

Supreme Court of India

Polamrasetti Manikyam & Anr vs Teegala Venkata Ramayya & Anr on 19 February, 1947

Author: E Hear.....J.

Bench: K.S. Radhakrishnan, Vikramajit Sen

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NOS. 2456-2457 OF 2014
[Arising out of SLP (C) Nos.16353-54 of 2012]

Polamrasetti Manikyam & Anr. .. Appellants

Versus

Teegala Venkata Ramayya & Anr. .. Respondents

J U D G M E N T

K. S. RADHAKRISHNAN, J.

1. Leave granted.

2. We are, in this case, concerned with the interpretation of Section 37 of the Andhra Pradesh Court Fees and Suits Valuation Act, 1956 (for short “the Court Fees Act”) as to whether it authorizes the valuation of the suit on the basis of the sale consideration mentioned in the sale deed or to be valued on the basis of the market value of the property as on the date of presentation of the plaint for the purpose of Court Fee and jurisdiction.

3. Learned Single Judge of the Andhra Pradesh High Court in the impugned judgment placing reliance on the Full Bench judgment of the Madras High Court in Kolachala Kutumba Sastri v. Lakkaraju Bala Tripura Sundaramma & Ors. AIR 1939 Mad. 462, and the Division Bench Judgment of the Andhra Pradesh High Court in Lakshminagar Housing Welfare Association v. Syed Sami @ Syed Samiuddin & Ors. (2010) 5 ALT 96, held that in a suit for cancellation of sale deed, Court Fee has to be determined on the market value of the property as on the date of presentation of the plaint and not the value shown in the registered sale deed, the legality of which is under challenge in these appeals.

4. The Appellants/Plaintiffs filed O.S. No.114 of 2008 on 21.7.2008 before the Court of Junior Civil Judge, Kothavalasa, seeking, inter alia, the following reliefs :-

“(a) to cancel the alleged sale deed dated 2.8.2002 which was got registered as No.2496/05 by the Sub-Registrar, Kothavalasa on dt. 30 July, 2005 as the orders of District Registrar dt. 26.07.2005 as it was obtained fraudulently;

(b) direct the defendants to pay the cost of the suit.”

5. Value of the suit for the purposes of Court Fee and jurisdiction was shown as the value of the deed to be cancelled i.e. Rs.1 lakh. Court Fee of Rs.3,426/- was paid under Section 37 of the Court Fees Act, deposited vide Challan No.4239075 dated 29.7.2008. The Appellants/Plaintiffs filed I.A. No.374 of 2008 under Order IX Rule 1 and 2 CPC for grant of temporary injunction restraining the Respondents therein from interfering with peaceful possession and enjoyment of the property and also filed I.A. No.375 of 2008 and sought an order restraining the Respondents from operating the sale deed until the disposal of the suit. During enquiry in I.A. No.375 of 2008, the Appellants/Plaintiffs got market value certificate dated 4.10.2002 as Exh.A-6 showing the market value of the property as Rs.19,36,000/- by the year 2002 and contended that the alleged sale for Rs.1 lakh was a fraudulent transaction. The Respondents raised an objection that the Civil Judge has no jurisdiction to entertain the suit since the Plaintiff's case is that the market value of the property is more than Rs.1 lakh. It was contended that for cancellation of sale deed, Court Fee has to be calculated on the current market value, but not as per value shown on the document. Reliance was placed on the judgment of the Madras High Court in Kolachala Kutumba Sastri (supra) and T.S. Rajam Ammal v. V.N. Swaminathan & Ors. AIR 1954 Mad. 152, wherein it was held that in a suit for cancellation of sale deed, Court Fee payable is on the market value of the property involved as on the date of the plaint and not on the consideration recited in it.

6. Learned Civil Judge vide his order dated 25.11.2008 took the view that the Court Fee has to be calculated as per the market value on the date of presentation of the plaint and not as per the value shown on the document. Consequently, it was held that the Court has no pecuniary jurisdiction to entertain the suit and the plaint was returned under Order 7 Rule 10 CPC for presentation before the proper Court.

7. The Appellants/Plaintiffs, aggrieved by the said order, filed C.M.A. No.2 of 2009 in the Court of the Judge, Family Court-cum- District and Sessions Judge, Vizianagaram. The appellate Court dismissed the appeal vide its order dated 29.10.2009 holding that the Court below has no jurisdiction to entertain the suit and the plaint was correctly returned for presentation before the appropriate Court holding that the Court Fee has to be calculated as per the market value of the property as on the date of presentation of the plaint and not on the value shown in the registered sale deed.

