

(2005) 04 KAR CK 0025

In the Karnataka High Court

Case No : Regular First Appeal No. 429 of 1997

Smt. Amanbi and Others

APPELLANT

Vs

Rasulsaheb Nabisaheb Nawaz

RESPONDENT

Date of Decision : 13-04-2005

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 92, 11 (4), 96
Karnataka Land Revenue Act, 1964 — Section 157, 168, 173, 176, 177
Land Acquisition Act, 1894 — Section 30

Citation : (2005) ILR (Kar) 2659 : (2005) 3 KCCR 1819

Hon'ble Judges : Ajit J. Gunjal, J

Bench : Single Bench

Advocate : V. Tarakarma Associates, for the Appellant; G.S. Visveswara for R.1, for the Respondent

Judgement

Ajit J. Gunjal, J.,

1. This appeal u/s 96 of the CPC is filed by the plaintiffs. They are aggrieved by the judgment and decree passed by the learned Civil Judge, Gokak in O.S. 26 of 1992, wherein the suit for possession has been dismissed.

2. Few facts that are necessary to appreciate the controversy in question are:

The suit property is an agricultural land situate in Kudachi village bearing Sl.No. 161/4B ad measuring 4 acres 26 guntas, which, according to the plaintiffs is valued at Rs. 1,80,000/-. The case of the plaintiffs is that they are the owners of the land in question. The suit property was brought to sale in a revenue Court auction and one late Smt. Ajamatbi purchased the same. After her death the property devolved on her heirs who are the plaintiffs. According to them, even before the plaintiffs or could establish their possession in respect of the suit land pursuant to an auction sale, the defendant had filed a suit in O.S. No. 323/68 for declaration and injunction on the ground that the said auction in favour of the plaintiffs' predecessor was null and void. The defendant obtained an order of injunction in the said suit and the plaintiffs were kept out of possession. The said

suit was decreed by the learned trial Judge on 4.12.1971. An appeal was preferred against the said judgment and decree in R.A. No. 30/72 on the file of the Civil Judge at Belgaum. The said appeal was allowed and the judgment and decree of the trial Judge was reversed and it was held, according to the plaintiffs, that the auction sale of the suit land in the name of the predecessor in title of the plaintiffs, namely, Ajamatbi was legal and valid. The defendant carried the said Judgments and decrees of the Courts below in this Court in RSA No. 572/82. This Court confirmed the judgment and decree of the learned Civil Judge Gokak reaffirming that the auction sale in favour of Smt. Ajamatbi was legal and valid and the title of the plaintiffs to the suit property was finally confirmed by this Court in the said second appeal. It appears, during this interregnum, the defendant filed an application in Form No. 7 for grant of occupancy rights in respect of suit schedule property in TRV.SR. 1452, inter alia, contending that he was a tenant of the suit land of the plaintiffs. The Land Tribunal without notice to the plaintiffs granted occupancy rights in favour of the defendant which was challenged by a plaintiff in W.P. No. 16269 of 1986 and the said writ petition was allowed and the order of the Land Tribunal was quashed. Since the defendant was continuing in possession by virtue of an order of injunction obtained by him in O.S. No. 323/68, they had no option but to institute the present suit seeking possession in respect of the suit schedule property.

3. The defence of the defendant is that the plaintiffs are not the owners of the suit schedule property. He would deny that the suit property was sold in auction and in the said auction it was purchased by Smt. Ajamatbi. He has also denied that after the death of Ajamatbi, the plaintiffs have succeeded to the interest of Ajamatbi in the suit property. It is his case that he purchased the suit property for valuable consideration of Rs. 2500/- under a registered sale deed dated 25.5.1951. It is his case that since the date of purchase he has been in possession of the suit property as owner thereof. It is his further case that since the date of purchase in the year 1951, the plaintiffs did not at any point of time initiate any proceedings either before the revenue Court or in the Civil Court seeking possession of the suit property in pursuance of the alleged revenue auction. He would further contend that the suit filed by the plaintiffs is not in time. According to him, the suit itself is liable to be dismissed.

