ex. P-13. The difference of 5 years must be taken into account by taking the average increase in price of land per year at 8% in a place like Athani and thus 40% has to be deducted to arrive at the market value in the year 1975.

On such deduction of 40% out of Rs. 25,590/-, the market value in 1975 will work out to Rs. 15,356/-. This we can round off to Rs. 15,000/-

10. Therefore, applying the hypothetical layout method which the Court below has rightly adopted, we cannot go beyond Rs. 15,000/-per acre. As Ex.R-1 disclosed the transaction relating to an agricultural land (Sy.No. 1627/2B) said to have been sold by the Government of Karnataka for not having paid the land revenue as observed in the course of the award of the Land Acquisition Officer, we cannot adopt the valuation found in Ex.R-1 being in the nature of a distress sale. This is another reason for interference by this Court in the award in question.

11. Thus viewed from these circumstances and considering the submissions made by the learned Counsel for the appellant, we are of the view that the proper valuation to the land in the instant case would be Rs. 15,000/- per acre instead of Rs. 4,500/- per acre awarded by the Reference Court.

12. At this stage, the question that arises for consideration is whether the appellant is liable to pay the Court fee and if so, how much.

13. Sri D'Sa, learned Government Advocate appearing for the State, submitted that the appellant having succeeded partly in the appeal presented in forma pauperis was liable to pay the requisite. Court fee as provided under the Karnataka Court Fees and Suits Valuation Act, 1958 (the Act for short) in view of Sub-rules (1) and (2) of Rule 11 of Order 33 C.P.C., as amended by Karnataka Act No. 104 of 1976. Opposing the above submission of Sri D'Sa, Sri Kothavale, learned Counsel for the appellant, urged the following points:-

(a) Since the appellant was permitted to file the appeal as an indigent person, she is not liable to pay any Court fee at all, although she has succeeded partly in the appeal;

(b) In the alternative, assuming for the purpose of argument that the appellant is liable to pay the Court fee, since she has succeeded partly in the appeal, she is required to pay the Court fee not on the amount claimed but to the extent she has succeeded and that too under the amended Article which came to be substituted by the Karnataka Court Fees and Suits Valuation (Amendment) Act, 1992 (Karnataka Act No. 2 of 1993) relying on the Decision of the Supreme Court in Rib Tapes (India) Pvt. Ltd. and Another Vs. Union of India (UOI) and Others, and

(c) The Court has discretion in awarding costs and to determine by whom such costs have to be paid, having regard to the provisions of Section 35 CPC, r/w Rule 10 of Order 33 CPC.

In support of this contention, he placed reliance on the Decisions in State of Kerala Vs. Chandradass Butt and Others, and Ors., S.MUJAWIR HUSAIN v. Mr. KISHWAR JEHAN BEGAM, AND Anr. AIR 1941 Oudh 66 and G.PARASMALL v. M.P.JAYALAKSHMMA and Ors. 1962 Mys. L.J. 295.

14. To appreciate the contentions urged by the learned Counsel, it is necessary to extract Sub-rules (1) and (2) of Rule 11 of Order 33 CPC, as amended in Karnataka:-

"Rule 11(1) Where the plaintiff fails in the suit or is dispaupered or where the suit is withdrawn or where part of the claim is abandoned or the suit is dismissed because the summons for the defendant to appear and answer has not been served upon him in consequence of the plaintiff's failure to pay the requisite charges for service of the suit is so dismissed because the plaintiff does not appear when the suit is called on for hearing, the Court shall order the plaintiff or any person added as a co-plaintiff to the suit to pay the Court fee and in case of abandonment of part of the claim the proportionate court-fee which would have been payable by the plaintiff if he had not been permitted to sue as pauper.

(2) In cases where the plaintiff is dispaupered the court may, instead of proceeding under Sub-rule (1), order the plaintiff to pay the requisite court fee within a time to be fixed by it and in default dismiss the suit and make an order for the payment of court fee as in Sub-rule (1)."

