

(1998) 05 KAR CK 0016

In the Karnataka High Court

Case No : Civil Revision Petition No. 3056 of 1993

Smt. Achamma and Another

APPELLANT

Vs

H. Dhanaraj Singh and Others

RESPONDENT

Date of Decision : 26-05-1998

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 23 Rule 3

Mysore Court-fees and Suits Valuation Act, 1958 — Section 24 (a), 7 (2)

Citation : AIR 1998 Kar 318 : (1998) ILR (Kar) 2512 : (1998) 4 KarLJ 318

Hon'ble Judges : V. Gopala Gowda, J

Bench : Single Bench

Advocate : Sri S.V. Shastry, for the Appellant; Smt. K.R. Meenakumari, Government Advocate, for the Respondent

Judgement

1. This revision petition is filed challenging the impugned order passed by the Trial Judge in I.A. No. VI in O.S. No. 69 of 1989, dated 20-9-1983 urging the following grounds:

The learned Trial Judge failed to appreciate the relief of declaration of the title of the petitioner-plaintiffs for consideration of possession and mesne profits in respect of the properties, both lands and houses described in the schedule thereto and the Court fee payable u/s 24(a) of the Karnataka Court Fees and Suits Valuation Act (in short "the Act") has been correctly paid for the said reliefs. As such there could be no occasion for demanding further Court fee on the adjustment of the relief by the parties and pertaining to the subject-matter of the suit.

2. The Trial Judge has further failed to appreciate and consider that the relief sought for and the payment of Court fee on the said relief are in conformity with the provisions of the said Act. Therefore, the impugned order is not sustainable in law. The further ground urged is, compromise petition filed by the parties is neither plaint nor written statement therefore, is not a chargeable document hence they are not liable to pay the Court fee as observed by the Trial Judge in

the impugned order. The compromise petition filed by the parties on the basis of which the judgment and decree passed by the Trial Judge would not relate back to the date of institution of the suit, therefore, he is not liable to pay the Court fee on the amount which was required to be payable by the petitioners as on the date of the institution of the suit. In support of this submission, the learned Counsel relies upon the judgment of this Court in *Canara Bank, Ankali Vs. M/s. Krishna Tubewells, Ankali and others*, . The learned Counsel appearing for the petitioner further submits that, the compromise petition filed under Order 23, Rule 3 of the CPC deciding the scope of the plaint which is an adjustment between the parties which was the subject-matter of the suit. Further, it is submitted that, petitioners-plaintiffs were in good terms by filing compromise petition to some extent they have given up their title and rights upon the plaint schedule property in favour of the respondent-defendants. This important aspect of the matter is not taken into consideration by the learned Trial Judge while directing the further payment of additional Court fee. Therefore, exercise of power by the Trial Judge is in contravention of the provisions of the Act and same is vitiated by law. Hence, the impugned order is liable to be set aside. The learned Counsel further relies upon a judgment of Andhra Pradesh High Court in *R. Rukmaji Rao Vs. Government of Andhra Pradesh and Others*, , on this point.

3. I have perused the impugned order passed on I.A. No. VI. In my opinion, the Trial Judge has passed a well-considered order by giving cogent and valid reasons in support of the findings arrived at by him and with reference to the law on the question and considering the relevant provisions i.e., Section 7(2) and Section 24(a) of the Act. The learned Trial Judge has elaborately considered the contentions urged on behalf of the petitioners before him. He has examined in detail with reference to the questions raised before him with regard to the payment of additional Court fee as per the terms and conditions agreed upon, by the parties in the compromise petition.

4. The learned Trial Judge has categorically held, eventhough the terms of the compromise petition arrived at by the parties are deciding the scope of the plaint, such a compromise petition is acceptable considering Order 23, Rule 3 of the CPC which gives a mandate. The learned Trial Judge has stated that said order gives a mandate to the Court to record the lawful adjustment or compromise in terms of such compromise to pass a judgement and decree in terms of such compromise or adjustment. He has further held that, sub-rule (3) of the order referred to above requires the agreement or compromise petition between the parties must relate to the parties to the suit. Even if the agreement or the terms is not the subject-matter of the suit but relates to the parties to the suit in such circumstances, it has to be recorded and the decree has to be placed in terms of such compromise petition.

