

(2000) 03 KAR CK 0008

In the Karnataka High Court

Case No : Civil Revision Petition No. 3444 of 1997

The Karnataka Housing Board, Bangalore

APPELLANT

Vs

Yamanur Sab and Others

RESPONDENT

Date of Decision : 29-03-2000

Acts Referred:

Mysore Court-fees and Suits Valuation Act, 1958 — Section 24, 24 (a), 25, 38

Citation : (2000) 4 KarLJ 516 : (2000) 3 KCCR 1910

Hon'ble Judges : T.N. Vallinayagam, J

Bench : Single Bench

Advocate : Miss Gowhar Unnisafor Sri Basavaraj V. Sabarad, for the Appellant;
Sri T.B. Krishnakumar and Smt. Asha Kumbangerimath for Sri I.G.
Gachchinamath, for the Respondent

Judgement

1. The 1st defendant-Karnataka Housing Board has filed the above civil revision petition, questioning the valuation and payment of Court fee by the plaintiff in the Trial Court in O.S. No. 1358 of 1993, a suit for declaration of title and for possession apart from mesne profits and another declaration regarding possession. The defendants raised issue of Court fee. The plaint was valued at Rs. 10,000/- and Court fee of Rs. 250/- was paid u/s 24(a) of Karnataka Court Fees and Suits Valuation Act. Taking the Court fee issue, as a preliminary issue the Trial Court took into consideration that the plaint was amended as one for declaration that lease-cum-sale agreement and the sale deed is not binding on the interest of the plaintiff. Therefore, in view of such amendment, the Court held that the Court fee paid is proper.

2. Learned Counsel Miss Gowhar Unnisa appearing for the petitioner, submitted that actual value mentioned in the sale deed itself is Rs. 60,000/- and the Court fee must be paid on that value u/s 24(a). She also relied upon the dictum of this Court in Shivaram Bapuchand Shaha and Co. Vs. Hirachand Sakharam Mehata and Co, .

3. Heard the respective Counsels appearing for various parties, and also the

Government Pleader. However Counsel for respondent 1 is absent.

4. The question to be decided in the above civil revision petition is, whether the Court fee paid by the plaintiff is correct. Section 24(a) reads as follows.-

"24. Suits for declaration.--In a suit for a declaratory decree or order, whether with or without consequential relief, not falling u/s 25,--

(a) Where the prayer is for a declaration and for possession of the property to which the declaration relates, fee shall be computed on the market value of the property or on rupees one thousand whichever is higher".

5. It appears, the original prayer for declaration was amended by introducing the words "that the sale deed is void and not binding". The learned Counsel for the petitioner is not able to say as to whether the prayer for declaration was retained or not.

6. The dictum of this Court in M/s. Shivaram Bapuchand Shaha and Company's case, supra, regarding valuation of property for the purpose of Court fee is to the following effect.-

"The plaintiffs under the garb of seeking a declaration are virtually seeking the relief of cancellation of the decree obtained against them. The relief of declaration sought for by the plaintiffs that the decree passed is null and void, has to be construed as one for cancellation of the decree, inasmuch as the result of granting such a relief, is to cancel the decree itself. It is the substance of the relief that is relevant and material and not the form for the purpose of deciding the question as to whether the suit is properly valued and the Court fee paid is sufficient. The plaintiffs are parties to the decree, therefore they have to seek a relief of cancellation of the decree. When the effect of the declaratory relief sought for by the plaintiffs, if granted, is to set aside or cancel the money decree, the relief necessarily falls u/s 38 of the Act".

7. Admittedly, the prayer is one to set aside the sale deed and in the light of the above dictum, the property is to be valued at least at the value given in the sale deed which is now found to be Rs. 60,000/-.

Relying upon the above dictum, I have no hesitation to hold that the suit has been deliberately undervalued and the order of the Trial Court, is not sustainable.

The Trial Court is, therefore, directed to have the plaint valued in respect of declaration and also for mesne profits apart from the other reliefs found in the plaint, as amended. Consequently, the civil revision petition is allowed and the order of the Court below is set aside.

No costs.