4. During the trial, the plaintiffs examined the husband of the third plaintiff and six documents were marked through him, which are at Exs P.1 to P.6. The defendant examined himself as DW. 1 and he got marked Exs. D.1 to D.2. On these pleadings, the learned trial Judge has framed the following issues:

1. Whether the plaintiffs prove that the property described in the plaint was purchased by late Ajamatbi in an auction?
2. Whether the plaintiffs prove their title in respect of the property described in the plaint?
3. Whether the plaintiffs prove that they and their predecessor in title were

prevented from taking possession by the defendant by obtaining an order of temporary injunction in O.S. No. 323/68 on the file of Prl. Munsiff, Chikodi?

4. Whether the plaintiffs prove that they are entitled to recover the possession of the property described in the plain?

5. Whether the plaintiffs prove that they are entitled to past and future mesne profits and if so, at what rate?

6. Whether the defendant proves that he has acquired valid title in respect of the properly described in the plaint under the registered sale deed dated 25.5.1951 ?

7. Whether the defendant proves that the auction in respect of the property described in the plaint does not bind him?

8. Whether the suit is properly valued for the purpose of court fee and jurisdiction?

9. Whether the defendant proves that the suit is barred by limitation?

9A. Whether the suit is barred under the provisions of Karnataka Land Revenue Act?

10. To what relief are the plaintiffs entitled?

6. The learned trial Judge on consideration of the material on record was of the opinion that the plaintiffs have proved that the suit property was purchased by the predecessor of the plaintiffs in acution. The Trial Court would further record a finding that the plaintiff have not proved the title in respect of the suit property. The plaintiffs had also further proved that they and their predecessor in title were prevented from taking possession by the defendant by virtue of the order of injunction obtained in O.S. 323/68. In so far as the material issue which is at issue No. 5, regarding title of the defendant, the Trial Court would record that the defendant had acquired title to the suit property under the registered sale deed dated 25.5.1951, but, however, subject to the auction sale. The learned trial Judge has proceeded to non-suit the plaintiffs on the ground that after the auction purchase the sale in favour of the plaintiffs' predecessor having not been confirmed following the decision of this Court reported in Goudappaappaya Paul v. Shivarai Bhimappa Mattar AIR 1992 Kar 71. It was of the opinion that the sale having not been confirmed as contemplated u/s 177 of the Karnataka Land Revenue Act, declined to grant the relief and has dismissed the suit. Hence this appeal.

7. During the pendency of this appeal, the first plaintiff appellant No. 1 having died, plaintiffs 2 and 3 being the legal representatives of the deceased plaintiff-appellant No. 1, the question of bringing the legal heir on record could not arise.

8. Mr. V. Tarakaram, learned senior counsel, appearing for the plaintiffs would strenuously contend that the learned trial Judge was not justified in non-suiting the plaintiffs on the ground that the auction sale was not confirmed as

contemplated u/s 177 of the Karnataka Land Revenue Act. He would further contend that the auction sale comes under Chapter 14 of the Karnataka Land Revenue Act and commences for the purpose of this case from Section 173 of the Act. He would further submit that since no application was made by the defendant for setting aside the sale u/s 176 of the Karnataka Land Revenue Act, the question of confirmation of sale and issuance of certificate u/s 179 would not arise as it is only in the nature of a ministerial obligation on the part of the revenue Courts. He would further contend in the earlier proceedings the appellate Court in R.A. 128/81 having recorded a finding that the sale in favour of the plaintiffs' predecessor was genuine and valid, it is not open to the defendant now to contend that the auction sale is void. He would press into service the doctrine of res judicata u/s 11(4) of the C.P.C. He would further contend that the learned trial Judge having recorded a finding on all material issues in favour of the plaintiffs could not have dismissed the suit of the plaintiffs. He would further submit that on issue No. 1, the learned trial Judge has recorded a finding that the suit property was purchased by late Ajamatbi in an auction and issue No. 6 wherein a positive finding is recorded that the defendant had acquired the title to the suit property under the registered sale deed, but however subject to the confirmation of auction sale. In view of this finding recorded by the learned trial Judge on the material issues, he contends that mere fact that the sale was not confirmed would not disentitle the plaintiffs in seeking relief of possession in the present proceedings.