8. The Appellant, aggrieved by the said order, filed Civil Revision Petition No.2539 of 2010 before the High Court of Andhra Pradesh, Hyderabad. The learned Single Judge of the Andhra Pradesh High Court, as already stated, placing reliance on the judgment of the Madras High Court in T.S.

Rajam Ammal (supra) and also the Full Bench decision of the Madras High Court in Kolachala Kutumba Sastri (supra) and also a Division Bench judgment of the Andhra Pradesh High Court in Lakshminagar Housing Welfare Association (supra), took the view that under Section 37 of the Court Fees Act, for cancellation of the sale deed the suit has to be valued on the basis of the market value of the property governed by the sale deed on the date of presentation of the plaint for the purposes of Court Fee and jurisdiction and not on the basis of sale consideration mentioned in the sale deed. The appellants then filed a review petition being Review CRP No.6557 of 2010 seeking review of the judgment based on the Judgment of this Court in Satheedevi v. Prasanna and another (2010) 5 SCC 622. The review petition was, however, dismissed on 19.1.2011. Aggrieved by the same, these appeals have been preferred.

9. We are, in this case, concerned with the interpretation of Section 37 of the Court Fees Act, which reads as follows :-

“37. 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 :-

a) 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;

b) If a part of the decree or other document is sought to be cancelled, such part of the amount or of the 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 for cancellation of a decree within the meaning of this section.”

10. When the matter came up for hearing, the learned counsel for either side brought to our knowledge a judgment of this Court in Satheedevi (supra) and submitted that a similar issue came up for consideration in the above-mentioned case while interpreting Section 40 of the Kerala Court Fees and Suit Valuation Act, 1959, which is *pari materia* with Section 37 of the Andhra Pradesh Court Fees and Suits Valuation Act, 1956. While interpreting the scope of Section 40 of the Kerala Act, this Court had occasion to examine the ratio laid down by Full Bench of the Madras High Court in Kolachala Kutumba Sastri (supra) and took the view that in the said the interpretation of Section 7(iv-a) of the Court Fee Act, as case, the Madras High Court was primarily concerned with amended

by the Madras Act, which refers to the value of the property simplicitor and the Court interpreted the same as market value. It was pointed out that the Full Bench was not called upon to interpret a provision like Section 40 of the Act. Consequently, it was held that the ratio of that judgment cannot be relied upon for the purpose of interpretation of Section 40 of the Act. While doing so, the Court also opined that the Division Bench judgment of the Kerala High Court in Krishnan Damodaran v. Padmanabhan Parvathy 1972 KLT 774, P.K. Vasudeva Rao v. K.C. Hari Menon AIR 1982 Ker 35, Pachayammal v. Dwaraswamy Pillai 2006 (3) KLT 527 and the learned Single Judge judgments in Appikunju Meerasayu v. Meeran 1964 KLT 895 and Uma Antherjanam v. Govindaru Namboodiripad 1966 KLT 1046 do not lay down the correct law since the High Court had failed to appreciate that the legislature has designedly used a different language in Section 40 of the Act and the term “market value” has not been used therein.

11. We have already indicated that Section 40 of the Kerala Act and Section 37 of the Court Fees Act are *pari materia* provisions. Consequently, the reasoning of this Court in Satheedevi (*supra*) could be safely applied when we interpret Section 37 of the Court Fees Act.

12. In Satheedevi (*supra*), this Court while interpreting Section 40 of the Kerala Act held as follows :-

“17. Section 40 deals with suits for cancellation of decrees, etc. which are not covered by other sections. If this section is interpreted in the light of the expression “save as otherwise provided” used in Section 7(1), it becomes clear that the rule enshrined therein is a clear departure from the one contained in Section 7 read with Sections 25, 27, 29, 30, 37, 38, 45 and 48 which provide for payment of court fee on the market value of the property. In that sense, Section 40 contains a special rule.

18. Section 40(1) lays down that 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 the 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 further lays down that such value shall be deemed to be, if the whole decree or other document 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 constitute the basis for fixation of court fee. Sub-section (2) lays down that 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 the property belonging to the plaintiff or the plaintiff's share in such property, fee shall be computed on the value of such property, or share or on the amount of the decree, whichever is less.

