

Mercy Rose and ors. Vs. State of Kerala and anr.

Mercy Rose and ors. Vs. State of Kerala and anr.

SooperKanoon Citation : sooperkanoon.com/727281

Court : Kerala

Decided On : Sep-18-2008

Reported in : AIR2009Ker59; 2008(3)KLJ511

Judge : Kurian Joseph and; ; K.T. Sankaran, JJ.

Acts : Code of Civil Procedure (CPC) - Sections 107(2) and 141 - Order 7, Rule 11; [Valuation Act, 1959](#) - Sections 4, 51, 52, 66 to 71, 72, 73, 73A, 74, 74A and 75; Land Acquisition Act

Appeal No. : Unnumbered L.A.A of 2008

Appellant : Mercy Rose and ors.

Respondent : State of Kerala and anr.

Advocate for Pet/Ap. : Thomas M. Jacob,; G. Rajagopal and;Ajay Kumar R. Advs.

Judgement :

ORDER

K.T. Sankaran, J.

1. The appellants in whose favour the Reference Court under the Land Acquisition Act granted a sum of Rs. 20,46,322/- as enhancement of compensation, have challenged the decision of the Land Acquisition Court in this appeal. The appeal is valued at Rs. 54,12,235/-. The court fee payable under Section 51 of the Kerala Court Fees And Suits [Valuation Act, 1959](#) (hereinafter referred to as 'the Act') is shown as Rs. 2,93,915/ -. At the time of filing the appeal, only a sum of Rs. 10/- was paid as court fee. The Registry returned the appeal as defective on the ground of insufficiency of court fee.

2. The appellants submitted that they have filed an application along with the appeal to allow them to set off the court fee payable in the appeal against the admitted compensation amount due from the Government as per the award under challenge passed by the Land Acquisition Court.

3. The question to be decided at this stage is whether the appellants are entitled to claim such set off as prayed for in the application and to prosecute the appeal with out paying the requisite court fee.

4. Section 4 of the Act states that no document which is chargeable with fee under the Act shall be filed, exhibited or recorded in, or be acted on or furnished by, any court including the High Court, unless in respect of such document there be paid a fee of an amount not less than that indicated as chargeable under the Act. Section 51 provides for the fee payable on the memorandum of appeal against an order relating to compensation under any Act, for the time being in force for the acquisition of property for public purposes. Court fee under Section 51 shall be computed on the difference between the amount awarded and the amount claimed by the appellant. Section 52, which provides for fee payable in an appeal, makes provision in the second proviso for payment of only one-third of the fee at the stage of admission of the appeal. The

balance court fee shall be paid within such period, not later than fifteen days from the date of admission of the appeal. Sections 66 to 71 of the Act provide for refund of court fee in the contingencies provided therein. Section 72 of the Act provides for exemption from payment of fee. Clause (xviii) of Section 72 is with respect to application for compensation under any law, for the time being in force relating to the acquisition of property for public purposes. Section 72 does not provide for any exemption from payment of court fee in the matter of appeals arising out of the judgment of the Land Acquisition Court. Sections 73, 73A, 74 and 74A of the Act contain special procedure and special provisions in respect of the suits, appeals, revisions, etc. of the categories mentioned in those sections where total or partial exemption from payment of court fee is provided. Section 75 empowers the Government to reduce or remit the fee payable under the Act by issuing notification in the Gazette.

5. Clause (c) of Rule 11 of Order VII of the Code of Civil Procedure provides for rejection of the plaint where the relief claimed is properly valued but the plaint is written upon paper in sufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp paper within a time to be fixed by the Court, fails to do so. In view of Sections 107(2) and 141 of the Code of Civil Procedure, the provisions of Order Rule 11 would apply to appeals as well. The Kerala Court Fees and Suits Valuation Act does not allow the appellant to set off the court fee against any liability due from the Government. Section 4 of the Act is mandatory. No person can claim exemption from payment of court fee unless such exemption is provided in the Act. The payment of court fee cannot be the subject matter of a set off against a claim available against the Government. Court fee is chargeable and payable under the statute relating to valuation and court fee. That has nothing to do with the amount to be realised by the appellants from the Government. The fact that the appellants have to get huge amounts from the Government is not a ground to exempt them from payment of court fee. It does not matter whether the liability of the Government is admitted or not. A claim against the Government or a decree against the Government cannot be executed indirectly by claiming a set off against court fee payable in an appeal arising out of the same decision or in an appeal against some other case. There is no machinery provided as to how such set off could be adjusted, monitored and verified. Such a set off was beyond the imagination or contemplation of law makers. There is no statutory provision enabling the appellants to claim such set off nor is there any precedent which would support the contention now raised by the appellants.

6. We are unable to accept the contention raised by the appellants in the matter of non-payment of court fee. The objections raised by the Registry are upheld.

7. Post after three weeks to enable the appellants to pay the requisite court fee.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com