

Munishamappa and Others Vs. Chikkalagumaiah and Another

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Court : Karnataka

Decided On : Sep-30-2011

Judge : N.K. Patil & C.R. Kumaraswamy

Appeal No. : M.F.A.No.7654 of 2011 (LAC)

Appellant : Munishamappa and Others

Respondent : Chikkalagumaiah and Another

Advocate for Pet/Ap. : For the Appellants: Veeresha Kumar Sivasali, Advocate.
For the Respondents: C.R. Gopala Swamy and Associates, Advocates.

Judgement :

Order on Memo Dated 08.09.2011

Patil, J.

This memo is filed by the learned counsel for the appellants stating that, appellants have not paid any court fee before the Trial Court as the reference was pertaining to apportionment of compensation under Section 30 and 31 of Land Acquisition Act and not under Section 18 of the said Act and therefore, they need not pay any court fee under section 49 of the KCF and SV Act. Further, he submitted that, as per the said section, the appellants have to pay the court fee on the memorandum of appeal whatever the court fee paid at the first instance of the Court, since the appellants have not paid any court fee before the first instance

Court, they need not pay any court fee, however, the court fee of Rs.20/- paid as per Schedule II, Article 3(ii)(1)(a) of the KCF and SV Act.

2. Further, learned counsel for the appellant has stated in the memo that, claimant Nos.2, 5, 6 and 7 also claimed the compensation and the same was dismissed. The claimant Nos. 2, 6 and 7 though appeared before the Trial Court, have not claimed any compensation and the claimant No.5 claimed the compensation on the ground that he was the agreement holder. The Trial Court dismissed their claim and they have not challenged the same in the appeal to the knowledge of the appellants. Further, it is stated that, appellants have not claimed any relief against the claimants and hence, they are not made as party to this appeal.

3. We have heard learned counsel for the appellants and learned counsel for respondents.

The submission of the learned counsel for the appellants is that, the order impugned passed by the Reference Court is under Sections 30 and 31 of the L.A Act and not under Section 18(1) of the said Act and therefore, they need not to pay any court fee under Section 49 of the KCF and SV Act. Therefore, he submitted that the objections raised by the office are not sustainable and is liable to be set aside. Further, he submitted that claimant Nos.2,5,6 and 7 though appeared before the Trial Court have not claimed any compensation and only 5th claimant has claimed the compensation on the ground that he is the agreement holder and the appellants have not claimed any relief against R2, 6 and 7 and therefore, they have not been made as parties to this appeal.

4. Per contra, learned counsel for the first respondent and learned Additional Government Advocate appearing for second respondent submitted that, the statements made in the memo and the submissions made by the learned counsel for the appellants cannot be accepted and are liable to be rejected at threshold. To substantiate the said submission, they placed reliance on Section 48 of the KCF and SV Act and also on the judgment of this Court in the case of Ghose Saheb Vs. Sharifa Bi and Others 1977 (2) Karnataka Law Journal page 467, wherein, it is held that, 'the Land Acquisition Act does not make a distinction between the claim for compensation and the right to receive it. But in either case the decision

whether on the adequacy of compensation or to the right to receive it, must necessarily relate to the compensation awarded in a given case because when once the property is vested in the State upon acquisition, the only right that remains in the person interest is to receive the compensation awarded therefor and nothing more. Therefore, they submitted that in view of the law laid down by this Court in the aforesaid judgment, the statements made in the memo cannot be sustained and are liable to be set aside.

5. After hearing the learned counsel for the both parties, we have perused the statements made in the memo and the reliance placed by the learned counsel for the respondents. Earlier, the Division Bench of this Court had an occasion to consider the views expressed by the learned counsel for the appellants in this appeal regarding the payment of court fee, in the case of *Ghouse Saheb Vs. Sharifa Bi and others* (Supra), and held that, “the difference between a decree and an award in the Land Acquisition proceedings makes no difference in the application of Section 48. The determination of a dispute upon a reference under section 30 will be a ‘decree’ for the purpose of appeal. But the omission to use the word ‘decree’ in the first part of section 48 makes little difference in the position of law as the word decision referred to therein appears to be wide enough to cover a decree also. Hence, in an appeal relating to apportionment of compensation, appellant has to pay court fee under Section 48 read with Article 7 of Schedule-I of the Court Fees Act.

6. In the light of the law laid down by the Division Bench of this case in the aforesaid case and taking into consideration the relevant provisions of Section 48 of the Court Fee and Suit Valuation Act, which is clear that if once the appellants seek apportionment of compensation, then they are liable to pay the court fee. Therefore, we are of the considered view that, appellants are bound to pay the court fee as envisaged under Section 48.

7. So far as the submission of the learned counsel for the appellants that appellants are not liable to pay any court fee as per Section 49 of the Act, is concerned, the same cannot be accepted and is liable to be rejected and accordingly, it is rejected.

8. Having regard to the facts and circumstances of the case as stated supra, the statements made in paras-1 and 2 of the memo dated 8.9.2011 are liable to be rejected and accordingly, they are rejected.

9. So far as the statements made in second para of the memo is concerned, the same is accepted and learned counsel for the appellants is permitted not to implead the claimant Nos.2, 6 and 7 at their risk. Ordered accordingly.

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