

RAJASTHAN HIGH COURT

Gokul

Vs.

Durgalal

C.R.P. No. 56 of 1995

(Arun Madan, J.)

28.09.2001

ORDER

Arun Madan, J.

1. This revision petition is directed against an order dated 16-11-1994 in civil suit No. 151/92 deciding a preliminary issue relating to valuation of suit against the defendants.

2. Plaintiffs Durgalal and Kailash instituted a suit for cancellation of a decree passed by the Additional City Magistrate No. 2 Tonk in a case No. 554/77, on the assertions that the land in dispute was in khatedari of plaintiffs (respondents Nos. 1 and 2) and Devilal, defendant No. 6 who had filed a suit before the ACM No. 2 Tonk against defendants Nos. 1 to 5 (present petitioners). It was the case on behalf of the plaintiffs that though the defendant No. 6 filed suit before the ACM in the name of plaintiffs but the plaint was not signed by the present plaintiffs; and since defendant No. 6 Devilal entered into a compromise on 16-7-83 before the ACM who was requested to decide the suit on the basis of compromise and on which, suit No. 554/97 was decreed on 25-7-83 by the ACM Tonk in the terms of the compromise against which the present suit was filed for cancellation of that compromise decree by respondents Nos. 1 and 2 (plaintiffs) and in counter the defendants Nos. 1 to 4 (petitioners) filed their written statements raising a plea as to the insufficiency of court-fees and devaluation of the suit because as per the defendants the suit land was having market value of Rs. 1,50,000/-, but the court-fee was lesser paid thereby the trial Court has no jurisdiction to hear the suit.

3. On the basis of the pleadings of the parties the trial Court framed the issues and a preliminary issue was framed as to whether the valuation of the suit land is of Rs.

1,50,000/- the suit is devalued by paying lesser court- fees and whether the court is competent to hear the suit? To decide this preliminary issue plaintiff examined Kailash and the defendant examined Ram Deva. After hearing both the parties, the learned trial Court decided this preliminary issue against defendants Nos. 1 to 4 (petitioners) by the impugned order. Hence, this revision petition.

4. Shri Praveen Jain, learned Counsel for the petitioners placing reliance on the award having been passed on 24-10-92 by the Land Acquisition Officer, Bisalpur (Devli) contended that since the Land Acquisition Officer determined the valuation of the suit land for compensation at Rs. 1,50,658/- as the land in dispute was acquired even before filing of the present suit on 13-11-92 and inasmuch as the market value thereof is also more than the award amount but the plaintiff described the valuation of the suit at Rs. 27000/- only, as against the market value of the suit land, hence the learned trial Court ought not to have legally valued the suit at Rs. 27,000/-, as was being pleaded in the plaint of the plaintiffs and thereby the learned trial Court acted in exercise of its jurisdiction illegally and with material irregularity by non- consideration of the market value of the suit land. Shri Jain cited the decisions in *Narmada v. Aashi*,¹ *P. K. Vasudeva v. K. C. Hari Menon*,² and *Collector, Bilaspur v. Lachhman*,³

5. On the contrary, Shri S. K. Jindal, learned Counsel for the respondents supported the findings of fact arrived at by the learned trial Court under the impugned order and Shri Jindal laid down much stress by relying the decision of the High Court as well as Apex Court i.e. *S. G. Ram v. Surveshwari S. K. Sevashram*,⁴ *Khema v. Sribhagwan*,⁵ and *Ratnavarmaraja v. Vimla*,⁶

6. I have heard learned Counsel for the parties and perused the impugned order. Having considered the rival contentions and carefully perused the citations relied upon by both the parties. I am of the opinion that the decision in *Ratnavarmaraja v. Vimla* (supra) is totally applicable to the facts and circumstances of the present case.

7. The Apex Court in *Ratnavarmaraja v. Vimla* (supra) observed as under at page 1300 :-

"Whether proper court-fee is paid on a plaint is primarily a question between the plaintiff and the State. The jurisdiction in revision exercised by the High Court under Section 115 of the Civil Procedure Code is strictly conditioned by

Clauses (a) to (c) thereof. The defendant who may believe and even honestly, that proper court-fee has not been paid by the plaintiff has still no right to move the superior courts by appeal or in revision against the order adjudging payment of court-fee payable on the plaint."

The Apex Court further observed thus :-

"But those provisions do not arm the defendant with a weapon of technicality to obstruct the progress of the suit by approaching the High Court in revision against an order determining the court-fee payable."

