

Bheemanda Devaiah Vs. Kanjithanda Karumbaiah

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Court : Karnataka

Decided On : Jan-22-1985

Reported in : ILR1985KAR3073

Judge : Venkatachala, J.

Acts : Karnataka Court Fees and Suits Valuation Act, 1958 - Sections 7(2)

Appeal No. : C.R.P. No. 18 of 1985

Appellant : Bheemanda Devaiah

Respondent : Kanjithanda Karumbaiah

Advocate for Pet/Ap. : S.G. Bhagavan, Adv.

Disposition : Petition dismissed

Judgement :

ORDER

Venkatachala, J.

1. Market value of land in a suit falling in the class of land suits covered by sub-section (2) of Section 7 of the Karnataka Court Fees and Suits Valuation Act, 1958 (for short 'the Act'), determined by the Court of Civil Judge, Madikeri (for short 'the Trial Court'), applying the provision in clause (d) thereof, is questioned before me.

2. Land in item-1 of the plaint schedule to the suit in the Trial Court, is 3 acres in extent and forms a specified portion of a total extent of 3 acres 89 cents comprised in Survey No. 33/2 respecting which annual revenue payable to Government is Rs 33-72. The Trial Court determined the market value of that land applying clause (d) of sub-section (2), as stated earlier.

3. It was urged by Shri S. G. Bhagavan, Learned Counsel for the petitioner, that the Trial Court should have applied clause (b) of sub section (2) of Section 7 of the Act for determining the market value of the said land, instead of applying clause (b) thereof.

4. Fees payable under the Act on a plaint in a suit, ordinarily depends on the market value of the subject matter of the suit. However, when it comes to land-suits covered by sub-section (2) of Section 7 of the Act, how market value of land concerned in any of such suits has to be determined, is provided for by that sub-section itself, which reads:

'(2) The market value of land in suits falling under Section 24(1), 24(b), 26(a), 27, 28, 29, 31, 35(1), 35(2), 35(3), 26, 38, 39 or 45 shall be deemed to be -

(a) Where the land forms an entire estate, or a definite share of an estate, paying annual revenue to Government, or forms part of such an estate and is recorded in the Deputy Commissioner's register as separately assessed with such revenue, and such revenue is permanently settled - twenty-five times the revenue so payable :

(b) Where the land forms an entire estate, or a definite share of an estate, paying annual revenue to Government or forms part of such estate and is recorded as aforesaid, and such revenue is settled, but not permanently -

twelve and a half times the revenue so payable ;

(c) Where the land pays no such revenue, or has been partially exempted from such payment, or is charged with any fixed payment in lieu of such revenue, fifteen times the net profits if any from the land during the year before the date of presenting the plaint or thirty times the revenue payable on the same extent of

similar land in the neighbourhood, whichever is lower ;

(d) Where the land forms part of an estate paying revenue to Government, but is not a definite share of such estate and is not separately assessed as above mentioned or the land is a garden or the land is a house site whether assessed to full revenue or not, or is land not falling within the foregoing description - the market value of the land.

Explanation :- The word 'estate', as used in this section means any and subject to the payment of revenue for which the proprietor or farmer or raiyat shall have executed a separate engagement to Government, or which in the absence of such engagement shall have been separately assessed with revenue.'

5. 'Estate' used in clauses (a) (b) and (c) of the sub-section, means only land which is subject to payment of revenue, becomes evident from the explanation found there-in. If the land, which is the subject matter of the suit, form; an entire estate, or a definite share of an estate paying annual revenue to Government, or forms part of such an estate and is recorded in the Deputy Commissioner's register as separately assessed with such revenue and such revenue is permanently settled, its market value shall be deemed to be twenty-five times the revenue so payable under clause (a) of the sub-section. Next, if similar land is assessed to revenue as before, but if such revenue is not permanent settled, its market value shall be deemed to be twelve and a half times the revenue so payable under clause (b) of the sub-section. What shall be deemed to be the market value of land, which is the subject matter of the suit, if no revenue is payable therefore or is partially exempted from paying such revenue, or is charged with any fixed payment in lieu of such revenue, is covered by clause (c) of the sub-section. But, when it comes to clause (d) of the sub-section, it declares that the market value of the lands described therein and any land not described therein shall be the market value of the lands themselves. The lands covered by clause (d) above, therefore, may be categorised thus :

(1) Any land forming part of an estate paying revenue to Government, but not forming a definite share of such estate and not separately assessed either permanently or not permanently ; or

(2) Any land which is a garden; or

(3) Any land which is a house site whether assessed to full revenue or not ;

(4) Any land not falling within the above categories.

