

Surat Singh v. Jagdish and others (S. C. Mittal, J.)

and others (2), and *Mohammad Habibullah Sahib and others versus Special Deputy Collector for Land Acquisition Madras and others* (3). The argument of Mr. Tiwana, if accepted, would bring about a curious situation. A landowner who has a genuine feeling that the notification regarding the acquisition of land is illegal would either have to challenge the legality of the notification by filing a petition under Article 226 of the Constitution or to forego his right to make such a challenge and to claim enhanced compensation only. I see no ground to introduce an element of uncertainty in the procedure which entitles a citizen to enforce his rights. The other ground impels me to take this view that the notification under section 4 of the Act was issued on February 21, 1974 and the instant petition was filed on March 21, 1974. At the time of admission of the petition further proceedings were ordered to be stayed by the Motion Bench and according to the learned counsel for the petitioners the landowners continued to be in possession of the land. In the Madras case cited above the acquisition was challenged after a long delay of three years. In the circumstances, I see no force in the contention raised by Mr. Tiwana. These petitions are accordingly allowed with costs. Counsel's fee Rs. 300 in each case.

N. K. S.

REVISIONAL CIVIL

Before S. S. Sandhawalia and S. C. Mittal, JJ.

SURAT SINGH—(Plaintiff) Petitioner

versus

JAGDISH AND OTHERS—(Defendants) Respondents.

Civil Revision No. 1368 of 1974

March 17, 1978.

Court Fee Act (VII of 1870) as amended by the Court Fee (Punjab Amendment) Act (XXXI of 1953)—Section 7(iv) (c) proviso—Suit for cancellation of a money decree—Court fee—Whether payable ad valorem.

(2) 66 Calcutta Weekly Notes, Page 115.

(3) A.I.R. 1967 Madras 118.

Held, that the proviso to section 7(iv)(c) of the Court Fee Act 1870 as amended by the Punjab Amendment Act of 1953 was enacted to demolish the ratio decidendi of a number of earlier rulings including a Full Bench decision supporting the view that a plaintiff can put in any arbitrary value for the purpose of Court Fee. Besides, by applying the rule of harmonious construction, there is no escape from the conclusion that a case of cash cannot escape the sweep of the Punjab Amendment Act 1953. Accordingly, the plaintiff in a suit for cancellation of a money decree has to pay *ad valorem* Court-fee.

(Para 8)

Bawa Bir Singh v. Ali Niwaz Khan, A.I.R. 1964, Punjab 381; OVERRULED.

Petition under Section 115 of Act V of 1908 (C.P.C.) for revision

property such valuation shall not be less than the value of the property calculated in the manner provided for by clause (v) of this section."

(3) On behalf of the plaintiff-petitioner, reliance was placed on *Bawa Bir Singh v. Ali Niwaz Khan* (1) laying down that clause (v) of section 7 deals only with the method of calculation of value in case the suit relates to land, garden and houses and does not deal with a case of cash. The learned Judge further observed :—

"Argument of the learned counsel for the petitioner is that this proviso applies only to suits relating to property of which method of calculation of value is given in clause (v) and not to other suits. Though it does look a bit strange that a suit seeking a declaration and consequential relief in respect of a house must necessarily be valued in accordance with the value of the property and if it relates to the same amount of cash the plaintiff shall be at liberty to fix the amount at any figure, yet the wording of the proviso leads to no other interpretation. The learned counsel for the respondent could not urge any argument to the contrary. In view of the above, therefore, this proviso, which has been brought in by the amendment,

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purposes of court-fee and jurisdiction at Rs. 130 only. Accordingly, Rs. 13 was affixed as court-fee. The valuation was challenged by the defendants. The trial Court accepted their objection and directed the plaintiff to pay *ad valorem* court-fee of Rs. 1953.60 on the above-said amount of Rs. 21,500. Feeling aggrieved, the plaintiff preferred the present revision petition.