15. By a careful consideration of the language employed in Sub-rules (1) and (2), it is abundantly clear that once the plaintiff who was held to be an indigent person for the purpose of filing the suit without paying Court fee and who succeeded in the suit, either partly or fully, is thereby considered as dispaupered, he is liable to pay the requisite Court fee provided in the Act as if he had not been permitted to sue as an indigent person. Therefore, the first contention of the appellant that having been permitted to file the appeal as an indigent person, she is not liable to pay any Court fee, even after partly succeeding in the appeal, is rejected.

16. Coming to the second contention that since the appellant has succeeded partly in the appeal, she is liable to pay court fee only to the extent she has succeeded and not on the amount claimed in the appeal and that too under the amended Article-1 of Schedule-I to the Act, by Act No. 2 of 1993. Article-1 Clauses (i) and (ii) of Schedule-I to the Act came to be amended and the amendment came into effect at once. Section 2 of the Amending Act reads:

"2. Amendment of Schedule-I. In Schedule-I of the Karnataka Court Fees and Suits Valuation Act, 1958 (Karnataka Act 16 of 1958) in Article-1 for Clauses (i) and (ii) and the entries relating thereto, the following shall be substituted, namely:-

1. Plaint, written statement, pleading a set off or counter claim or memorandum of appeal presented to any Court When the amount or value of the subject-matter in dispute -

(i)

does not exceeding rupees 15,000

..2 1/2per centum.

(ii)

Exceeding rupees 15,000 but not exceeding rupees 75,000

.. Rs.375 + 7 1/2% of the amount exceeding rupees 15,000.

(iii)

exceeding rupees 75,000 but not exceeding rupees 2,50,000

.. Rs.4,875 + 7% of the amount exceeding rupees 75,000

xxx

xxx

xxx"

17. It is clear that the Legislature intended to amend by way of substitution only Article-1 of the Schedule and not the entire schedule. No other Article in Schedule-I is either substituted or amended by the amending Act. The plaintiff or the appellant as the case may be, intending to file a suit or an appeal, has to pay the Court fee in accordance with the amended Schedule from the date of amendment.

18. In Halsbury's Laws of England, (3rd Edition), Vol.36, page 425, it is observed that fiscal legislation imposing liability is generally governed by the normal presumption that it is not retrospective - vide The Union of India Vs. Madan Gopal Kabra, . It is a cardinal principle of the tax law that the law to be applied is that in force in the assessment year unless otherwise provided expressly or by necessary implication (please see Reliance Jute and Industries Ltd. Vs. Commissioner of Income Tax, West Bengal, Reliance Jute & Industries Ltd v. C.I.T., West Bengal.

19. Therefore, in the light of the said authorities, the amendment effected to Article-1 of Schedule-I to the Act which affects the fiscal policy of the State, unless the amendment provides expressly or by implication, has to be presumed as only prospective and not retrospective. The amendment in question amending Article-1- therein and coming into force at once from the date of receiving the assent of the Governor on 28.1.1993 is only prospective and not retrospective.

20. Now we proceed to consider whether the Court has discretion in the matter of directing payment of Court fee by either party to the proceedings. On this point, Sri Kothavale relies upon Rule 10 of Order 33 which reads:-

"Rule 10. Costs where an indigent person succeeds.- Where the plaintiff succeeds in the suit, the Court shall calculate the amount of court-fees which would have been paid by the plaintiff if he had not been permitted to sue as an indigent person; such amount shall be recoverable by the State Government from any

party ordered by the decree to pay the same, and shall be a first charge on the subject-matter of the suit."

