

(1971) 03 KAR CK 0004

In the Karnataka High Court

Case No : Civil Revision Petition No. 607 of 1969

Shivappa Satyappa Mudakannavar

APPELLANT

Vs

Satyappa Yellappa Muttapagol and Others

RESPONDENT

Date of Decision : 02-03-1971

Acts Referred:

Mysore Court-fees and Suits Valuation Act, 1958 — Section 38 (1)

Citation : AIR 1971 Kar 352 : (1971) 1 MysLJ 374

Hon'ble Judges : D.M. Chandrashekhar, J

Bench : Single Bench

Advocate : W.K. Joshi, for the Appellant; N. Venkatachala, High Court Govt. Pleader, for the Respondent

Final Decision : Dismissed

Judgement

D.M. Chandrashekhar, J.—What is the court-fee payable in a suit by a reversioner on the death of a Hindu Widow to set aside the alienation by her, of the property of her husband and for possession of that property? That is the question that arises for determination in this revision Petition.

2. Defendant-3 purports to be the adopted son of one Madawa who died as a widow. The plaintiff claims to be a reversioner after her death. She and defendant-3 sold the suit house to defendant-2 under the sale deed dated 12-7-1950 for Rs. 500/-. Deft. 2 in turn gifted the suit house to defendant-1 under the deed of gift dated 8-5-1957.

3. The plaintiff has pleaded that the adoption of defendant-3 by Madawa was illegal and that there was no legal necessity for her to sell the suit house. The reliefs prayed for in the suit are:--

i) Setting aside the alienation of the suit house by deceased Madawa and defendant-3 in favour of defendant-2;

ii) Setting aside the further alienation of the suit house by defendant-2 in favour

of defendant-1; and

iii) Recovery of possession of the suit house.

4. The plaintiff valued the suit at Rs. 500/- under Sub-section (1) of Section 38 of the Mysore Court-fees and Suits Valuation Act, 1958, (hereinafter referred to as the Act) and paid the court-fee accordingly.

5. The question whether the court-fee paid on the plaint was sufficient, came up for consideration before the Munsiff, at Jamkhandi. He held that separate court-fee has to be paid on each of the above three reliefs and that for the relief of possession the court-fee has to be paid on the market value of the suit house.

6. Feeling aggrieved by the decision of the learned Munsiff, the plaintiff has come up in revision.

7. Mr. W. K. Joshi, learned counsel for the petitioner-plaintiff, contended that the main relief sought for by the plaintiff is setting aside the alienation effected by Madawa and defendant-3 in favour of defendant-2 and that the relief of setting aside the gift effected by defendant-2 in favour of defendant-1 and the relief of recovery of possession of the suit property, are merely ancillary to the main relief of setting aside the first alienation, Mr. Joshi added that the: court-fee is payable only on the main relief, and not on the two consequential reliefs and that the main relief has to be valued under Sub-section (1) of Section 38 of the Act on the amount of consideration specified in the deed of sale.

8. In support of his contention, Mr. Joshi relied on the decision of the Madras High Court in *Zamindar of Khallikote Vs. Sivaram Bevartha Patnaik and Others*, . There, the suit was for cancellation of the deed of sale executed by the plaintiff and for recovery of possession of the land, and the plaintiff had paid Court-fee on the amount of consideration specified in the sale deed, under Clause 4-A of Section 7 of the Court-fees Act 1870. That clause is in pari materia with Sub-section (1) of Section 38 of the Act. Dealing with the question whether the plaintiff was bound to pay court-fee in respect of the claim for possession, Madhavan Nair, J. said that the claim with regard to possession, was only ancillary to the main claim, namely, setting aside the sale deed and that the plaintiff need not pay court-fee on the relief of recovery of possession.

9. Mr. Joshi next relied on the decision of the Full Bench of the former Mysore High Court in *re: Bale Chikka Yadoora Setty* ((1927) 5 Mys LJ 293). There, the plaintiffs instituted a suit for a declaration that under a deed of gift executed by them and defendants 2 to 9 in favour of defendant 1, the latter did not acquire any interest in the properties comprised in the said deed for the cancellation thereof and for delivery of possession of those properties. Para iv (a) to Section 4 of the Mysore Court Fees Regulation, 1900, is in pari materia with Sub-section (1) of Section 38 of the Act. The Full Bench held that in a suit for cancellation and possession, the plaintiffs main relief is cancellation of the deed, that court-fee must be computed ad valorem on the amount for which the document had

been executed and that separate court-fee need not be paid on the consequential relief of possession of property.

