

(2013) 04 KAR CK 0029

In the Karnataka High Court

Case No : Writ Petition No. 8590 of 2012 (GM-CPC)

Smt. Suguna, Smt. Suphala and Smt. Sudarshana U.

APPELLANT

Vs

V. Sunil Kumar Holla, Smt. Sumana, U. Bhaskar Holla and
State of Karnataka

RESPONDENT

Date of Decision : 26-04-2013

Acts Referred:

Karnataka Court-fees and Suits Valuation Act, 1958 — Section 24(d), 38

Citation : AIR 2013 Kar 159 : (2013) 3 KCCR 2237

Hon'ble Judges : A.N. Venugopala Gowda, J

Bench : Single Bench

Advocate : R.V. Jayaprakash, for the Appellant; S.V. Prakash, for R1 and Sri Sajan Poovayya, AAG for Smt. Geetha J. Kadur, HCGP for R4, for the Respondent

Final Decision : Allowed

Judgement

A.N. Venugopala Gowda, J.—Material facts of this case are that, petitioners are the plaintiffs and respondents are the defendants in O.S. No. 12/2008 pending in the Court of Senior Civil Judge at Kundapura. Suit was filed on 16.09.2008 to pass a decree for partition and allotment of separate possession of the plaintiffs' 3/5th share in the plaint schedule properties by metes and bounds and for awarding of the future mesne profits. Defendant No. 1 filed written statement on 24.11.2008 denying the plaint averments and seeking dismissal of the suit. On 06.01.2009, plaintiffs filed I.A.2 for grant of permission to amend the plaint. The application having been dismissed on 17.12.2009, Writ Petition No. 4823/2010 filed there-against was allowed on 22.04.2010 and the plaintiffs were permitted to amend the plaint on certain terms. By incorporating the amendment, the plaintiffs have sought for passing a decree for cancellation of a sale deed dated 27.01.1997 in respect of the plaint "A" schedule properties and to declare a sale deed dated 10.11.2008 executed by the 1st defendant in favour of defendant Nos. 2 and 3 in respect of the portions of plaint "A" schedule properties, as null and void and not binding on their share. After incorporating the amendment a

fresh valuation slip was filed. The relief of cancellation of registered sale deed dated 27.01.1997 which was for a total consideration of Rs. 79,000/- was valued at Rs. 79,000/- and Court fee of Rs. 5,155/- was paid under S. 38 of the Karnataka Court-Fees and Suits Valuation Act, 1958 ("the Act" for short). In so far as for the relief of declaration that the two sale deeds dated 10.11.2008 executed by defendant No. 1 in favour of the defendant Nos. 2 and 3 during the pendency of the suit as null and void and not binding on their share, the plaintiffs have valued the said relief at Rs. 1,000/- under S. 24(d) of the Act and Court fee of Rs. 25/- was paid for the said relief. Thus, the plaintiffs have paid additional Court fee of Rs. 5,180/- on the additional reliefs incorporated in the plaint pursuant to the order dated 22.04.2010 passed in Writ Petition No. 4823/2010. The 1st defendant has filed additional written statement on 13.07.2010 and contended that the valuation made by the plaintiffs is not proper and that sufficient Court fee has not been paid. Trial Court has raised an additional issue on 09.08.2010, whether the 1st defendant proves that the suit has not been properly valued and the Court fee paid is insufficient? Said issue was treated as preliminary issue. In the valuation slip dated 16.09.2008 annexed to the plaint, the total value of the suit properties was shown as Rs. 44 lakhs and the 3/5th share of the plaintiffs as Rs. 26,40,000/-, for the purpose of pecuniary jurisdiction. The said valuation having been accepted and the plaintiffs having valued the relief for cancellation of the deeds under S. 38 of the Act, applying the decision rendered in the case of Smt. Damegunta Rajeshwaramma Reddy and Smt. Kondabujjamma Reddy all represented by their Power of Attorney Holder, Mr. Sumanth Reddy Vs. Smt. Jayalakshamma and Kum. Sushma, the Trial Judge directed the plaintiffs to pay the Court fee on Rs. 26,40,000/-. Trial Judge held that the Court fee paid is insufficient and additional issue No. 1 was answered in the affirmative on 18.11.2011. Assailing the said order this writ petition has been filed. Sri R.V. Jayaprakash, learned advocate for the petitioners contended that the main relief sought for by the plaintiffs is for cancellation of registered sale deed dated 27.01.1997 said to have been executed by the plaintiffs and the 2nd defendant and their mother in favour of the 1st defendant in respect of plaint "A" schedule property as vitiated by fraud, misrepresentation and mistake and to declare the said document as null and void and not binding on the share of the plaintiffs and to pass a decree for partition and separate possession entitling the plaintiffs to 3/5th share in all the suit properties. He submitted that the 1st defendant having sold plaint A schedule property in favour of defendants 2 and 3 during the pendency of the suit i.e., on 10.11.2008, the same is null and void and not binding on the shares of the plaintiffs. He submitted that the cancellation of sale deed dated 10.11.2008 by the 1st defendant in favour of defendants 2 & 3 being ancillary, the main relief has to be valued under sub-Section (1) of S. 38 of the Act i.e., on the amount of consideration shown in the registered sale deed dated 27.01.1997. In support of the contention, he relied on the decision in the case of Satheedevi Vs. Prasanna and Another, and an order passed in the case of Smt. Anandamma and Others Vs. Sharada @ Munithayamma Gowda, and submitted that the learned Trial

