

Laxminarayan and ors. Vs. Shivanarayan

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Court : Madhya Pradesh

Decided On : Apr-26-1965

Reported in : AIR1968MP74

Judge : P.V. Dixit, C.J. and ;K.L. Pandey, J.

Acts : [Court Fees Act, 1870](#) - Sections 7; Madhya Pradesh Suits Valuation Rules; Suit Valuation Act, 1887

Appeal No. : Civil Revn. No. 670 of 1964

Appellant : Laxminarayan and ors.

Respondent : Shivanarayan

Advocate for Def. : R.G. Mukati, Adv.

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

Disposition : Revision allowed

Judgement :

K.L. Pandey, J.

1. This case comes before us on a reference made by Tare J. (or resolving the disharmony between Hiralal v. Nilkanth, Civil Revn. No. 14 of 1951 D/- 18-12-1951 decided by V. R. Sen J. (Nag) & Nilkanth v. Laxman, (Civil Revn. No. 399 of 1963

D/- 19-12-1963 by S. B. Sen J.) (MP). The questions which Tare J. had formulated for our consideration are:

(i) Whether a plaintiff suing for vacant possession of a plot of land after demolition of the superstructure is required to value the claim for purposes of court-fee and jurisdiction with reference to the value of the plot only or he should include in his claim the value of the superstructure as well?

(ii) Whether the view as pronounced in C. R. No. 14 of 1951 D/- 18-12-1951 (Nag) (supra) or in C. R. No 399 of 1963 D/- 19-12-1963 (MP) (supra) is in accord with the provisions of Section 7(v)(b) of the Court-fees Act and Sections 3 and 4 of the Suits Valuation Act, 1887, read with the Madhya Pradesh Rules framed thereunder?

2. The facts of the case, briefly stated, are these. The applicants filed a suit for vacant possession of S. No. 891 area 0.27 acre after demolition of the structures standing thereon and also for a permanent injunction to restrain the non-applicant from interfering with their possession. They valued the relief of possession at twenty times the rent of S. No. 891 which came to Rs. 27 and the relief of permanent injunction at Rs. 200. Relying upon C. R. No. 399 of 1963 D/- 19-12-1963 (MP) (supra), the Court of first instance directed the applicants to value the relief of possession by including therein the value of the land as well as that of the structures standing thereon. Being aggrieved by that order, the applicants preferred a revision. Since V. R. Sen J. had held in the earlier case, C. R. No. 14 of 1951 D/-18-12-1951 (Nag) (supra), that in a case like the one here the value of the structure could not be taken into consideration for determining the court-fee payable, Tare J. has made this reference.

3. Having heard the counsel, we have formed the opinion that the view taken by V. R. Sen J. in C. R. No. 14 of 1951 D/-18-12-1951 (Nag) (supra) is correct. So far as the question of computation of court-fee is concerned, it is governed by paragraph (v) of Section 7 of the Court-fees Act, 1870. which read as under:

'In suits for the possession of land, houses and gardens--according to the value of the subject-matter; and such value shall be deemed to be where the subject-

matter is land, and

(b) where the land forms an entire estate or a definite share of an estate, paying annual revenue to Government, or where the land forms part of such estate and is recorded as aforesaid: and such revenue is settled, but not permanently-twenty 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, and netprofits have arisen from the land during the year next before the date of presenting the plaint-fifteen times such net profits;

but where no such net profits have arisen therefrom the amount at which the Court shall estimate the land with reference to the value of similar land in the neighbourhood;

(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 abovementioned the market value of the land:

Provided that, in the territories subject to the Governor of Bombay in Council the value of the land shall be deemed to be-

(1) where the land is held on Settlement for a period not exceeding thirty years and pays the full assessment to Government--a sum equal to five times the survey- assessment;

(2) where the land is held on a permanent settlement, or on a settlement for any period exceeding thirty years, and pays the full assessment to Government a sum equal to ten times the survey assessment; and

(3) where the whole or any part of the annual survey assessment is remitted a sum computed under paragraph (1) or paragraph (2) of this proviso, as the case may be, in addition to ten times the assessment, or the portion of assessment, so remitted. Explanation:-- The word 'estate' as used in this paragraph means-