Land in item-1 of the plaint schedule to the suit, the market value of which has to be determined, falls in category (1) above. It is so because (i) its extent is 3 acres only as against the extent of 3 acres 89 cents comprised in Survey No. 33/2 and it forms only a specified part of an estate paying revenue to Government ; (ii) it is not a specific share of an estate in Survey No. 33/2; and (iii) it is not also separately assessed to revenue. Thus, when land in item-1 of the plaint schedule falls in category (i) of lands in clause (d) above, its market value, that is, what it would have fetched if had been sold in the open market on the date of presentation of the plaint, should be of relevance and court fee under the Act is pay-able on such market value.

6. Hence, it cannot be said that the trial Court was in error in applying clause (d) and determining the market value of the land concerned. The Trial Court has also acted very rightly in applying the ratio of this Court's decision in *Shanta Bai -v.- Manik Rao Panduranga Rao*, 1968(2) Mys. L.J. 273 inasmuch as it squarely covered the case on hand. Consequently, the argument of Shri Bhagavan that it is clause (b) of sub-section (2) of Section 7 of the Act that should have been applied by the Trial Court, to the case on hand, cannot be sustained. It is accordingly rejected. What should follow is the dismissal of this revision petition. But, before doing so, an anomaly, which has arisen from excepting the aforesaid category (1) lands from other lands covered by clauses (a) to (c) thereof, needs mention.

7. Lands covered by clauses (a) to (c) of sub-section (2) of Section 7 of the Act, are agricultural lands. Their market value is determinable on the fictional basis created in those clauses. Such fictional basis created by the Legislature is obviously intended to benefit the agriculturists, in that, they can have easy access to Courts for establishing their legitimate claims respecting agricultural lands by paying negligible Court fee on such claims. Though category (1) lands of clause (d) of sub-section (2) of Section 7 are agricultural lands of agriculturists, their market

value for purposes of Court fee is determinable as required by that clause on the basis of their real market value, that is, what they would fetch in the open market if sold on the date of suit and not on a fictional basis as provided for in clauses (a) to (c) of sub-section (2) thereof. Benefit of fictional basis of determination of market value of agricultural lands, appears to have been denied to lands in category (1) lands in clause (d), for, they are only specific portions of lands covered by clauses (a) or (b) and they are not separately assessed. When both category (1) lands in clause (d) and lands in clauses (a) to (c) are agricultural lands and of agriculturists, to deny the benefit of fictional basis of determination of market value to the former class of lands merely because they form smaller (specific) portions of assessed' survey numbers and are not, by themselves, separately assessed, would amount to denial of well intended benefit with no rationale or logic behind it. After all, it is common knowledge that it is small agriculturists who would very much need the assistance of Courts in establishing their claims respecting smaller (specified) portions of their agricultural lands, which may form parts of larger lands. But, denying the fictional basis of determination of market value for these lands to small agriculturists and to demand from them Court fee on the real market value of those lands for establishing their claims respecting them, may, in several cases, result in closing the doors of Courts for their entry. Moreover such an anomaly, which is brought about by the exception created by clause (d) regarding portions of agricultural lands not separately assessed to revenue, creates an impression that it is only big agriculturists who are allowed to have access to Courts to establish their claims respecting their large agricultural lands (holdings) by paying little Court fee and not the small agriculturists, who may be in dire need of establishing their claims in Courts, respecting their small agricultural lands because of the exorbitant Court fee which they are liable to pay on such claims. To my mind, it looks that this is an anomaly which might not have been really intended by the Legislature itself. However as this is an anomaly which requires to be remedied by the Legislature alone, all that the Court can do is to invite its attention to this aspect and leave it at that.

8. In the result, this Revision Petition is dismissed with-out being admitted,

