

Madhaorao and Others

Vs

The State of Maharashtra

Civil Appeal No. 1728 of 1967

(S. K. Hegde, A. N. Grover JJ)

29.01.1971

JUDGMENT

GROVER, J. -

1. This is an appeal by special leave from a judgment of the Bombay High Court (Nagpur Bench). The appellants had filed a suit for claiming proprietary rights in a property which was known as "Navegaon tank" and which consisted of several Khasras with a total acreage of 3104 odd. These villages were Malguzari villages. By virtue of the provisions of the Madhya Pradesh Abolition of Proprietary Rights (Estates, Mahals, Alienated Lands) Act, 1950 the Malguzars of this tank were deprived of their rights and the Government took over possession. The compensation was paid by the Government after holding enquiry provided by the Act. The appellants, however, claimed a declaration that they still continued to be owners as before and wanted a permanent injunction restraining the Government from interfering with their rights. Alternatively it was prayed that if the Government was found to be in possession then a decree for possession be granted in their favour.

2. The court-fee which was paid by the appellants was calculated on the following basis. It was alleged that compensation of Rs. 1,126/- only had been paid to the proprietors and therefore the tank had to be valued on the basis of that figure for the purpose of court-fee and jurisdiction. In addition owing to the injunction claimed an additional court-fee of Rs. 50/- was paid. On behalf of the State an objection was raised in the Trial Court that the value of the tank would not be less than Rs. 10,00,000/- and court-fee on that amount should have been paid. The Trial Court came to the conclusion that the suit was for possession of land on the evidence which was produced it was held that the value of the land was Rs. 25,00,000/-. The appellants were directed to pay court-fee on that amount and make appropriate amendments in the plaint.

3. The appellants approached the High Court on the revisional side and challenged the decision of the trial Court on the question of court-fee. The High Court referred to Section 6(i)(v) of the Bombay Court Fees Act, 1959, which was in force at the material time. This provision may be reproduced :

"In suits for the possession of land, houses and gardens - according to the value of the subject-matter; and such value shall be deemed to be, where the subject-matter is a house or garden - according to the market-value of the house or garden and where the subject-matter is land".

#(a)(b)(c)##

According to the High Court the court-fee was payable according to the value of the subject-matter of the suit. So far as the houses and gardens were concerned it was the market value on which the court-fee had to be paid. As regards the lands sub-clauses (a), (b) and (c) contained a qualification with regard to those lands which were liable to pay land revenue to the State. Since tank was land covered under water it had to be valued as on the date of the suit without taking into consideration the improvements which might have been made. The value was of the subject-matter and it would be that value which would be relevant for the purpose of court-fee and jurisdiction. The matter was remanded to the Trial Court for further enquiry in the matter.

4. It appears that according to the view of the High Court the court-fee is payable under Section 6(i)(v) even with regard to land on its value which, according to the counsel for the State, would be the market-value. In our judgment Section 6(i)(u) does not admit of any such method of calculating the court-fee where the subject-matter is land. There is no doubt that where the subject-matter is a house or a garden in a suit for possession the court-fee has to be paid according the market-value of the house or garden but where the subject-matter is land the court-fee has to be calculated according to what has been provided in the sub-clauses (a), (b) and (c) with regard to different categories of land. It may be that in Clause (v) the land which has not been assessed to land revenue is not covered by sub-clauses (a), (b) and (c) but then the court-fee will have to be calculated under some other provision of the Act but not on the basis of the value of the land.

5. If there is any lacuna in the Bombay Act that will not justify the court in straining the language of Clause (v) and reading it in such a way that if the land does not fall within sub-clauses (a), (b) and (c) mentioned therein it must be valued in the same way as a house or a garden and court-fee should be paid on that value. If, however, it is found that the land underneath the tank is assessed to land revenue then there is no difficulty and the court-fee has to be calculated in accordance with the provisions of Section 6(i)(v). But if the court-fee cannot be determined under that provision it will be for the Trial Court to decide, under which provision court-fee is payable and the appellant shall be required to pay that amount of court-fee which is payable under the appropriate provision.

6. The appeal is consequently allowed and the order of the High Court is set aside. The case is remanded to the Trial Court for disposal in accordance with law. Costs and shall abide the event.

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