9. Mr. G.S. Visveswara, learned senior counsel appearing for the defendant would support the judgment and decree passed by the learned trial Judge. He would contend that the title to the suit property would transfer in favour of the auction purchaser only after confirmation of sale and not otherwise. According to him, the plaintiffs did not derive any title by virtue of the said auction sale. According to him the confirmation of sale cannot be termed as a ministerial act, but will have to be a judicial pronouncement to the effect that the sale is confirmed. Of course, he would contend that the issuance of the certificate is only a ministerial act. According to him, the present suit filed is without jurisdiction and further in the absence of seeking a declaration of title the said suit itself would not be maintainable. He would also refer to me the relevant provisions of Chapter 14 of the Karnataka Land Revenue Act commencing from Section 168 of the Act. (according to him Sections 177 and 179 are not at all applicable to the present proceedings). He would further contend that it is only in the realm of the revenue Courts to put the auction purchaser in possession and not the Court. The sum and substance of his contentions are that the sale having not been confirmed in conformity with Section 177 of the Act, the learned trial Judge was justified in dismissing the suit.

10. Both the counsel have relied on a catena of decisions to buttress their rival contentions.

11. The only material points that would arise for consideration in this appeal are :

1) Whether, after recording a finding that the defendant's title to the suit property under the registered sale deed dated 25.5.1951 was subject to the auction sale, the plaintiffs did not derive any title to the said suit property?

2) Whether the Trial Court was in error in non-suiting the plaintiffs on the ground that in the absence of confirmation of sale the title had not passed on to the plaintiffs?

12. In so far as point No. 1 is concerned, it is material to notice the relevant provisions of Chapter 14 of the Karnataka Land Revenue Act. Section 157 would relate to realisation of land revenue and other public demands. It is not in dispute that the subject matter of the present proceeding was originally of the ownership of one Janha Sahib Mohammed Sahib Patait. It appears the said Janna Sahib Mohammed Sahib had taken Tagavi loan of Rs. 2500/- from the Government on an application dated 3.12.1945. He had hypothecated the suit land and some other lands for obtaining the said loan. The said Janha Saheb, who was defendant- 8 in the earlier suit, had taken some more loan from the Government by hypothecating/mortgaging two other lands belonging to him. Thus, the total loan taken by him on several dates worked out to Rs. 3750/-. The said Janha Saheb did not discharge his obligation to repay the loan to the Government. Suppressing this fact the Sand in question was sold in favour of the defendant for a consideration of Rs. 2500/- on 29.5.1951. Since the said Janha Saheb did not repay the Tagavi loan, recovery proceedings were initiated to recover the said amount. Sometime in 1957 some of his lands were brought to sale. But however three of the lands excluding the suit land were sold in favour of the Government for a nominal sum of rupee one. It is also not in dispute that the Government is in possession of those lands and they have been annually leased by way of public auction. Thus, the amount of Rs. 3749/- remained to be recovered from the said Janha Saheb and to recover the said amount the present suit land was brought to sale and in the said auction Ajamatbi, the predecessor of the plaintiffs, purchased the suit property. Admittedly, the defendant was kept in dark in respect of these auction proceedings. But however what is pertinent to note is that the defendant received a notice on 2.8.1966 informing him that auction sale of the suit property was being held on 30.9.1966, he approached the jurisdictional Tahsildar and put forth his grievance by filing an application. Be that as it may, the suit land was sold in public auction for a sum of Rs. 4000/- According to the defendant, the auction purchaser is none other than the relation of Janha Sab and sister of Smt. Rehanbi Muniroddin Bichhu.

13. With this background, it is necessary to look into the provisions of law regarding recover of loan amount which is due to the Government, wherein the property of the debtor is brought to sale to recover the loan amount. Section 165 though not very material for adjudication of the controversy, it is necessary to note that the said provision deals with the attachment and sale of immovable property towards arrears. The relevant provision would be Section 173, which would deal with sale not to be excessive. Section 175 would deal with failure to

make deposit and more importantly Section 176 which deals with setting aside of sale. Admittedly, and it is also not in dispute that after the sale was conducted on 30.9.1996, the defendant herein did not make an application u/s 176 to the concerned revenue officer for setting aside the sale. Section 176 of the Karnataka Land Revenue Act is in pari materia with Order 21 Rule 92 of the C.P.C. Both are almost identical in respect of the debtor's right to seek setting aside sale. It is advantageous to reproduce the relevant provisions. Section 176 of the Act reads thus:

"176- Setting aside sale -(1) where immovable property has been sold under this Chapter, the defaulter, or any person owning such property or holding an interest therein may at any time within ninety days of the date the prescribed manner to the Deputy Commissioner to have the sale set aside:-

(a) On the ground of some material irregularity or mistake or fraud resulting in loss or injury to him; or

(b) on his depositing in the Deputy Commissioner's office the amount of the arrears specified in the proclamation of sale, the cost of the sale and for payment to the purchaser, a sum equal to five per centum of the purchase money.