5. The learned Trial Judge considered the ratio laid down by the Andhra Pradesh High Court in the case stated *supra* on behalf of the petitioners for the proposition that, the Act referred to above is a taxing statute it does not specify

a written statement or memo of compromise as a chargeable for Court fee is not correct position of law holding that, facts of the said case referred to above are not applicable to the facts of the instant case. In the present case, parties have settled the dispute and petitioners have agreed to pay certain sum to the defendant in terms of the compromise petition in one lakh rupees in lieu of giving up their claim in respect of suit properties. Therefore, the learned Trial Judge drawn decree in terms of compromise petition as a chargeable document u/s 4 of the Act.

6. On the basis of terms and conditions of the compromise petition to be incorporated in the decree for a sum of Ks. 1 lakh payable by the defendant in favour of the petitioners in lieu of their rights upon the suit schedule property such a decree would be an executable decree under the provisions of the CPC therefore, learned Trial Judge has held that, unless the Court fee and the said payment is made under the provisions of the Act, no decree can be drawn in terms of the compromise petition.

7. In so far as the alternative prayer is concerned, the learned Trial Judge has directed the petitioner to pay the Court fee at the present rate which were prevailing as on the date of filing compromise petition. The learned Trial Judge has directed the petitioners to pay the Court fee on the terms to be incorporated in the judgment and decree as per the amended Act. In support of his contention, he strongly relied upon the law laid down by the Bombay High Court in *Gangaram Tillockchand Vs. The Chief Controlling Revenue Authority*, , contending that Court fee has to be paid as on the date of the order passed by the Court but, not as on the date on filing of the petition. In support of this submission, the reliance is placed in the case of *Canara Bank, supra*, which has no application to the facts of the case. Learned Trial Judge considered the law laid down by the Bombay High Court in the case referred to *supra* and has given valid reasons in not agreeing with the ratio laid in the case for the reason that, said judgment is in respect of a probate. The payment of Court fee to be paid before the grant of probate has to be calculated according to the Act in force as on the date of grant of probate and not on the date of application for probate. Therefore, the learned Trial Judge did not agree with the above said authority to apply the same principle to the facts of the case as the present case is in respect of a suit for decree and judgment which relate back to the date and in respect of suit.

The learned Trial Judge has further held in the matter of grant of probate and payment of Court fee in such matters on the non-judicial stamps only if the Court grants the probate or grant the succession certificate. Therefore, the learned Trial Judge was perfectly right in directing the payment of Court fee as per the terms and conditions of the compromise petition which was required to be incorporated in the judgment and decree on such sum the petitioners were directed to pay Court fee prevalent as on the date in respect of the suit not on the basis of the amended Court Fee Act, and as the decree would relate back to the date in

respect of a suit. In support of such direction, the learned Trial Judge has assigned reasons for either additional Court fee or additional Court fee has to be paid by the petitioners on the basis of the valuation to be filed in respect of the relief sought for by them. Since the terms and conditions of the compromise petition to be incorporated in the decree relates back to the date of institution of suit the petitioners were required to pay either additional Court fee or the deficit Court fee on such sum which was prevalent as on the date of institution of the suit. Therefore, the submission of the learned Counsel for the petitioners was negatived by the Trial Judge holding that, the amended Court fee act was not prevalent as on the date of institution of the suit.

8. The learned Trial Judge has appropriately answered the various grounds and the contentions urged before him by the petitioners and has assigned valid and cogent reasons while passing the impugned order. Therefore, this Court in exercise of its revisional power and jurisdiction cannot exercise in this revision petition as the petitioner has not shown the grounds on which such power can be exercised. In my opinion, the impugned order is not vitiated as it does not suffer from any infirmity or illegality of excessive jurisdiction by the learned Trial Judge.

9. In this view of the matter, I do not see any valid grounds made out by the petitioners to interfere with the impugned order. Hence, I pass the following:

ORDER

1. Revision petition is dismissed. No costs.