(2) That the present suit is governed by section 7 (iv) (c) of the Court Fees Act has not been disputed before us. The relevant part of section 7 dealing with the computation of fees payable in certain suits for money, reads :—

“(iv) in suit—

(a) *for moveable property of no market value*—for moveable property where the subject-matter has no market value, as, for instance, in the case of documents relating to trial;

(b) *to enforce a right to share in joint family property*—to enforce the right to share in any property on the ground that it is joint family property;

(c) *for a declaratory decree and consequential relief*—to obtain a declaratory decree or order, where consequential relief is prayed.

(d) * * * *

(e) * * * *

(f) * * * *

In all such suits the plaintiff shall state the amount at which he values the relief sought. Provided that the minimum court-fee in each case shall be thirteen rupees.”

It further deserves mention that by the Court Fees (Punjab Amendment) Act No. XXXI of 1963, the following proviso was added to clause (iv) of section 7 of the Court Fees Act :—

“Provided further that in suits coming under sub-section (c), in cases where the relief sought is with reference to any

property such valuation shall not be less than the value of the property calculated in the manner provided for by clause (v) of this section.”

(3) On behalf of the plaintiff-petitioner, reliance was placed on *Bawa Bir Singh v. Ali Niwaz Khan* (1) laying down that clause (v) of section 7 deals only with the method of calculation of value in case the suit relates to land, garden and houses and does not deal with a case of cash. The learned Judge further observed :—

“Argument of the learned counsel for the petitioner is that this proviso applies only to suits relating to property of which method of calculation of value is given in clause (v) and not to other suits. Though it does look a bit strange that a suit seeking a declaration and consequential relief in respect of a house must necessarily be valued in accordance with the value of the property and if it relates to the same amount of cash the plaintiff shall be at liberty to fix the amount at any figure, yet the wording of the proviso leads to no other interpretation. The learned counsel for the respondent could not urge any argument to the contrary. In view of the above, therefore, this proviso, which has been brought in by the amendment, has no application to the present case.”

It is the soundness of this view which is before us. The learned Judge himself noticed that the interpretation of the proviso was anomalous. As observed by the learned Judge, counsel for the respondent was unable to urge any argument to the contrary.

(4) For finding out the true effect of the proviso in question, the history of the case law, which was not even cited before us, deserves consideration. The earliest in point is Full Bench decision in *Barru and others v. Lachhman and others* (2), laying down :—

“In suits falling under section 7 (iv) (c), Court Fees Act, the Courts are bound to accept the valuation placed by the plaintiff upon the relief sought by him, even though such valuation is arbitrary and inadequately represents the value of the property.

(1) A.I.R. 1964 Panjab 381.

(2) 111 Punjab Records 1913.

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(5) That the plaintiff can put in any arbitrary value was recognised by the Privy Council in *Sunderbhai and another v. Collector of Belggum and others* (3). Their Lordships approved the following view of the Bombay High Court :—

“Where a plaintiff sues for a declaratory decree and asks for consequential relief and puts his own valuation upon that consequential relief, then for the purposes of Court Fee, and also for the purposes of jurisdiction, it is the value that the plaintiff puts upon the plaint that determines both.”

(6) Then in *Jhanda Singh and another v. Bhagwan Dass*, (4), Tek Chand J., considered at length all the authorities in point starting from *Barru and others v. Lachhman and others* (2) (supra). Reliance was also placed on *Nandan Mal v. Salig Ram* (5) and *Gurdwara Mahant Jawala Singh and others v. Kala Singh and others*, (6). Head-note if the authority (4 supra) may be quoted with advantage :—

“Where a suit is brought for a declaration that a decree for Rs. 2,432 odd, which had been passed against the plaintiff *ex-parte* had been obtained by fraud and was not binding on him and for an injunction restraining the defendant decree-holder from executing it, the suit is a suit to obtain a declaratory decree where consequential relief is prayed and falls under Section 7 (iv)(c), and if the plaintiff values the suit for purposes of jurisdiction as well as for court-fees at Rs. 130, the Court has no power to review the valuation inasmuch as the plaintiff can fix any value he likes howsoever arbitrary, fanciful or inadequate it may be.”