(2) on an application made under Clause (a) of Sub-section (1), the Deputy Commissioner shall, if he is satisfied after a summary enquiry that there has been some material irregularity, mistake or fraud in publishing or conducting the sale, set aside the sale and direct a fresh sale;

Provided that no sale shall be set aside on the ground of any irregularity or mistake, unless it is proved that the applicant has sustained loss or injury as a result of such irregularity or mistake.

(3) on an application with the required deposit being made under Clause (b) of Sub-section (1) within the period specified therein, the Deputy Commissioner shall make an order setting aside the sale;

Provided that if more persons than one have made deposits and applied under this section, the application of the first depositor or in case all the depositors agree to the application of any other depositor being accepted, the application of such depositor shall be accepted."

14. Section 176(1) would deal with that part of the subject where the property of a defaulter or any person who is entitled to own such property or holding an interest therein at any time should make an application within 90 days from the date of the sale to the Deputy Commissioner to have the sale set aside. The grounds on which the sale can be set aside are that some material irregularity, mistake or fraud is committed which has resulted in loss or injury to the interested person or in the alternate the interested person depositing with the Deputy Commissioner the amount of the arrears for which the property brought to sale along with the cancellation of the sale and a sum equal to five per centum of the purchase money. On such application being made by the interested

person, the Deputy Commissioner, if he is satisfied and after holding a summary enquiry that some material irregularity, mistake or fraud has crept in publishing or conducting the sale, set aside the sale and direct a fresh sale. Admittedly, as could be gathered from the narration of events, neither Janha Saheb, the vendor of the defendant, nor the defendant himself having come to know that the sale is likely to take place or has taken place on 30th November 1966, did not venture to make an application as contemplated u/s 176. The fact that no such application was made by the defendant for setting aside the sale within the time prescribed under law, he cannot be heard to say that the sale in favour of the plaintiffs' predecessor was accentuated by misrepresentation.

15. As observed in the preceding paragraph, Section 176 of the Act is in pari materia with Order 21 Rule 92 and 94 of CPC which would deal with the sale of the suit property in execution of a decree, where the same has been purchased by the third party. Order 21 Rule 92 contemplates period for setting aside the auction sale. Thus it is clear that a judgment debtor whose property is sold does not cease to be its owner capable of selling it effectively under certain conditions, so long as he can apply to have the sale set aside, that is to say, till the expiration of 30 days from the date of sale. The question would be what would be the position after the said time is expired. The question would be can he still dispose of the property so as to pass an effective title to the transferee against the auction purchaser, An identical question fell for consideration before the Madras High Court in the case of S. Ramaswami Iyer Vs. Komalavalli Ammal, . It is observed that "after the expiry of the period for an application to set aside an auction sale, the auction-purchaser can effectively sell the property purchased even in the absence of a confirmation of the auction sale by the Court and therefore the judgment-debtor cannot be said to have a saleable interest in the property". Thus, it is clear that once the judgment-debtor does not make an application as contemplated under Law, namely, order 21 Rule 92 of CPC to set aside the sale and he loses all his right in the said property and the auction purchaser would get all saleable interest to deal with the property. Admittedly, in the case on hand, after the plaintiffs predecessor purchased the suit property in the revenue auction, the defendant did not make any application for setting aside the sale as contemplated. In view of the fact that no application for setting aside the sale is made u/s 176 of the Act, he loses all his rights in the suit property. Thus, the defendants, as stated earlier, cannot be heard to say that the sale in favour of the auction purchaser, namely, predecessor of the plaintiff is bad. Instead of making an application as contemplated u/s 176 of the Act, he has chosen to contest the sale in favour of the predecessor of the plaintiffs in a suit which was instituted by him for declaration of title and injunction. It is no doubt true, in the said suit a finding was recorded by the learned trial Judge that the said sale in favour of Ajamatbi was wholly illegal, void and ab initio. But, however, on appeal, the appellate Court was of the opinion that the Civil Court would lack inherent jurisdiction to deal with the matter in respect of the sale under the land revenue Courts. But however recorded a finding that the sale in

