

Kerala High Court

P.K. Vasudeva Rao vs K.C. Hari Menon And Anr. on 22 September, 1981

Equivalent citations: AIR 1982 Ker 35

Author: G Vadakkal

Bench: P S Poti, G Vadakkal

JUDGMENT George Vadakkal, J.

1. One of the reliefs sought for in the plaint is to set aside a sale deed dated 26-11-1977 in respect of an immovable property executed by the 1st defendant and his wife (since deceased) in favour of the 2nd defendant for Rs. 30,000/-. According to the plaintiff, the vendors had agreed to sell the said property to him for Rs. 25000/-. The plaintiff also seeks a decree for specific performance of the alleged agreement for sale in his favour; and in the alternative, claims a decree for refund of Rs. 9,700/- and for damages to the June of Rs. 10,000/-. The plaintiff paid court-fee on Rs. 25,000/- under Sections 40 and 42 (a) of the Court-fees Act, 1959. The 2nd defendant contended that the relief of setting aside the sale deed has to be separately valued and court-fee is leviable thereon for the market value of the property. This contention was upheld by the lower Court. It directed the plaintiff to take out a Commission to ascertain the market value of the said property by depositing Rs. 300/- as Commissioner's remuneration. This order is challenged in this Revision Petition.

2. The material portion of the reference order is as follows:--

"The Section itself does not use the words "market value", as in Sections 25, 27 and Section 37(1). The first part of Section 40 (1) speaks of the "value of the subject-matter of the suit"; and if this means the value (the market value) of the property disposed of, why is it that a deeming provision incorporated immediately after it? Deeming provisions are usually designed to create a fiction, and not to clarify what is otherwise clear. Is it not possible to read "value of the property for which the document was executed" as value shown in the document? Raman Nayar, J. has attempted an answer in *Uma Antherjanam*, ((1966) Ker LT 1046), but there is no reference to Sub-section (2) which speaks of the "liability under" the document. And What is the approach to be made in interpreting a statute relating to court-fee, if two constructions are possible?"

3. Section 40 of the Court-fees Act, 1959 reads :--

"40. 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 plaintiff's 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.-- 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 "

4. This Court has consistently taken the view that where the subject-matter of the decree or other document sought to be cancelled is movable or immovable property other than money, court-fee is to be computed on the market value of the property. See *A. Meerasayu v. Meeran Pillai*, (1964 Ker LT 895) and *Uma Antherjanam v. Govindaru Namboodiripad*, (1966 Ker LT 1046). In the latter case this Court said:--

"When the decree or other document is for property as distinguished from money it is the value (which in the absence of any indication to the contrary can mean only market value) of the property that counts, not the value as shown in the decree or other document. The second clause makes this clear -- it is impossible to mislead this clause as the petitioner would have misread the first clause and say that the value referred to is not the actual value of the property but the value shown in the document. Likewise; Sub-section (2) of the section."

5. Section 40 (1) deals with computation, of court-fees for cancellation of a decree or other document. The decree sought to be cancelled may be one for money or other property having a money value. The 'other document' may, as well be, one executed for money, e. g. a promissory note or for other property having money value. Other property having money value in both the cases may be movable property or immovable property. Where the plaintiff seeks cancellation of a decree or 'other document' in order to get rid of his obligation thereunder, i.e. under the decree or 'other document' as the case may be, on the plea that he is not and/or cannot be bound by the decree or 'other document' and is not, therefore, liable there-

under, he has to pay court-fees 'on the value of the subject matter of the suit'. Where the subject matter of the suit is a decree or other document for money, obviously the value of the subject matter of the suit is the plaintiff's liability for money under the decree or 'other document' which he wants to get rid of by the cancellation of one or the other of the two kinds of documents, as the case may be. And, where the subject matter of the suit is not the whole of the decree or 'other document' for money, but only part thereof, the value of the subject matter of the suit is only that portion of the liability for money thereunder which he seeks to get rid of.

6. The decree sought to be set aside or the 'other document' required to be cancelled may not be for money but for other property having money values movable or immovable. In such casts the plaintiff seeks, to get rid of his liability in respect of that property under the decree or 'other document', as The case may be. The value of the subject matter of the suit here is the value of the property --not that mentioned in the decree or 'other document' but actual value thereof or in other words, the market value as on the date of suit. 'Value' in this contest means the just

money-equivalent, or the worth of the property in terms of the currency of the land, as on the date of suit. Here again, where the decree or 'other document', is sought to be cancelled as a whole, the subject matter of the suit is the whole of the property comprised in the decree or dealt with in the 'other document' and court-fee is to be paid on the market value thereof. If only part of the decree or 'other document' is impugned, the subject matter of the suit will be the property comprised in that part of the decree sought to be set aside or dealt with in that part of the 'other document' which the plain tiff seeks to cancel. Then court-fee is to be reckoned on the market value of the property.

comprised or dealt with in the impugned part of the decree or of the 'other document', as the case may be.

