

Smt. Narbada Vs. Smt. Aashi

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Court : Rajasthan

Decided On : Feb-21-1986

Reported in : AIR1987Raj162; 1986WLN(UC)635

Judge : Dwarka Prasad, Ag. C.J.

Acts : Rajasthan Court-fees and Suits Valuation Act, 1961 - Sections 38

Appeal No. : Civil Revn. No. 71 of 1986

Appellant : Smt. Narbada

Respondent : Smt. Aashi

Advocate for Pet/Ap. : Madhusudan Narain Bhatt, Adv.

Disposition : Petition dismissed

Judgement :

ORDER

Dwarka Prasad, Ag. C.J.

1. The question in this revision petition relates to the interpretation of Section 38 of the Rajasthan Court Fees and Suits Valuation Act, 1961. Sub-section (1) of Section 38 with which I am concerned in the present revision petition reads as under : --

'38. Suits for cancellation of decrees etc.-

(1) In a suit for cancellation of a decree for money or other property having a money value, or other document which purports or operates to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest in money, movable or immovable property, fee shall be computed on the value of the subject-matter of the suit, and such value shall be deemed to be (a) if the whole decree or other document is sought to be cancelled, the amount or value of the property for which the decree was passed or other document was executed, and

(b) if a part of the decree or other document is sought to be cancelled, such part of the amount or value of the property.'

2. Thus, in a suit for cancellation of a document the court fee has to be computed on the value of the subject matter of the suit and such value has to be determined when the whole of the document is sought to be cancelled as the value of the property which the document was executed.

3. Learned counsel for the petitioner relied upon the decision of the Madras High Court in *Andalammal v. B. Kanniah*, AIR 1972 Mad 5 wherein it was held that the valuation of a suit for cancellation of a deed should be made on the basis of the valuation of the property set out in the deed. The learned Judge of the Madras High Court who decided the *Andalammal's* case thought that the legislative intent was that the basis for the purpose of valuation should be the amount or value mentioned in the document itself, and proceeded on the assumption that when a person sought to cancel a document executed by himself, he should pay court fees upon the value which he had chosen to put upon the property in the document sought to be cancelled.

4. With all respect to the learned Judge, I am unable to agree with the interpretation put by him on the corresponding provisions of Section 40 of the Madras Court Fees and Suits Valuation Act, 1955. With respect it may be observed that the words 'for which' referred to the property and not to the value of the property relating to which the document said to be cancelled was executed. In my humble opinion, the value of the property for which the document was

executed, clearly refers to the market value of the property. Obviously if the plaintiff desires to get rid of his obligation or liability in respect of a document relating to property and prays for cancellation of such document, then he must pay court fees on the money value of such property for which the document was executed. I find support in the view which I have taken from a Division Bench decision of the Kerala High Court in P. K. Vasudeva Rao v. K. C. Hari Menon, AIR 1982 Ker 35 wherein the aforesaid Madras decision was dissented from. It was held in P. K. Vasudeva's case by the Kerala High Court while dealing with the provisions of Section 40 of the Kerala Court Fees and Suits Valuation Act which are parimateria with Section 38 of our Act that Court fee was payable on the market value of the property to which the document related when the cancellation of the document was sought in the suit. In my view the decision in P. K. Vasudeva Rao's case is the correct interpretation of the expression 'value of the property for which the document was executed' occurring in Section 40 of the Kerala Court Fees and Suits Valuation Act which is equivalent to Section 38 of the Rajasthan Act. It may be pointed out that although the expression 'market value' has not been used in Section 38, yet the legislative intent to levy court fee on the market value is clear as the valuation of the suit must be just equivalent in money to the property in respect of which the document was executed and which was sought to be cancelled.

5. I, therefore, uphold the order passed by the learned Munsif, Sojat City.

6. The revision petition has no force and it is dismissed.

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