favour of the plaintiffs" predecessor was valid. The finding recorded by the learned trial Judge that the sale in favour of the plaintiffs" predecessor was valid, to my mind, is wholly without jurisdiction, in as much as, once having come to the conclusion that the Civil Courts do not have jurisdiction to deal with the auction sale under the land revenue court, the finding recorded by the learned Appellate Judge that the sale was valid or otherwise will have to be excused. In view of this, the contention of Mr. Tarakaram, learned senior counsel that the doctrine of res judicata u/s 11(4) of the C.P.C. is applicable cannot be accepted, in as much as, the said finding recorded by the appellate Court was wholly without jurisdiction.

16. It is to be stated that the defect of jurisdiction cannot be cured by consent or by waiver. It is settled law that normally a decree passed by the Court of competent jurisdiction after its adjudication in a settlement suit or proceedings and the parties or persons claiming such right, title or interest from the parties, the validity of the said judgment and decree could be assailed only in an appeal or revision as the case may be. The validity thereof cannot be questioned in a subsequent proceeding. A decree passed by a Court which does not have jurisdiction over the subject matter or on any other ground which goes to the root of the jurisdiction or a Court which lacks inherent jurisdiction the said decree would be a nullity and void. Its validity or otherwise can be questioned or set aside whenever it is sought to be enforced and is acted upon as a foundation for a right even at the stage of execution or collateral proceedings. The defect of jurisdiction attracts the authority of the Court to pass a decree which cannot be cured by consent or waiver of a party. In these circumstances, it cannot be said that in the present case on hand Section 11(4) of CPC is attracted and the validity of the same thereof having been affirmed by the appellate Court in the earlier proceedings will be of no avail. Admittedly, a clear finding has been recorded in the said appeal that the Civil Court do not have jurisdiction to set aside a sale which has taken place under the Karnataka Land Revenue Act. When such is the finding recorded by the learned appellate Judge, the subsequent finding that the title has passed on to the plaintiffs cannot be accepted. As has been stated, any finding by the Court which lacks inherent jurisdiction is void in law. The Apex Court in identical case, *Municipal Committee Sirhind v. Parshotam Dass and Ors.*, 1996 (8) SCC p. 324 which reads thus:

"Section 11 - Res judicata -Applicability - Findings arrived at by a Court without jurisdiction cannot operate as res judicata -Findings of Court under S. 30 of Land Acquisition Act that the acquired land belonged to the claimants khewatdars and not to Municipal Committee would not operate as res judicata for determining whether the khewatdars had title to the land".

17. The next question which would fall for consideration is whether the title has passed on to the auction purchaser without there being any confirmation of sale. In this regard Sri Visveswar, learned counsel appearing for the defendants-respondents has relied on two judgments of this Court. The first of the judgment

is Nagesh Alias Nagappa Ganapathi Hegde v. Syndicate Bank and another ILR 1981 Kar 477 Division Bench decision of this Court Goudappa Appaya Patil v. Shivari Bhimappa Pattar and Anr., which in substance has affirmed the view of the learned single Judge in the above referred decision. What fell for consideration in the said two decisions is the interpretation of Sections 177 and 179 of the Act. Section 177 of the Act would deal with confirmation of sale and Section 179 would deal with issuance of a sale certificate. This Court held that the title will pass on to the auction purchaser only on confirmation of sale. Grant of sale certificate u/s 179 would only be a ministerial act. The Division Bench has observed thus:

"Auction sale - Property sold in auction under Land Revenue Act of State - Still title in property passes on confirmation of auction sale - Absence of sale certificate immaterial"

In view of the authoritative pronouncement of the Division Bench in this regard, it has to be held that the title has not passed on to the predecessor of the plaintiff when she purchased the suit property in auction though the sale is valid. There is no material placed either before the trial Court or before this Court to say that the confirmation of sale has taken place.

18. Section 177 which would deal with confirmation of sale read as follows:

"177. Confirmation of sale-If, on the expiration of ninety days from the date of sale of any immovable property, no application has been made for setting aside the sale or if any such application has been made and rejected, the Deputy Commissioner shall make an order confirmation the sale:

Provided that for reasons to be recorded, the Deputy Commissioner may set aside the sale subjected to such conditions as he may deem proper, notwithstanding that no application therefore has been made, or on grounds other than those alleged in any application which has been made and rejected".