10. On the other hand, the learned Government Pleader to whom notice had been issued, contended that in order to determine the proper court-fee payable on the plaint, the substantial relief sought for in the plaint should be ascertained and that in the present suit the substantial relief is recovery of possession of the suit property and not cancellation of the sale deed or the gift deed nor setting aside the sale or gift.

11. The learned Government Pleader referred to the following observations of the Full Bench of the Allahabad High Court in *Kalu Ram Vs. Babu Lal and Others*, .

"The Court has to see what is the nature of the suit and of the reliefs claimed, having regard to the provisions of Section 7 of the Court-fees Act, if a substantive relief is claimed, though clothed in the garb of a declaratory decree with a consequential relief, the court is entitled to see what is the real nature of the relict and if satisfied that it is not a mere consequential relief but a substantive relief it can demand the proper court-fee on that relief irrespective of the arbitrary valuation put by the plaintiff in the plaint on the ostensible consequential relief."

12. I am in respectful agreement with the above observations.

13. The learned Government Pleader next contended that where a limited owner alienates a coparcenary property, it is not necessary for the reversioner who wants to avoid such alienation, to ask for a declaration that such alienation is not binding on him and that he can straightway file a suit for recovery of possession of the property so alienated.

14. The learned Government Pleader relied on the following observations of the Privy Council in *Bijoy Gopal Mukerji v. Krishna Mahishi Debi* ILR (1907) Cal 329:

"Her (the widow's) alienation is not, therefore, absolutely void, but it is "prima facie" voidable at the election of the reversionary heir. He may think fit to affirm it, or he may at his pleasure treat it as a nullity without the intervention of any court, and he shows his election to do the latter by commencing an action to recover possession of the property. There is in fact, nothing for the court either to set aside or cancel as a condition precedent to the right of action of the reversionary heir."

15. It was also contended by the learned Government Pleader that as the plaintiff was not a party to the sale deed and the gift deed referred to in the suit, there is no need for the plaintiff to ask for cancellation of the sale deed and the said gift deed and that the substantial prayer in the suit is for recovery of possession. The learned Government pleader added that the two decisions relied on by Mr. Joshi are distinguishable on facts because in those cases the plaintiff had asked for cancellation of the deeds to which they were parties.

16. In Bijoy Gopal Mukerji's case ILR (1907) Cal 329 the plaintiffs who were reversionary heirs, had prayed for a declaration that the deed under which the widow alienated properties of her husband was inoperative against them and had also prayed for delivery of possession of those properties. Their Lordships of the Privy Council pointed out that it was not necessary for the plaintiffs to have asked for such declaration and that they could have merely claimed possession leaving it to defendants to plead and (if they could) prove the circumstances on which they relied for showing that the said alienation was not voidable but was binding on the reversionary heirs.

17. In view of the aforesaid pronouncement of the Privy Council, it is clear that in the present suit also the plaintiff need not have asked for either cancellation of the sale deed or the gift deed or for a declaration that the said sale and the gift were not binding on him. He could straightway ask for possession. The Government Pleader, is in my opinion, right in contending that the substantial relief sought for in the suit is recovery of possession and that court-fee is payable on the market value of the suit property.

18. Thus, I am unable to accept the contention of Mr. Joshi that court-fee is payable u/s 38 (1) of the Act on the amount of the consideration mentioned in the sale deed executed by Madawa and defendant 3 and that no court-fee is payable for relief of possession. At the same time, the view taken by the learned Munsiff that separate court-fee is payable for all the three reliefs, mentioned in the plaint, is equally unsustainable.

19. In modification of the order of the learned Munsiff, the plaintiff is directed to pay court-fee on the relief of possession.

20. However, Mr. Joshi argued that subsequent to the alienation by Madawa and defendant 3, defendants 1 and 2 had effected substantial improvements to the suit house and that such improvements should not be taken into account in determining the value of the suit property for purpose of court-fee.

21. u/s 29 of the Act, court-fee is payable on the market value of the suit property. Such market value obviously should be as on the date of institution of the suit. Mr. Joshi was not able to state on what principle the value of improvements to the suit property should be excluded from, the market value of such property on the date of the suit. Hence, the value of the suit house including the improvements should be the basis for determining the court-fee.

22. The plaintiff has not stated what the market value of the suit property is. After he stated such value, the learned Munsiff is directed to consider the objections if any of the defendants to such valuation and determine such market value and the court-fee payable on the plaint. The learned Munsiff is further directed to give to the plaintiff two months' time from the date of such determination, for payment of the deficient court-fee, if any.

23. In this petition, parties are directed to bear their own costs.