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Shekhappa Vs. Assistant Commissioner and Land Acquisition Officer, Koppal and Another

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Court : Karnataka

Decided On : Jun-22-2000

Reported in : ILR2000KAR3956

Judge : Mohamed Anwar, J.

Acts : [Code of Civil Procedure \(CPC\), 1908](#) - Sections 122; Karnataka Civil Rules of Practice, 1967 - Rule 100; [Land Acquisition Act, 1894](#) - Sections 18

Appeal No. : Civil Revision Petition No. 2484 of 1999

Appellant : Shekhappa

Respondent : Assistant Commissioner and Land Acquisition Officer, Koppal and Another

Advocate for Def. : Sri B.H. Satish, High Court Government Pleader and; Veena Antin, Adv.

Advocate for Pet/Ap. : M/s. Prime Law Associates, Adv.

Judgement :

ORDER

1. This is decree-holder's revision directed against the Execution Court's order dated 5-6-1999 made in E.P. No. 538 of 1997 awarding him the Advocate's fee of Rs. 50/- only per cost towards the execution proceeding while declining his claim to the same at the rate of 50% of the Advocate's fee awarded on the original suit.

2. Admittedly, the reference Court under Section 18 of the Land Acquisition Act had passed an award in favour of the decree-holder in LAC No. 3 of 1988, dated 17-4-1995 awarding compensation of Rs. 18,65,441-20 for his lands acquired for the public purpose. That award was put to execution by him in the said E.P. No. 538 of 1997. Whole of the award amount is stated to have been, recovered from the judgment-debtors. As regards the Advocate's fee payable for the Counsel representing the decree-holder in the execution proceeding, an application was filed to award the same at Rs. 5,900/- in accordance with the relevant provisions under Rule 100(a) and (d) of the Karnataka Civil Rules of Practice, 1967. The Court below holding that the Advocate's fee has to be calculated per Rule 100(f)(i) of the said Rules, has awarded only Rs. 50/- on this Court.

3. In order to appreciate the validity or otherwise of the finding of the Court below in awarding the decree-holder's Advocate's fee payable in the said E.P. No. 538 of 1997, it is necessary to advert to the relevant provisions of Rule 100 of the Karnataka Civil Rules of Practice, 1976 which regulates scale of Advocate's fee payable in various legal proceedings. The material provisions of this rule are excerpted below:--

Rule 100(d) specifically deals with the scale of Advocate's fees payable in an execution case and it reads:

'100: Advocate's fee to be included in the costs awarded by Court to a party in any suit or other proceeding shall be computed in the manner prescribed hereunder-

(a) In original suits...

(b) In a Regular Appeal... .

(c) In Small Cause Suit. ...

(d) In the Execution Case, the fee shall be calculated as follows:

(i) On the first application at 50 per cent of the fee calculated at the rate specified in clause (a) above on the amount of money or value of the relief claimed in the application.

(ii) No fee shall be payable on any subsequent application unless it is contested, in which case, the fee shall be calculated at 25 per cent of the fee calculated at the rate specified in clause (a) above on the amount of money or value of the relief claimed in the application'.

4. In the instant case, it is an admitted fact that the execution petition was filed in E.P. No. 538 of 1997. An application was filed by the decree-holder for realisation of the award amount from the judgment-debtors who are respondents herein. Therefore, sub-clause (ii) of Rule 100(d) would not be attracted to the case on hand but it is sub-clause (i) thereof which is obviously applicable. Rule 100(a) lays down various scales of Advocate's fee payable in a suit proceeding depending upon the value of the subject-matter of the suit. The maximum limit of the fee payable as prescribed under Rule 100(a) states that if the market value or the subject-matter of the suit exceeds Rs. 1,00,000/-, then the Advocate's fee payable would be:

'Rs. 4,125/- + 1 1/2 per cent on the amount which exceeds Rs. 1,00,000/- subject to a maximum of Rs. 15,000/-'.

5. A plain reading of the material provision in Rule 100(d)(i) makes it clear that the Advocate's fee payable in an execution case as prescribed by this provision is 50% of the scale of fees given in Rule 100(a). The award amount in question is Rs. 18,65,441-20. When the Advocate's fee calculated at the aforesaid prescribed rate, it works out to Rs. 15,304-20. But, the decree-holder has restricted his claim to Rs. 5,900/-. Therefore, but the Court below has misdirected itself in refusing to grant the same by erroneously resorting to the aid of Rule 100(f) which deals with the rate of Advocate's fee payable in respect of the proceedings other than the original suits, regular appeal, small causes suits, execution case and the execution appeal. Therefore, the impugned order cannot be sustained and the revision is

entitled to succeed.

6. Hence, for the reasons aforesaid, the revision is allowed. The impugned order is set aside. The application filed by the petitioner (decree-holder) in E.P. No. 538 of 1997 on the file of the Court below is allowed granting him the Advocate's fee at Rs. 5,960/- as prayed therein. Parties to bear their own costs.

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