"The Court-fees Act was enacted to collect revenue for the benefit of the State and not to arm a contesting party with a weapon of defence to obstruct the trial of an action."

"We fail to appreciate what grievance the defendant can make by seeking to invoke the revisional jurisdiction of the High Court on the question whether the plaintiff has paid adequate court-fee on his plaint. Whether proper court-fee is paid on the plaint is primarily a question between the plaintiff and the State."

8. As regards citations relied by Shri Jain, the decision in *Collector, Bilaspur v. Lachhman* (AIR 1965 Himachal Pradesh 18) (supra) wherein the dispute in appeal before the Himachal Pradesh related to the determination of the market value of suit land and trees for which the Collector had assessed compensation for acquisition, is not attracted to the facts of the case at hand. In *Narbada v. Aashi* (supra) this Court relying upon the decision in *P. K. Vasudeva v. K. C. Harimenon* (AIR 1982 Kerala 35) (supra) held that in a suit for cancellation of document relating to property the court-fee has to be computed on the value of the subject-matter of the suit and such value has to be determined when whole of the document is sought to be cancelled as the value of the property of which the document was executed. This Court observed that the provisions of Section 40 of the Kerala Court- fees and Suits Valuation Act are *pari materia* with Section 38 of the Rajasthan Court-fees Act and according to which court-fee was payable on the market value of the property to which the document related when the cancellation of the document was sought in the suit. This Court specifically pointed out that although the expression "market value" has not been used in Section 38, yet the legislative intent to levy court-fee on the market value is clear as the valuation of the suit must be just equivalent in money to the property in respect of which the document was executed and which was sought to be cancelled.

9. With due respect to the learned Judge of this Court, in my considered view, having benefitted by enlightenments derived from the dictum of law laid down by the Apex Court in *Ratnavaramaraja v. Vimal* (supra) which was followed by Andhra Pradesh High Court in *S.G. Ram v. S. S. K. Sevasthram* (AIR 1995 Allahabad 52) (supra) cited by Shri Jindal, once it is settled law that the defendant has no legal right to challenge insufficiency of court-fees because there is no provision in the Rajasthan Court-fees and Suits Valuation Act or any other statute which enables the defendant to move the High Court in revision against the decision of the court of first instance on the matter of court-fee payable on a plaint and the anxiety of the Legislature to collect court-fee due from the litigant is manifest from the detailed provisions made under the Rajasthan Court-fees Act, therefore, the present revision petition is not maintainable at the instance of the defendants against the determination of the court-fees payable in the suit for cancellation of the compromise decree. Moreover, in the instant case, under the impugned order the learned trial Court also made an enquiry after framing preliminary issue for the purpose of deciding whether the subject-matter of the suit has been properly valued or whether the fee paid is sufficient and after proper appreciation of the evidence led by both the parties, it has arrived at the conclusion on the basis of the evidence of the plaintiff in suit for cancellation of decree that value of the suit land of 9 bighas was Rs. 27,000/- as per value thereof @ Rs. 3,000/- per bigha prevalent in his village Sandla. Further even in the defendants' evidence of Ramdeva (D.W. 1) during cross-examination it stands proved because Ramdeva (D. W. 1) stated that as regards rent of the suit land he did not remember but in village Sandla, value of per bigha land was Rs. 2000/-. So far as the acquisition proceedings are concerned, under the Award (Ex. 1) made in favour of the present petitioners, though compensation was awarded at Rs. 1,50,000/- but the trial Court has rightly held that in those acquisition proceedings the plaintiffs were not impleaded as parties thereof, hence not binding on them. That apart, in view of the clear pleadings on record, grievance of the plaintiffs (respondents) in their suit for cancellation of compromise decree was that the defendant No. 6 firstly filed suit before the ACM in his name so also in plaintiffs' name but since the plaint did not contain signature of the plaintiffs, according to them, the compromise arrived at ultimately in that suit before the ACM in collusion with present defendant Nos. 1 to 4 was not binding on them.

10. In this view of the matter, I do not find any illegality or material irregularity in the impugned order passed by the learned trial Court in exercise of jurisdiction vested in it

under the law and reasons assigned for by it do not called for any interference by invoking Section 115, Civil Procedure Code against the impugned order.

11. Consequently, this revision petition fails and is hereby dismissed with no order as to costs.

Revision dismissed.

Cases Referred.

1. AIR 1987 Raj 162
2. AIR 1982 Ker 35
3. AIR 1965 Him Pra 18
4. AIR 1995 All 52
5. 1994 (2) RLW 14
6. AIR 1961 SC 1299