

Jyotiram and Others Vs. The Assistant Commissioner and Another

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Court : Karnataka

Decided On : Apr-18-2016

Judge : H.G. Ramesh & G. Narendar

Appeal No. : M.F.A. No. 102577 of 2014 (LAC)

Appellant : Jyotiram and Others

Respondent : The Assistant Commissioner and Another

Judgement :

(Prayer: This MFA filed under Section 54(1) of L.A. Act, against the judgment and award dated 06.08.2014 passed in L.A.C. No.52/2011 on the file of the Senior Civil Judge, Hukkeri, partly allowing the reference petition for compensation and seeking enhancement of compensation.)

H.G. Ramesh, J.

1. Whether this first appeal is to be heard by a Bench of not less than two Judges of this Court or by a Single Judge of this Court? This question is raised by the appellants counsel which needs to be answered.

2. In our opinion, for the following reasons, this first appeal is to be heard by a Single Judge of this Court as the value of the subject matter of this appeal does not exceed Rupees Fifteen Lakhs.

3. This appeal is preferred under Section 54(1) of the Land Acquisition Act, 1894 as amended in Karnataka. The value of the subject matter of the appeal is Rs.11,62,749/- and the appellants have accordingly paid court fee on the said value.

4. Sri S.N. Hatti, learned counsel appearing for the appellants submitted that the value of the original proceeding before the Reference Court exceeded Rupees Fifteen lakhs, and, therefore, this appeal is to be heard by a Bench of two judges of this Court. In support of his submission, he relied on a Full Bench decision of this Court in Indian Council of Agricultural Research vs. Smt. Varija and Ors. [ILR 2011 KAR 499]. According to the learned counsel, the value of the original proceeding before the Reference Court determines the forum of appeal including as to whether the appeal is to be heard by a Bench of two Judges or a Single Judge of this Court, and not the value of the subject matter of the appeal.

5. In the context of the question raised, Section 19 of the Karnataka Civil Courts Act, 1964 (the Civil Courts Act), and Section 5 of the Karnataka High Court Act, 1961 (the High Court Act) as amended by Karnataka Act No.26 of 2007 require to be noticed:

Section 19 of the Civil Courts Act reads as follows:

19. Appeals from Senior Civil Judge. Appeals from the decrees and orders passed by a Senior Civil Judge in original suits and proceedings of a civil nature, shall when such appeals are allowed by law, lie.-

(1) to the District Court, when the amount or value of the subject matter of the original suit or proceeding does not exceed ten lakh rupees;

(2) to the High Court, in other cases.

Section 5 of the High Court Act reads as follows:

5. First appeals. Save as otherwise provided in this Act,

(i) all First Appeals against a decree or order passed in a suit or other proceedings, the value of subject matter which exceeds fifteen lakh rupees shall

be heard by a Bench consisting of not less than two Judges of the High Court and other First Appeals shall be heard by a Single Judge of the High Court.

(ii) all Criminal Appeals against Judgments in which sentence of death or imprisonment for life is passed and against Judgments of acquittal in cases in which offences are punishable with death or imprisonment for life shall be heard by a Bench consisting of not less than two Judges of the High Court and other Criminal Appeals shall be heard by a Single Judge of the High Court.

(Underlining supplied)

6. The very question raised herein fell for consideration before a Division Bench of this Court in Special Land Acquisition Officer vs. Gopal [ILR 1994 KAR 1817], and after considering Section 19 of the Civil Courts Act and Section 5 of the High Court Act, answered the question as follows:

11. It is a well accepted principle that ordinarily it is the value in the original proceedings that determines the jurisdiction of the Court and not the amount which may be found or decreed by the Court against which the appeal is preferred. But the tenor of the amended provision of Section 5 appears to lay emphasis on the value of the subject matter in the First Appeal and not the value of the subject matter in the suit or other proceedings. If we were to hold that the value of the subject matter in a suit or other proceedings is pivotal for determining the forum it may defeat the very purpose of the amendment. To illustrate, in a money suit for recovery of a sum of Rs.3 lakhs, if the suit were to be decreed say for Rs.2,99,000.00, and if the plaintiff were to prefer appeal against the said judgment and decree as against the dismissal of his suit for the balance sum of Rs.1000/-, the same has to be heard by a Bench consisting of not less than two Judges of this Court.

12. Accordingly, we hold that First Appeals the value of subject matter of which is three lakhs or more shall be heard by a Bench consisting of not less than two Judges of this Court and other First Appeals shall be heard by a Single Judge in terms of the amended provisions of Section 5 of the Act.

(Underlining supplied)

In the above decision, this Court interpreted Section 5 of the High Court Act, as amended by Karnataka Act No.6 of 1994. Now, Section 5 has been further amended by Karnataka Act No.26 of 2007 whereby, for the words of which is rupees three lakhs or more , the words which exceeds fifteen lakh rupees is substituted. Hence, in view of this amendment, when first appeals lie to the High Court, all such first appeals, whose value of the subject matter exceeds Rupees Fifteen Lakhs, shall be heard by a Bench of not less than two Judges of this Court, and other first appeals shall be heard by a Single Judge of this Court.

7. The Full Bench of this Court in Indian Council of Agricultural Research [ILR 2011 KAR 499] has only examined as to when a first appeal will lie to the District Court or the High Court under Section 19 of the Civil Courts Act. It is relevant to refer to the following observations made therein:

10. Therefore, in order to determine whether it is the District Court or the High Court which has got the jurisdiction to entertain the present appeals, the claim made by the claimant landowners before the Reference Court becomes relevant.

11. It is necessary to notice here the amount claimed by the claimant in the application filed by him under sub-Section (1) of Section 18 of the Land Acquisition Act, will be the subject matter of the proceedings before the Reference Court. If the said amount as claimed by the claimant does not exceed Rupees Ten Lakhs, then appeal lies only to the District Court. .

14. In the light of the discussion made above, the reference is answered holding that if the value of the subject matter of the claim before the Reference Court does not exceed Ten Lakh Rupees, appeal lies to the District Court and if it exceeds Ten lakh Rupees, then appeal lies to High Court as per Section 19(1) of the Karnataka Civil Courts Act, 1964 read with Section 54 of the Land Acquisition Act, 1894, as amended by Mysore Amendment Act 17 of 1961.

(Underlining supplied)

The aforesaid Full Bench decision of this Court has no bearing on the question raised herein as Section 5 of the High Court Act did not even arise for consideration there.

8. In view of the above, we hold that, when first appeals lie to the High Court, all such First appeals, whose value of the subject matter exceeds Rupees Fifteen Lakhs, shall be heard by a Bench of not less than two judges of this Court, and other First Appeals shall be heard by a Single Judge of this Court. Therefore, as the value of the subject matter of this appeal is Rs.11,62,749/-, Registry shall list this appeal before the learned Single Judge having the Roster.

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