(i) any land 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;

(ii) any land held by a person deemed to be a tenant of State under Sections 45 & 59 of the Madhya Pradesh Abolition of Proprietary Rights (Estates, Mahals, Alienated Lands) Act, 1950, or a person deemed to be a lessee from the State under Sub-section (2) of Section 68 of the Madhya Pradesh Abolition of Proprietary Rights (Estates, Mahals, Alienated Lands) Act, 1950, and any reference to revenue in this paragraph shall, in such cases, be deemed to be a reference to the rent or lease-money payable to the State Government in respect of such land;

(e) Where the subject matter is a house or garden according to the market value of the house or garden '

No doubt the word land in its wider significance includes not only the surface of the ground but also everything on or under it but, in the provisions reproduced above it is used in a restricted sense because they prescribe a distinct mode of ascertaining the amount at which the relief should be valued according as the subject matter of the suit is land or a house or a garden. If the subject matter of the suit is land, there are two modes of computation according as the land is revenue paying or not. On the other hand, if it is a house or garden, another distinct mode of computation is provided. It would thus appear that the word land is used in contra-distinction to a house or a garden. Therefore, when the claim is one for possession of a house or a garden standing on revenue paying land, it cannot be regarded as one for the land alone within the meaning of Section 7(v)(b) of the Act; *Hibtulla Bhai v. Gulam Abbas*, (1936-1943) Taxing Decisions of Nag HC 49.

A house includes the site on which it stands and also its appurtenance. The fact that the land on which it stands is revenue paying does not affect the computation of the court-fee chargeable. But whether the suit is for recovery of the house or the land on which it stands falls to be determined by ascertaining what in substance the subject matter of the suit is. Where the claim is confined to the land, of which

possession is sought after demolition of the buildings erected on it, it is in substance one for possession of land. Long ago, the matter was considered in *Jogal Kishor v. Tale Singh*, (1882) ILR 4 All 320 by a Full Bench constituted by Stuart C. J., Straight, Oldfield. Brodhurst and Tyrell JJ. and it was held that the value of the buildings which have to be demolished should not be taken into account Oldfield J. pointed out that the subject matter or the relief sought was the restoration of plaintiff's possession over his land which the defendant had taken from him. There was also a further sub-relief incidental to re-possession, namely, the removal of the buildings made by the defendant on his pretended title. The same view was taken in *Durga Das v. Nihal Chand*, AIR 1928 Lah 852. C. R. No. 14 of 1951 D/-18-12-1951 (Nag) (supra), *Abdul Ghani v. Vishunath*, AIR 1957 All 337. *Shanti Prasad v. Mahabir Singh*, AIR 1957 All 402 (FB), *Kewal Kishore v. Hamad Ahmad Khan*, AIR 1959 Punj 181 and *Narasimha Rao v. Chenchamma* AIR 1962 Andh Pra 408.

4. For the contrary view taken in C. R. No. 399 of 1963 D/- 19-12-1963 (M P) (supra), S. B. Sen J. relied upon certain observations made in (1936-1943) Taxing Decisions of Nag HC 49 (supra) and *Gajanan v. Rajeshwar*, ILR 1950 Nas 432= (AIR 1950 Nag 237). In our opinion, those observations, which were made in relation to claims involving possession of buildings, do not support that view. We do not also agree with the view that, when the structure on the land has got to be removed or demolished, it ceases to be a claim for possession of land. As pointed out by Oldfield J. in the case of (1882) ILR 4 All 320 (FB) (supra), there is in such cases a sub-relief of demolition of the structure. Needless to say that this sub-relief has to be valued separately and it has no bearing on the question of computation of court-fee payable on the main relief of vacant possession of land. In view of the rules made by the State Government under Section 3 of the Suits Valuation Act, 1887, the valuation of the land, of which possession is claimed, for purposes of court-fee and pecuniary jurisdiction is the same.

5. Having regard to what we have stated in the foregoing paragraph, we would answer the two questions in this way:

(i) So far as the relief of vacant possession of the plot of land is concerned, the value of the structures standing thereon, which have to be demolished, should not be taken into account, However, the sub-relief of demolition of the structure has to be valued separately.

