

Beena Roy Vs Abdul Rahim

Court: High Court Of Kerala

Date of Decision: Sept. 19, 2012

Acts Referred: Civil Procedure Code, 1908 (CPC) â€” Section 2(2)

Constitution of India, 1950 â€” Article 227

Kerala Court Fees and Suits Valuation Act, 1959 â€” Section 25, 25(a), 25(b), 25(d), 25(d)(ii)

Kerala Stamp Act, 1959 â€” Section 45B

Citation: (2012) 4 KLJ 340 : (2012) 4 KLT 207

Hon'ble Judges: A.V. Ramakrishna Pillai, J

Bench: Single Bench

Advocate: K.V. Sadananda Prabhu, for the Appellant; Elizabeth Mathai Idiculla, Rachel Joseph, Mohan Idiculla Abraham, Martin D. Alumkara and Devan K. Menon, for the Respondent

Judgement

A.V. Ramakrishna Pillai

1. The petitioner is the plaintiff in O.S. No. 458/2008 on the file of the Munsiff's Court, Alappuzha. In this petition, the petitioner is challenging the

order of the learned Munsiff (dated 28.9.2010) directing amendment of the plaint valuation and payment of deficit court fee on the basis of the

market value as contended by the defendant, who is the respondent herein. The petitioner instituted the suit for declaration of his title to the plaint

schedule property and also for recovery of possession, after removal of some unauthorised constructions said to have been made by the

respondent. The plaint schedule property is described as a portion of C-Schedule to a settlement deed, having an extent of 1.75 Cents. The

petitioner valued the suit under S. 25(d)(ii) at Rs. 1,000/- and paid the court fee accordingly. The respondent objected to the same and produced

Exts. B1 to B3 and contended that the market value of the plaint schedule property would be more than Rs. 3 lakhs per cent. The trial court

relying on Exts. B1 to B3 and accepting the contention of the respondent, passed the impugned order under S. 7 of the Kerala Court Fees and

Suits Valuation Act, 1959, (hereinafter referred to as, "the Act") finding that the suit is under valued and directing amendment of the plaint valuation

in accordance with the market value and payment of deficit court fee before 15.10.2010.

2. Arguments have been heard.

3. Admittedly, the suit is for declaration of title and for recovery of possession. The subject matter of the suit is immovable property which is

capable of valuation. The relevant provision under the Act is S. 25, which reads as follows: -

25. Suits for declaration.-- In a suit for a declaratory decree or order, whether with or without consequential relief, not falling u/s 26 -

(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.

(b) where the prayer is for a declaration and for consequential injunction and the relief sought is with reference to any immovable property, fee shall

be computed on one-half of the market value of the property or on [rupees one thousand], whichever is higher.

(c) where the prayer relates to the plaintiffs exclusive right to use, sell, print or exhibit any mark, name, book, picture, design or other thing and is

based on an infringement of such exclusive right, fee shall be computed on the amount at which the relief sought is valued in the plaint or on [rupees

one thousand], whichever is higher;

(d) In other cases-

(i) where the subject-matter of the suit is capable of valuation, fee shall be computed on the market value of the property, and

(ii) where the subject-matter of the suit is not capable of valuation, fee shall be computed on the amount at which the relief sought is valued in the

plaint or on [rupees one thousand], whichever is higher.

4. The petitioner valued the suit under S. 25(d)(ii), which is obviously wrong. Hence, the finding to that extend in the impugned order is legally

sustainable. However, the learned Munsiff erred in relying on Exts. B1 to B3 documents to find that the suit is undervalued. Ext. B1 is a sale deed

of 2008 by which, the petitioner had sold 4.25 cents of property to a third party for a sum of Rs. 1,36,000/- . Ext. B2 is a settlement deed of

1993. Ext. B3 is a copy of the proceedings of the Additional District Magistrate, Alappuzha, by which the fair value of the land comprised in

Survey No. 285/27- A2 of Aryad South Village belonging to the respondent, was fixed at Rs. 3,36,000/- per Are. As the plaint schedule property

is comprised in the same survey number, the learned Munsiff found that the value of the plaint item would be Rs. 2,38,056/- as on 30/08/2010. It

was also observed by the learned Munsiff that if market value of the plaint item is calculated on the basis of Ext. B1, it would be Rs. 56,000/-. The

learned Munsiff proceeded to observe that as the fair value of the plaint schedule property as on 30.8.2010 was Rs. 2,38,056/-, the market value

of the plaint schedule property on the date of the suit could not be less than half of the said amount. Thus, the petitioner was ordered to amend the

valuation of the suit and to pay the deficit court fee.

5. The words ""market value"" appearing in S. 25(d) of the Act is the market value determined in accordance with Section 7 of the Act, which reads

as follows:

7. Determination of market value.-- (1) Save as otherwise provided, where the fee payable under this Act depends on the market value of any

property, such value shall be determined as on the date of presentation of the plaint.