Judge has committed material irregularity and the impugned order being vitiated is unsustainable.

2. Sri S.V. Prakash, learned advocate appearing for the respondent Nos. 1 to 3 on the other hand placed the reliance on the decision in the case of Mr. V. Prabhakar Vs. Mr. K. Raja and Others, and submitted that the view taken in the matter by the Trial Judge being justified, no interference with the impugned order is warranted.

3. Since the matter pertains to payment of Court fee, by an order dated 13.04.2012, the petitioners were directed to implead the State of Karnataka represented by its Revenue Secretary and learned Additional Advocate General was directed to accept notice and appear in the matter. Sri Sajjan Poovaiah, learned Additional Advocate General appeared and submitted that S. 38 of the Act is pari materia with S. 40 of the Kerala Court Fees and Suits Valuation Act, 1959 (for short "Kerala Act") and neither S. 38 of the Act nor S. 40 of the Kerala Act refer to "market value". A written submission dated 21.03.2013 was filed and he submitted that wherever the legislature has intended that market value be applied, it has expressly stated so. He submitted that since S. 38 of the Act relating to suits for cancellation of decrees etc., does not provide for payment of court fees on market value, in as much as it provides for value of the property for which the document was executed, the value denoted in the document should govern the process of calculation of court fee.

4. What is the court-fee payable in a suit filed for cancellation of a document and for passing a decree for partition and separate possession is the question that arises for consideration?

5. Petitioners by amending the plaint have sought for cancellation of a registered sale deed dated 27.01.1997 executed in favour of the 1st defendant in respect of the plaint "A" schedule properties and to declare the registered sale deeds dated 10.11.2008 executed by the 1st defendant in favour of the defendant Nos. 2 and 3 as null and void and not binding on their shares and for partition and separate possession of their 3/5th share in all the items of the suit properties by metes and bounds. They have paid the Court fee of Rs. 5,155/- on the basis of the consideration amount shown in the registered sale deed dated 27.01.1997 i.e., Rs. 79,000/-. As far as the relief with regard to the registered sale deeds dated 10.11.2008, the plaintiffs have valued the same under S. 24(d) of the Act at Rs. 1,000/-, since the said sale deeds were executed during the pendency of the suit and they have paid the Court fee of Rs. 25/-.