By a careful consideration of the language employed in the above Rule, it is true that there is discretion vested in the Court to order any party to the suit to pay the Court fee. But under what circumstances the Court could exercise such discretion to do so is another question. Whether in a case of this kind the Court is competent to direct the appellant to pay the Court fee to the extent she succeeded has to be considered. In Chandradass Butt's case, the Kerala High Court has held as follows:-

"On a reading of Rule 10 of Order 33 it will be seen that the said rule deals with the cases of a pauper plaintiff who succeeds in the suit and Rule 11 of Order 33 deals with the pauper plaintiff who fails in the suit. Neither Rule 10 nor Rule 11 deal with cases when the pauper plaintiff partly succeeds and partly fails. No provision, separate or specific, is seen in Order 33 itself or elsewhere in the Code, where provision is made for court fee being directed to be paid in cases where plaintiff succeeds in part and fails in part. In the absence of any such provision the discretion should entirely rest with the Court. Inherent powers u/s 151, of the Code cannot be invoked, since Section 35 of the Code confers jurisdiction to award costs. Section 33 gives very wide and unfettered jurisdiction to the Court in the matter of award of costs. Therefore, in cases where Rules 10 and 11 of Order 33 cannot be applied, the Court has necessarily to resort to Section 35 for the award of costs in the interests of justice or for other equitable circumstances. But in passing an order the discretion of the Court has to be exercised having due regard to the peculiar facts and circumstances of each case....."

21. In the light of the said Ruling, Sri Kothavale vehemently argued that by virtue of the discretion vested in the Court, the Court should allow the appellant herein to pay the Court fee only to the extent she succeeded and not on the amount claimed. Undoubtedly, the Court has got discretion in the matter of award of costs, but that discretion has to be exercised as is held by the Kerala High Court, having due regard to the peculiar facts and circumstances of each case. Further, as held by this Court in Parasmall's case, the general purpose of the Rules of Order 33 C.P.C., is protection of revenue and have no bearing upon the mutual liability of the parties to the suit in regard to costs. The matter is governed by Section 35 C.P.C. This is one aspect. The other aspect is, we cannot lose sight of the fact of Karnataka Amendment to Section 11, which has been extracted above. Therefore, in the light of the amendment effected by the State of Karnataka to Rule 11 by inserting Sub-rules (1) to (3), the Court will have to consider the object behind the amendment, it being protection of revenue. By a perusal of Sub-rule (2) of Rule 11, it is clear that in cases where plaintiff is dispaupered, the Court may instead of proceeding under Sub-rule (1), order the plaintiff to pay the requisite court-fee..... Provisions of Rule 11 of Order 33 are mandatory and the Court must take provision in the decree for payment of Court

fee by plaintiff to the State Government (vide Smt. Kalawati Devi Vs. Chandra Prakash and Others, ; State of Bihar Vs. Sheo Kumar Sinha, On failure of a pauper suit it is the plaintiff who alone becomes liable for payment of Court fee (See STATE OF BOMBAY v. DATTATRAYA NARASINGRAO AIR 1960 Mys 95).

22. No doubt, the appellant was pauper as on the date of filing the appeal; therefore she was permitted to prosecute it in forma pauperis. She has now succeeded partly in the appeal and therefore she is liable to pay the Court fee. Having regard to the amounts she is entitled to on enhancement of compensation and applying Sub-rule (2) of Rule 11 as amended to the facts of the present case, she has undoubtedly become dispaupered and therefore she would be required to pay the requisite Court fee as provided under the Act on the amount claimed and not to the extent she succeeded, the object of the Rules 10 and 11 of Order 33 being protection of revenue. The Kerala High Court and other High Courts had no occasion to consider the amended Rule 11 applicable to the State of Karnataka. Therefore, the appellant is liable to pay the requisite Court fee on the difference between the amount awarded and the amount claimed in the appeal as contemplated in Section 48 of the Act, which is as follows:-

Amount claimed (compensation at the rate of Rs.40,000/- per acre on 2 acres 27 guntas + 30% solatium)

Rs.1,39,100-00

LESS Amount awarded (Compensation @ Rs.4,500/- per acre on 2 acres 27 guntas + solatium at.15%

Rs. 13,843-00

DIFFERENCE on which Court fee is payable

Rs. 1,25,257-00

23. As to the award of costs u/s 35 C.P.C., no doubt, there is a discretion vested in the Court to impose costs. It is well known that imposition of costs in exercise of the discretion vested in the Court is incidental to the relief and costs must normally follow the event (see Swaminatha v. Official Receiver 1957 Mys. L.J. 200). It is also true that Section 35 governs costs in pauper suits as well (see Parasmall v. Jayalakshamma,).