In *Karam Ilahi v. Muhammad Bashir and others* (7), the rulings referred to above were discussed and followed. Thereafter, in

(3) A.I.R. 1918 P.C. 135=I.L.R. (43) Bombay 376.

(4) A.I.R. 1933 Lahore 246.

(5) A.I.R. 1922, Lahore 236.

(6) A.I.R. 1931, Lahore 307.

(7) A.I.R. 1949, Lahore 116 (F.B.)

Vishwa Nath and another v. Smt. Sita Bai Anand and others (8), the question referred to the Full Bench was :—

“Whether the valuation for court-fee of a suit to set aside a decree where in execution of such decree property has been sold and possession given, and where recovery of possession of the property so sold is sought in the suit, falls under section 7 (iv) (c) of the Court-Fees Act, and if not what court-fee is payable ?”

G. D. Khosla, J. (as he then was) while delivering the judgment of the Full Bench observed :—

“That the plaintiff can put in any arbitrary value was recognised by the Privy Council in *Sunderbai v. Collector of Belgaum*, (3 supra). There are several rulings of the Lahore High Court in which the same view was expressed and a list of these rulings is given in AIR 1949 Lah. 116, at page 119. There appears to be an established practice in Patna and Orissa that the Court can revise such arbitrary value and our attention was drawn to *Udaynath Mohapatra v. Rahas Pandiani*, (9), *Salahuddin Hyder v. Dhanoo Lal* (10), and *Rupia Mt. v. Bhatu Mahton* (11), but there appears to be no such recognised practice in this Court or in the Lahore High Court. In the circumstances I would answer the question referred to us as follows :—

“The valuation of court-fees of a suit to set aside a decree where in execution of such decree property has been sold and possession given and where possession of the property so sold is sought, falls under section 7 (iv) (c) of the Court Fees Act and Court-fee is payable on the value of the relief as fixed and stated by the plaintiff.”

(7) After the decision of the Full Bench, the proviso in question to clause (iv) (c) of section 7 of the Court Fees Act was added by

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- (8) A.I.R. 1952 Panjab 335.
 - (9) A.I.R. 1951 Orissa 10.
 - (10) A.I.R. 1945 Pat. 421.
 - (11) A.I.R. 1944 Pat. 17.

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Punjab Act No. XXXI of 1953. The object behind was stated as under :—

“In an appeal (A.I.R. 1952 Punjab 335) before the Punjab High Court a question was raised recently as to the valuation of court fees of a suit to set aside a decree where in execution of such decree property has been sold and possession given, and where recovery of possession of the property so sold is sought in the suit. It was considered whether such a suit falls under section 7 (iv) (c) of the Court Fees Act, and what court-fee is payable. The High Court have held that the value of court-fee leviable in such a suit falls under section 7 (iv) (c) of the Court Fees Act and not under section 7 (v) and court-fee is payable on the value of the relief claimed for the purpose of jurisdiction. It was revealed that according to the existing clause (iv) (c) of section 7 of the Court Fees Act, 1870, this State is losing revenue on stamp duties. With a view to avoid such loss, the proposed legislative measure is introduced.”

(8) In view of the above, there remains no room for doubt that the proviso in question was enacted to demolish the ratio *decidendi* of not only the Full Bench decision reported in *Vishwa Nath and another v. Smt. Sita Bai Anand and others* 8 (supra) but also of the preceding rulings supporting the view that the plaintiff can put in any arbitrary value for the purpose of Court-fee. Besides, by applying the rule of harmonious construction, there is no escape from the conclusion that a case of cash, like the one in hand, cannot escape the sweep of the Punjab Amendment Act No. XXXI of 1953. Accordingly, the plaintiff in the present case, as ordered by the trial Court, is required to pay *ad valorem* Court-fee. The view expressed by the learned Judge in *Bawa Bir Singh v. Ali Niwaz Khan*, (1 supra), with due respects, has to be overruled.

(9) In the result, the revision petition fails and the same is hereby dismissed. The parties are, however, left to bear their own costs of this Court.

S. S. Sandhawalia, J.—I agree.

N. K. S.