(2) The market value of agricultural land in suits falling under Sections 25(a), 25(b), 27(a), 29,30,37(1), 37(3), 38, 45 or 48 shall be deemed to be

ten times the annual gross profits of such land where it is capable of yielding annual profits minus the assessment if any made to the Government.

(3) The market value of a building shall in cases where its rental value has been entered in the registers of any local authority, be ten times such

rental value and in other cases the actual market value of the building as on the date of the plaint.

(3A) The market value of any property other than agricultural land and building falling under sub-sections (2) and (3) shall be the value it will fetch

on the date of institution of the suit.

(4) Where the subject-matter of the suit is only a restricted or fractional interest in a property, the market value of the property shall be deemed to

be the value of restricted value or fractional interest and the value of the restricted or fractional interest shall bear the same proportion to the market

value of the absolute interest in such property as the net income derived by the owner of the restricted or fractional interest bears to the total net

income from the property

6. The fair value fixed by the R.D.O. under S. 45B of the Kerala Stamp Act for determining stamp duty has no relevance in determining the market

value, for the purpose of valuation of the suit. The learned Munsiff, instead of being carried away by Exts. B1 to B3, should have permitted the

petitioner to amend the plaint valuation under Sections 7(2), 7(3) or 7(3A) of the Act, as the case may be. Hence, the grievance voiced by the

petitioner against the impugned order is genuine.

7. During the course of the argument, it was brought to my notice by the learned counsel for the petitioner that the plaint was subsequently rejected

under O.VIIR.11 C.P.C. on account of the failure on the part of the petitioner to remit the balance court fee as directed in the impugned order.

Though the trial court can exercise the power under O.VII R.11 C.P.C. at any stage of the suit, the learned Munsiff ought to have noticed that for

the purpose of passing an order under the said Rule, the averments in the plaint are germane, (see Saleem Bhai and Others Vs. State of

Maharashtra and Others,). However, as the order rejecting the plaint amounts to a decree (see the definition ""decree"" under S. 2(2) of the

C.P.C.), the same could not be annulled by exercising the visitatorial jurisdiction of this Court under Art, 227 of the Constitution of India.

8. It was argued by the learned counsel for the petitioner that, if the order sought to be interfered with in this petition is set aside, even though the

order rejecting the plaint is a decree, the same should not be allowed to stand. The said proposition would offend the spirit of the judgment of a

Full Bench of this Court in Haji Hassan Rowther v. Bulgheese Beevi (1971 KLT 613 F.B.), which advice against such a procedure. The learned

counsel for the petitioner, inviting my attention to the decision of the Apex Court in G. Ramegowda, Major and Ors Vs. Special Land Acquisition

Officer, Bangalore, submitted very persuasively that this is a case of ""dependent orders"" and if the impugned order is set aside, the subsequent

order rejecting the plaint would be rendered nugatory. In the aforesaid case, during the pendency of few appeals before the Apex Court, which

were filed by the claimants in certain land acquisition cases against the order of the High Court condoning the delay, the main appeals themselves

were disposed of finally on merits by the High Court. The Apex Court observed that the fact that the main appeals pending before the High Court

were disposed of finally on merits by the High Court during the pendency of the appeals before the Supreme Court, would not by itself detract

from and bar the consideration of the correctness of the orders condoning the delay.

9. On the same principle, I have considered the correctness of the impugned order and found that the same is not in accordance with law.

However, there is a crucial difference between the Ramegowda"s case (cited supra) and the case in hand. In Ramegowda"s case the main appeals

were disposed of during the pendency of appeal before the Apex Court. In the instant case, on the other hand, the order rejecting the plaint was

before the institution of this petition. The said order is not liable to be visited under the present jurisdiction, though it was the aftermath of the failure

on the part of the petitioner to comply with the impugned order. The reason is that an order rejecting the plaint is only an illegal order which will

have to be set aside either in appeal or in a review filed before the same court under 0.47 R.1 C.P.C. I, therefore, dispose of this petition

permitting the petitioner to file a Review Petition against the order rejecting the plaint before the lower court on the strength of this judgment, within

one month from today. If such an application is filed as above, the lower court shall reckon the same to be as one filed within time and pass orders

on the same in accordance with law. Drawing analogy from the decision of this Court in Thanappan Vs. Hassan Kappor, , it is hereby made clear

that the petitioner need not pay the ad valorem court fee on the Review Petition, as there is no adjudication as to the subject matter of the suit. In

the event of filing such an application for review and taking the plaint on file, the lower court shall give the petitioner an opportunity to amend the

valuation of the plaint as per the provisions of S. 7 of the Kerala Court Fees and Suits Valuation Act, 1959, as the case may be.

In the result, the Original Petition is disposed of as above. No costs.