Admittedly, in the case on hand, after the property was sold in auction no application is made by the defendants herein u/s 176 of the Act to set aside the sale. The natural corollary would be one of confirmation of sale u/s 177 of the Act. Since no application was made within the stipulated time of 90 days for setting aside sale, it was obligatory on the part of the Deputy Commissioner to have made an order confirmation the sale. That has not been done in the case on hand. But, however, it is to be noticed that on the basis of the auction sale and non-filing of the application by the defendant respondent to set aside the said sale presuming that the title has passed on after the auction, the present suit is filed by the plaintiff for recovery of possession. Section 180 of the Act would deal with the removal of obstruction. Section 180 reads thus:

"Removal of obstruction (1) Where a purchaser of immovable property, to whom a certificate is granted u/s 179, is resisted or obstructed by any person, in obtaining possession of the property, such purchaser may apply to the Civil Court

having jurisdiction over the property, for removal of such resistance or obstruction and such Court shall investigate the matter as if the property were purchased by the applicant at a sale held in execution of a decree of such Court under the CPC 1908.

(2) The provision of the CPC 1908, shall apply mutatis mutandis to the investigation and the order made thereafter by the Court, under Sub-section (1)".

where a purchaser of immovable property wherein a sale certificate has been granted u/s 179 of the Act and if there is any obstruction by any person in obtaining possession of the property, two options are open to the auction purchaser - one is that he may apply to the Civil Court having jurisdiction over the said property for removal of such resistance or obstruction and the Court shall investigate the matter as if the property was purchased by the applicant at a sale held in execution of a decree of such Court under the Code of Civil Procedure, 1908. Consequently, it will have to be held that in the absence of any confirmation of sale the present proceedings for possession will have to be termed as premature. But, however, one will have to give a thought to the proceedings which were initiated way back in the year 1992, whether the plaintiff-appellants can be non-suited since they have not obtained the confirmation of sale nor the sale certificate, as it has been held, is only a ministerial act. The only option now which is open to the plaintiffs-appellants is to seek confirmation of sale before the revenue authorities on the basis of the auction. Once the confirmation of sale is granted by the concerned revenue authorities and the sale certificate is issued, it is once again not necessary for the plaintiffs-appellants to initiate proceedings for the purpose of recovery of possession of the suit schedule property, which exercise has already been taken in the present proceeding. It is no doubt true that it would be trite that even before confirmation of sale and in the absence of sale certificate, whether the proceedings initiated for recovery of possessions as contemplated u/s 180 of the Act would be competent. But, however, one will have to take into consideration the fact that the defendant herein had initiated proceedings against the present plaintiffs for injunction in the year 1968 and they have been kept out of possession. The parties cannot be relegated to the position of 1992 once again to start the entire proceedings fresh from the trial Court for recovery of the said possession. Justice, equity and good conscience of the Court would require that the party should not be relegated to a position which they had not at all expected when they had initiated the present proceedings. *Sir Barnes Peacock In Sarrop v. Trayla Khomath* (1861) 9 WR 230.

"Now having to administer justice, equity and good conscience, when are we to look for the principles which are to guide us? we must go to other countries, where equity, justice are administered..... and if we find that the rules which are laid down are in accordance with the true principle of equity, we cannot do wrong in following them".

In view of this, I am of the considered view that a quietus will have to be given

to the proceedings lest the parties to the present proceedings or their progeny spend couple of more decades in the corridors of the Courts.

19. Consequently, the appeal is allowed. The judgment and decree passed by the learned Civil Judge Gokak in O.S. 26 of 1992 is set aside. The suit of the plaintiff-appellant is decreed. The plaintiffs-appellants are entitled for possession of the suit schedule property. A decree shall be drawn accordingly. But, however, the said decree for possession shall be kept suspended or in abeyance till the plaintiff obtain the necessary order from the concerned revenue authorities regarding confirmation of sale, as issuance of sale certificate is only a ministerial act.

20. With these observations, the appeal filed by the plaintiffs-appellants stands disposed of. Parties are directed to bear their own costs.