19. The deeming clause contained in the substantive part of Section 40(1) makes it clear that in a suit filed for cancellation of a document which creates any right, title or interest in immovable property, the court fee is required to be computed on the value

of the property for which the document was executed. To put it differently, the value of the property for which the document was executed and not its market value is relevant for the purpose of court fee. If the expression “value of the subject-matter of the suit” was not followed by the deeming clause, it could possibly be argued that the word “value” means the market value, but by employing the deeming clause, the legislature has made it clear that if the document is sought to be cancelled, the amount of court fee shall be computed on the value of the property for which the document was executed and not the market value of the property. The words “for which” appearing between the words “property” and “other documents” clearly indicate that the court fee is required to be paid on the value of the property mentioned in the document, which is the subject-matter of challenge.

20. If the legislature intended that fee should be payable on the market value of the subject-matter of the suit filed for cancellation of a document which purports or operates to create, declare, assign, limit or extinguish any present or future right, title and interest, then it would have, instead of incorporating the requirement of payment of fees on the value of subject-matter, specifically provided for payment of court fee on the market value of the subject-matter of the suit as has been done in respect of other types of suits mentioned in Sections 25, 27, 29, 30, 37, 38, 45 and 48. The legislature may have also, instead of using the expression “value of the property for which the document was executed”, used the expression “value of the property in respect of which the document was executed”. However, the fact of the matter is that in Section 40(1) the legislature has designedly not used the expression “market value of the property”.

13. Applying the above reasoning, this Court in *Satheedevi* (supra) upheld the view expressed by learned Single Judge of the Andhra Pradesh High Court in *Allam Venkateswara Reddy v. Golla Venkatanarayana* AIR 1975 AP 122 and the Division Bench judgment of the Madras High Court in *Venkata Narasimha Raju v. Chaandrayya* AIR 1927 Mad 825, *Navaraja v. Kaliappa Gounder* (1967) 80 Mad LW 19 (SN) and *Arunachalathammal v. Sudalaimuthu Pillai* (1968) 83 Mad LW 789 and ruled that those judgments have laid down the correct law.

14. This Court in *Satheedevi* (supra), therefore, gave its seal of approval to the judgment of learned Single Judge of the Andhra Pradesh High Court in *Allam Venkateswara Reddy* (supra), wherein learned Single Judge took the view that in a suit for cancellation of sale deed which was executed for a specified amount, the Court Fee has to be paid on that amount and not on the basis of the market value of the property at the presentation of the plaint.

15. The Andhra Pradesh High Court in the impugned judgment, while interpreting Section 37 of the Court Fees Act, placed reliance on the Division Bench judgment in *Lakshminagar Housing Welfare Association* (supra), wherein the Bench, as already indicated, placed reliance on the Full Bench judgment of the Madras High Court in *Kolachala Kutumba Sastri* (supra), though a reference was made to the learned Single Judge Bench judgment in *Allam Venkateswara Reddy* (supra). Since we are in agreement with the reasoning in *Satheedevi* (supra), which has given its seal of approval to

the reasoning of the learned Single Judge judgment of the Andhra Pradesh High Court in Allam Venkateswara Reddy (supra), the judgment of the Division Bench in Lakshminagar Housing Welfare Association (supra) is no more good law.

16. We are of the view, Section 37 of the Court Fees Act, which deals with the suits for cancellation of decrees etc. is not governed by other Sections of the Court Fees Act, such as Section 7 and other related provisions. If Section 37 of the Court Fees Act is interpreted in the light of the expression “save as otherwise provided” used in Section 7 of the Court Fees Act, it becomes clear that the rule enshrined therein is a clear departure from the one contained in Section 7 read with Sections 24, 26, 28, 29, 34, 35, 42 and 45, which provide for payment of Court Fee on the market value of the property. In that context, we are also of the view that Section 37 is stand alone provision, wherein the legislature has designedly not used the expression “market value of the property”. Section 37 of the Court Fees Act, therefore, contains a special rule for valuing the property for the purpose of Court Fee and jurisdiction and we do not see any reason why the expression “value of the property” used in Section 37 be substituted with the expression “market value of the property”.

17. In such circumstances, we are inclined to set aside the judgment of the High Court and allow these appeals. Consequently, the orders passed by the appellate Court as well as the High Court would stand quashed. The trial Court is directed to proceed with the suit in accordance with law and the declaration made by this Court.

18. The Appeals are, accordingly, allowed. However, there will be no order as to costs.

eard Hear.....J.

(K. S. Radhakrishnan) eard Hear.....J.

(Vikramajit Sen) New Delhi, February 19, 2014.