24. In the instant case, the appellant has succeeded in obtaining enhanced compensation and therefore she will be entitled to proportionate costs. But, the payment of Court fee is different from payment of costs. As we have already observed, imposition of costs is an incident to the success or failure of a legal proceeding, whereas the payment of Court fee is a condition precedent for initiation of an action. In the instant case, award of costs does not obliterate the liability for payment of Court fee under the statute, inasmuch as payment of Court fee under the Karnataka Court Fees and Suits Valuation Act is mandatory whereas the award of costs is left to the discretion of the Court. We are not

convinced by the argument of Sri Kothavale that by invoking the provisions of Section 35, the Court can exercise discretion in regard to payment of Court fee.

25. In the Civil Petition, the appellant was able to obtain an order permitting her to prosecute this appeal in forma pauperis. Thus, without paying any Court fee on the Memorandum of Appeal, this Appeal had been registered and heard. She has succeeded partly. She must be thankful that she has been able to prosecute this Appeal without payment of Court fee at the out-set. However, in view of the Order 33 Rule (1) and (2), she cannot be absolved from the liability of paying the Court fee.

26. The Decisions in Murukesan Vs. District Collector, Ernakulam, 1978(2) Kar.L.J.22 , Lakstimi Ammal v. Madhavakrishnan; Shamarao V. Parulekar Vs. The District Magistrate, Thana, Bombay and Others, 1972(1) Kar.L.J. 327 , Sha Chunnilal v. Gurushanthappa; Uttam Veranekar Vs. Shattu Laxman Donkari, plethora of Authorities relied upon by Sri Kothavale are of no assistance to the appellant in view of the amendment effected by the State of Karnataka to Rule 11 of Order 33 C.P.C. which in particular makes it abundantly clear that a person who had been permitted to prosecute the suit or an appeal information pauperis has to pay the requisite Court fee on his being dispaupered, which would have been payable by him if he had not been permitted to sue as pauper.

27. Ultimately, we have to fall back upon the amended provisions of Rule 11 of Order 33 which are the touch-stones to decide the question confronting us whether this Court can direct the appellant to pay the Court fee to the extent she succeeded or on the amount sought to be increased in the Appeal. Having regard to the language employed in Sub-rules (1) and (2) of Rule 11 of Order 33 CPC., it is clear that no discretion is left to the Court to permit a person subsequently dispaupered to pay the Court fee only to the extent he succeeds. On the other hand, it specifically lays down that such a person must pay Court fee payable by him if he had not been permitted to sue as pauper. That means, he has to pay the Court fee on difference between the amount claimed by the appellant and the amount awarded by the Reference Court.

For the aforesaid reason, we allow this Appeal in part, in modification of the award of the Reference Court as follows:-

(a) Rs. 15,000/- per acre is awarded in place of Rs. 4,500/- per acre as market value;

(b) The appellant will be entitled to 30% of such market value as solatium;

(c) The appellant shall be entitled to interest on the amount in excess of the award of the Land Acquisition Officer, at the rate of 9%. per annum from the date of taking possession to date of payment; and in case such amount is not paid within one year from the date of taking possession, at 15% per annum from the date of expiry of one year from the date of taking possession, to date of payment;

(d) In the event of the Supreme Court holding in Paripoornan's case that additional amount u/s 23(1A) is payable irrespective of the fact that the acquisition and award is earlier to 30.4.1932, the appellant shall be entitled to additional amount u/s 23(1A) payable within two months from the date of the Decision of the Supreme Court.

(e) The appellant is entitled to costs proportionate to the extent of success in the Appeal; and

(f) appellant shall be liable to pay Court fee on Rs. 1,25,257/-and the same shall be recovered from out of the amount payable under paras (a) to (c) above.