6. S. 38 of the Act reads thus:

38. Suits for cancellation of decrees, etc.- (1) In a suit for cancellation of a decree for money or other property having a money value, or other document which purports or operates to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest in money, movable or immovable property, fee shall be computed on the value of the subject matter of

the suit, and such value shall be deemed to be.-

if the whole decree or other document is sought to be cancelled, the amount or value of the property for which the decree was passed or other document was executed;

if a part of the decree or other document is sought to be cancelled, such part of the amount or value of the property.

(2) If the decree or other document is such that the liability under it cannot be split up and the relief claimed relates only to a particular item of property belonging to the plaintiff or to the plaintiffs share in any such property, fee shall be computed on the value of such property or share or on the amount of the decree, whichever is less.

Explanation 1.- A suit to set aside an award shall be deemed to be a suit to set aside a decree within the meaning of this section.

Explanation 2.- In a suit for cancellation of a decree and possession of any property, the fee shall be computed as in a suit for possession of such property.

The provision is very specific. The provision contemplates that the Court fee shall be computed on the value of the subject matter of the suit and such value shall be deemed to be the amount or the value of the property for which the document was executed. The provision makes it very clear that what is intended is only the value shown in the document and there is nothing to suggest that the amount or value of the property should be construed as one of market value.

7. In the case of J.M. Abdul Aziz and Another Vs. The Commissioner of Income Tax, this Court interpreted S. 4 Clause (iv) of the Mysore Court Fees Act, 1900, which is substantially similar to S. 38 of the present Act. The said decision was followed in the case of Smt. Damegunta Rajeshwaramma (supra), which was decided on 06.04.10. In the case of Satheedevi (supra), decided by the Apex Court on 07.05.2010, after noticing in para 25 of the judgment the interpretation which had been placed by the Division Bench in the case of R. Rangaiah (supra), it has been held that the decision do not make out the correct law on the ground that this Court did not appreciate that the legislature has designedly used different language in the section and the term that the "market value" has not been used therein. Apex Court has held that the order directing the appellant to pay the court fee on the market value of the property in respect of which the sale deed was executed by the respondent No. 1 in favour of the respondent No. 2 are liable to be set aside and the Trial Court was directed to proceed and decide the case in accordance with law.

8. Apex Court, in the case of Satheedevi (supra) has considered S . 40(1) of the Kerala Act, which provision is substantially similar to one contained in S. 38 of the Karnataka Act. Apex Court having considered the decision in the case of R. Rangaiah (supra) and the views expressed by the other Hon"ble High Courts in the matter of payment of court fees for setting aside the document with

reference to the question, as to whether it was the value shown in the document or the present market value that should be taken for determining the Court fee, has opined that, when there is special Rule in the Act for valuing the property for the purpose of Court fee, that method of valuation must be adopted in preference to any other method. It has been further held that the Court Fees Act certainly contains a special Rule for valuing the property for the purpose of Court Fee and as such, there is no question of substituting the expression "value of the property" with the expression "market value of the property" as is clear from the following statement of law:-

30. In view of our analysis of the relevant statutory provisions, it must be held that the judgments of the Division Bench of Madras High Court and of the learned Single Judges in *Dantuluri Venkatanarasimha Raju and Another Vs. Dantuluri Chandrayya and Others*, *Navaraja v. Kaliappa Gounder (supra)*, *Arunachalathammal v. Sudalaimuthu Pillai (supra)* and *Andalammal Vs. B. Kanniah*, as also the judgment of the learned Single Judge of Andhra Pradesh High Court in *Allam Venkateswara Reddy Vs. Golla Venkatanarayana and Others*, lay down correct law. In the first of these cases, the Division Bench of Madras High Court rightly observed that when there is a special rule in the Act for valuing the property for the purpose of court fee, that method of valuation must be adopted in preference to any other method and, as mentioned above, Section 40 of the Act certainly contains a special rule for valuing the property for the purpose of court fee and we do not see any reason why the expression "value of the property used in Section 40(1) should be substituted with the expression "market value of the property".