(ii) The view taken by V. R. Sen J. in C. R. No. 14 of 1951 D/- 18-12-1951 (Nag) (supra) is, and the one taken by S. B. Sen J. in C R. No. 399 of 1963 D/- 19-12-1963 (MP) (supra) is not correct and in accord with the relevant enactments.

Tare, J.

6. The petitioners filed a suit for possession of a plot of land after demolition of the superstructure belonging to the respondent. The petitioners had merely put the price of the land on the basis of land revenue. The learned Judge of the trial Court held that as the petitioners were claiming not a share, but a portion of land revenue paying estate, they were required to pay court-fees ad valorem on the market value of the portion of the land. In addition, they were also required to pay court-fees on the value of the superstructure which the petitioners did not claim to be their own and which they wanted to be demolished or to be removed by the respondent. The present revision is directed against that order.

7. On a previous occasion, this case came up before me for hearing when by order, dated, 3-3-1965, I upheld the order of the trial Judge demanding court-fees ad valorem on the market value of the portion of land assessed to land revenue. That order was based on the observations of Bose J. in (1936-43) Taxing Decisions of Nag. HC 49, which has been the recognised view of this Court. However, in view of the conflict of view as expressed by S. B. Sen J. in C. R. No. 399 of 1963, D/- 19-12-1963 (MP) and V. R. Sen J. in C. R. No. 14 of 1951, D/-18-12-1951 (Nag) 1953 N. L. J. (Notes of Cases) No. 64, I had referred two questions for consideration by a larger Bench.

8. Their Lordships constituting the Division Bench have answered the two questions as follows:--

'(i) So far as the relief of vacant possession of the plot of land is concerned, the value of the structure standing thereon, which have to be demolished, should not be taken in to account. However, the subrelief of demolition of the structure has to be valued separately.

(ii) The view taken by V. R. Sen J. in C. R. No. 14 of 1951 D/- 18-12-1951 (Nag)(supra) is, and the one taken by S. B. Sen J. In C. R. No. 399 of 1963 D/- 19-12-1963 (MP) (supra) is not, correct and in accord with the relevant enactments.'

9. In view of the answers given by the Division Bench, it is necessary to set aside that part of the order of the trial Judge, which requires the petitioners to value the superstructure for the purpose of court-fees. The order of the trial Judge so far as it relates to payment of court-fees on the market value of a part of the land revenue paying estate on the basis of (1936-43) Taxing Decisions of Nag HC 49(supra) is concerned, it is upheld. The petitioners will, therefore, be required to pay court-fees on the ad valorem market value of the portion of the and of which they claim possession. In addition, they will be required to value the sub-relief of demolition, which in most of cases might be on the basis of the probable cost of demolition. Therefore, as directed by the Division Bench, the petitioners shall be required to state that valuation and pay court-fees on that amount in addition to the market value of a portion of the plot of land.

10. The learned counsel for the respondent suggested that the sub-relief of demolition of superstructure ought to be valued on the price or the market value of the superstructure. That suggestion can in no case be accepted for the simple reason that the plaintiffs cannot be forced to purchase a superstructure, which they want to be demolished. The superstructure undoubtedly in the present case belongs to the defendant-respondent. Therefore, its price or the market value cannot be the criterion for valuing the sub-relief of demolition. That valuation will necessarily be with reference to the probable cost that may be required for demolition. In the first instance, it would be for the plaintiffs to state their own valuation regarding the probable costs of demolition. The Court can always interfere with the plaintiff's valuation as laid down by a Full Bench of the Nagpur High Court in Motiram v. Daulat, ILR 1938 Nag 558 -(AIR 1939 Nag 50) (FB), if it

finds that the valuation put by the plaintiff is arbitrary or wholly inadequate or excessive. Otherwise, the Court might accept the plaintiff's valuation in such matters.

11. As a result of the discussion aforesaid, this revision substantially succeed and is allowed as indicated. Under the circumstances, the petitioners shall be entitled to half of their costs in this Court including the Division Bench, Counsel's fee before the Single Bench shall be Rs. 25 of certified, while before the Division Bench Rs. 50, if already certified.

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