7. True, as contended for on behalf of the plaintiff-revision petitioner, Section
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ses the expression 'market value'. But it is clear therefrom that the legislative intent is to levy court-fee on the just equivalent in money of the 'other property' comprised in the decree or portion thereof sought to be set aside; or dealt with in the 'other document' or part thereof sought to be cancelled. The section opens by saying that 'in a suit for cancellation of a decree for money or other property having a money value'. (emphasis supplied) 'fee shall be computed on the value of the subject matter of the suit'. 'Money value' of a property is its worth in terms of the currency of the land or in other words, is such money-equivalent thereof in open market; and not any amount less than that as where it is undervalued or more than that as where it is overvalued at a fancy-price. It cannot be that when, what is sought to be cancelled is a decree or part thereof for 'other property', i.e. property other than money, the value of such property for computation of court-fees is its 'money-value', and when, what is sought to be cancelled is a document or part thereof in respect of 'other property', the value of such property for such compulsion is not its 'money-value'. Value of the subject matter, namely, value of the 'other property' in both cases is its money-value.

8. The object of the second and the third paras in Sub-section (1) of Section 40 is not to introduce any fiction but to provide for two situations, namely, (i) where the decree or the document as a whole is sought to be cancelled and (ii) where only part thereof is sought to be cancelled. In the first situation, the value of the subject matter is the amount for which the decree was passed or the document was executed; or the value of the property concerning which the decree was passed or the document was executed. In the second class of cases, the value, of the subject matter of the suit is such part of the amount for which the decree was passed or the document was executed, in respect of which part, the decree or the document is sought to be cancelled; or the value of such part of the property concerning which the decree was passed or the document was executed, in respect of which part, the decree or the document is sought to be cancelled.

9. It is argued that under the second para., the value of the subject-matter of the suit is 'the amount or value of the property for which other document was executed'.

The argument is that 'the amount or value for which other document was executed' is that amount mentioned in the document. The learned counsel for the revision, petitioner relied on *Andalammal v. Kanniah*, (AIR 1972 Mad 5) in support of this position.

10. Section 40 (1) has to be read as a whole. So read: (A) when the suit is for cancellation of a decree or other document for money, then the value of the subject-

matter of the suit will be :-- (i) the whole amount for which the decree was passed or the document was executed, if what is sought to be cancelled is the whole of the decree or the whole of the document; and (ii) such part of the amount for which the decree was passed or the document was executed, if only part of the decree or part of the document is sought to be cancelled; (B) when the suit is for cancellation of a decree or other document for a property having money-value, then, the value of the subject-matter of the suit will be :-- (i) if the whole of the decree or the document is sought to be cancelled --the value of the property covered by the decree or the document; and (ii) if only part of the decree or of the document is to be cancelled; value of such part of the property in respect of which the decree was passed or the document was executed and to which extent such decree or such document is to be cancelled. We are not impressed with the submission that there is a distinction between the expressions 'the value of the property for which the decree was passed or other document was executed' and 'the value of the property in respect of which the decree was passed or other document was executed' for the purpose of computation of court-fees. The scheme of Section 40 is to make court-fees leviable on the sum of money or portion thereof, when what the plaintiff seeks is to get rid of his obligation and liability therefor or part thereof under a decree passed or a document executed by cancellation thereof, and on the money-equivalent of the property or portion thereof, when what he seeks to get rid of is his obligation and liability in relation to that property or portion thereof under a decree passed or a document executed in respect of it by cancellation thereof.

11. Sub-section (2) provides as to how court-fee is to be computed if the decree or other document is such that the liability thereunder is not capable of being split up but the relief claimed is in respect of only a particular item of property or to a share in any such property. This sub-section says that in such cases fee shall be computed on the value of such property or share or on the amount of the decree whichever is less. There is nothing in this sub-section which militates against the construction we have placed on Sub-section (1) of Section 40 or which supports the contention advanced on behalf of the Civil Revision Petitioner.

12. We are therefore of the view that it is not possible to read 'value of the property for which the document was executed' in Section 40 as value stated in the document. That expression means market value of the property which has been dealt with under the impugned document.

In the result, this Civil Revision Petition fails and is dismissed. No order as to