31. The judgment of the learned Single Judge of Madras High Court in *Jonnnavaram Balireddi Vs. Khatipulal Sab alias Abdul Satar and Others*, which was approved by the Full Bench of that Court in *Kolachala Kutumba Sastri Vs. Lakkaraju Bala Tripura Sundaramma and Others*, turned primarily on the interpretation of Section 7(iv-A) of the Court Fee Act as amended by Madras Act which refers to the value of the property simpliciter and the Court interpreted the same as market value. Neither the learned Single Judge nor the Full Bench were called upon to interpret a provision like Section 40 of the Act. Therefore, the ratio of those judgments cannot be relied upon for the purpose of interpreting Section 40 of the Act. In *Arunachalathammal v. Sudalaimuthu Pillai (supra)*, the learned Single Judge rightly distinguished the judgment of the Full Bench by making a pointed reference to the language employed in Section 40(1) of the Madras Act No. XIV of 1955, which is identical to Section 40 of the Act. In *Sengoda Nadar Vs. Doraiswami Gounder and Others*, and *S. Krishna Nair and Another Vs. Rugmoni Ammal alias Valiamma Pillai*, the other learned Single Judges did not correctly appreciate the ratio of the judgment of the coordinate Bench in *Arunachalathammal v. Sudalaimuthu Pillai (supra)* and distinguished the same without assigning cogent reasons. We may also observe that if the learned Single Judges felt that the view expressed by the co-ordinate Bench was not correct, they ought to have referred the matter to the larger Bench. The judgments of

the Division Benches of Kerala High Court in P.K. Vasudeva Rao Vs. K.C. Hari Menon and Another, and Pachayammal v. Dwaraswamy Pillai (supra) and of the learned Single Judges in Appikunju Meerasayu v. Meeran Pillai (supra) and Uma Antherjanam v. Govindaru Namboodiripad and others (supra) also do not lay down correct law because the High Court did not appreciate that the legislature has designedly used different language in Section 40 of the Act and the term "market value" has not been used therein. The same is true of the judgments of the learned Single Judges of Mysore and Raiaasthan High Courts noticed hereinabove.

(emphasis supplied by me)

9. Since the legislature in its wisdom has used only the expression of "value" for the purpose of payment of Court fee under S. 38 of the Act, in contradiction to the assessment of the value for computing the Court fee in the other provisions of the Act, it is the value which is shown in the instrument, the cancellation which has been sought, which is the material for the purpose of levying the Court fee.

10. In the case of Smt. Anandamma (supra), it has been held that, in a suit for cancellation of a document and possession of the property, the court fee has to be paid only under S. 38(1) of the Act, on the value of the property as indicated in the document and not on the market value of the property on the date of the suit. Such view has been taken, by following the statement of law in the decision of the Apex Court in the case of Satheedevi (supra).

11. Another learned Single Judge who decided on 24.05.2012, the case of Mr. V. Prabhakar (supra), has not been apprised of the decision of the Apex Court in the case of Satheedevi (supra) decided on 07.05.2010, which decision was followed and the case of Smt. Anandamma (supra), decided on 18.10.2010. The learned Single Judge has followed the decision of Sri R. Rangaiah (supra), which has been held as not good law by the Apex Court, in the case of Satheedevi (supra). Since the view taken in the case of Mr. V. Prabhakar (supra), is not in consonance with the said two decisions, the same is not a binding precedent.

12. In view of the above, the expression "value" as found in S. 38 of the Act, must be treated as "value shown in the document", the cancellation which has been sought in the suit and not on the market value of the property covered under the document as on the date of filing of the suit. The learned Trial Judge having not noticed the relevant provisions of the Act and also the decisions in the case of Satheedevi and Smt. Anandamma (supra), has erroneously directed the plaintiffs to pay the court fee on the market value of the property. The plaintiffs are expected to pay the Court fee on the amount shown in the impugned sale deed dated 27.01.1997. Undeniably, the value shown in the document is Rs. 79,000/- and the plaintiffs have paid the Court fee accordingly. Therefore, the impugned order being illegal is unsustainable.

In the result, the writ petition is allowed and the impugned order is quashed.

Parties are directed to bear their respective costs.