

Rishiraj Singh and ors. Vs. Raghubar Singh and ors.

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Court : Madhya Pradesh

Decided On : Jan-29-1968

Reported in : AIR1968MP228; 1968MPLJ461

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

Acts : Court-fees Act, 1870 - Sections 8; Land Acquisition Act - Sections 30;
;Code of Civil Procedure (CPC) - Sections 47

Appeal No. : Letters Patent Appeal No. 8 of 1964

Appellant : Rishiraj Singh and ors.

Respondent : Raghubar Singh and ors.

Advocate for Def. : M.L. Shrivastava, Adv. for Respondents (Nos. 1 to 4)

Advocate for Pet/Ap. : Y.S. Dharmadhikari, Adv.;K.K. Dube, Govt. Adv.

Disposition : Appeal dismissed

Judgement :

Dixit, C.J.

1. This is a Letters Patent Appeal from an order of Shiv Dayal J holding that an appeal preferred by the appellants before us, against a decision of the Additional District Judge, Ambikapur under Section 30 of the Land Acquisition Act is a regular

first appeal and should be registered as such and directing the appellants to state the valuation of the appeal and pay ad valorem court-fees on it accordingly

2. The material facts are that in acquisition proceedings of certain lands situated in village Patna, tahsil Baikanthpur an amount of Rs 7196.70 was determined as compensation for the land acquired. In those proceedings a dispute arose between the parties to the appeal as regards the apportionment of the compensation. The respondents claimed that they were entitled to the full amount of the compensation and that the appellants had no claim to receive the compensation amount. The Land Acquisition Officer referred this dispute about apportionment to the Court of the Additional District Judge, Ambikapur, under Section 30 of the Land Acquisition Act, 1894, for decision. The learned Additional District Judge held that the respondents were entitled to get the entire amount of Rs. 7196.70 rejecting in toto the claim of the appellants to get any amount of the compensation. The appellants, therefore, preferred an appeal in this Court in which the order before us in appeal was passed by the learned Single Judge.

3. The short question that arises in this appeal is as regards the court-fee payable on the appeal preferred by the appellants. The learned Single Judge, relying on *Ramachandra v. Ramachandra*. AIR 1922 PC 80, held that the decision of the learned Additional District Judge on a reference under Section 30 of the Land Acquisition Act was a decree and that, therefore, the appeal preferred before him by the appellants was a regular appeal and ad valorem court-fee was payable on the valuation of the appeal. In AIR 1922 PC 80 (Supra) the Privy Council has observed:--

'The award as constituted by statute is nothing, but an award which states the area of the land, the compensation to be allowed and the apportionment among the persons interested in the land of whose claims the Collector has information meaning thereby people whose interests are not in dispute but from the moment when the sum has been deposited in Court under Section 31(2) the functions of the award have ceased; and all that is left is a dispute between interested people as to the extent of their interest.

Such dispute forms no part of the award, and it would indeed be strange if a controversy between two people as to the nature of their respective interests in a piece of land should enjoy certain rights of appeal, which would be wholly taken away when the piece of land was represented by a sum of money paid into Court.'

The decision in AIR 1922 PC 80 (supra) was explained by the Privy Council in a later case, *Bhagwati v. Ram Kali*. AIR 1939 PC 133 thus:--

'In that case some question arose as to whether any appeal lay to His Majesty in Council in a case where the determination of the Judge ended in an award and not in a decree. The Board took the view that where the matter referred was not the adequacy of the amount of compensation awarded, but a dispute between the persons claiming compensation involving, it may be, difficult questions of title, the resultant decision was not an award but a decree.'

4. In our judgment the learned Single Judge rightly held that the decision of the learned Additional District Judge was a decree and that, therefore, ad valorem court-fee was payable on the appeal. That apart, even under Section 8 of the Court-fees Act the amount of court-fee payable on the appeal preferred by the appellants was the amount they claimed as compensation. That provision lays down that the amount of court-fee payable on a memorandum of appeal against an order relating to compensation under any Act for the time being in force for the acquisition of land for public purposes shall be computed according to the difference between the amount awarded and the amount claimed by the appellants. No amount was awarded to the appellants and they have claimed some amount in the appeal preferred by them. Consequently they should have paid ad valorem court-fee on the amount claimed by them in the appeal.

5. Shri Dharmadhikari, learned counsel appearing for the appellants, did not dispute that under Section 8 of the Court-fees Act ad valorem court-fee was payable. He, however, urged on the strength of the decision of a Division Bench of this Court in *Jageshwar Prasad v. Vishnoo Prasad*, Misc. First Appeal No. 47 of 1959, D/- 1-2-1962 (Madh Pra) that the appeal preferred by the appellants was one under Section 47 of the Code of Civil Procedure and that, therefore, no ad valorem court-fee was payable on the memorandum of appeal. The decision in

Jageshwar Prasad's ease (supra) is not in point. In that case in proceedings under Section 18 of the Land Acquisition Act before the Additional District Judge. Durg, when a dispute arose between the rival claimants to the compensation amount, it was settled by consent of the parties that the amount should be paid to such trustee or trustees of the temple of the deity as may be appointed or recognized by a competent Court. Thereafter, Jageshwar Prasad and others made an application before the Additional District Judge claiming the amount of compensation saying that they were the trustees of the temple. The learned Additional District Judge rejected the claim of Jageshwar Prasad and others holding that they had failed to establish that they were the trustees of the temple. He also rejected the application of Vishnoo Prasad in that case for giving directions under Section 32 of the Land Acquisition Act. The learned Additional District Judge, however, directed that the amount of compensation should remain in deposit in court until such time as the trustees are lawfully appointed and recognized. It was against this order of the Additional District Judge. Durg, that an appeal was preferred in this Court. Leaving aside the question whether the appeal preferred by Jageshwar Prasad and others was at all competent, it is plain that in that appeal the dispute was not as regards the apportionment of compensation between rival claimants. That dispute had already been settled by the consent order which the learned Additional District Judge passed holding that the amount of compensation shall be paid to such trustee or trustees of the temple of the deity as may be appointed or recognized by a competent Court. The dispute raised was thus whether Jageshwar Prasad and others who claimed to be the trustees had been validly appointed and recognized as trustees of the temple and were, therefore, under the terms of the consent order lawfully entitled to receive the amount of compensation. This was made clear by the learned Judges of the Division Bench hearing Jageshwar Prasad's appeal. They said:--

'As soon as therefore the dispute as to the apportionment is resolved by the reference Court, whether as a result by his own judicial order or as a result of any compromise between the rival claimants, the proceedings before the reference Court come to an end and nothing remains to be decided thereafter excepting to implement that decision. '

There is thus a clear distinction between the case before us and Jageshwar Prasad's case, Misc. First Appeal No. 47 of 1959, D/-1-2-1962 (Madh Pra) (supra). In Jageshwar Prasad's case, Misc First Appeal No 47 of 1959, D/- 1-2-1962 (Madh Pra) the appeal against an order passed by the Additional District Judge in proceedings initiated for enforcing the consent order under which the recognized trustees of the temple were held to be entitled to get the compensation. The question whether the proceedings before the Additional District Judge for enforcement of the consent order had been rightly initiated is not material here and we express no opinion on it

6. In our judgment, the learned Single Judge was right in holding that the appeal preferred before him was a regular first appeal and the appellants should have paid ad valorem court-fees on the valuation of the appeal. This appeal is therefore, dismissed with costs. Counsel's fee is fixed at Rs. 50/-.

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