

Before S. S. Sandhawalia, C.J. and I. S. Tiwana, J.

UNION TERRITORY OF CHANDIGARH,—Appellant.

versus

SARDARA SINGH,—Respondent.

C.M. 305-C-1 of 1981

In R.F.A. No. 148 of 1980.

May 29, 1981.

*Land Acquisition Act (1 of 1894)—Sections 26, 27, 53, 54 and 56—Code of Civil Procedure (V of 1908)—Sections 2(2) & (9), 35, 122 and 125—High Court Rules and Orders, Volume V, Chapter 6-I, Rules 1, 8 and 12—Proceedings in land acquisition cases—Whether to be equated with a suit for the purpose of preparing memo of costs—Assessment and quantification of counsel's fee in such proceedings—Whether regulated by Rule 1 of the High Court Rules and Orders, Volume V, Chapter 6-1—Claim involved in these proceedings—Whether 'property' within the meaning of the said Rule.*

*Held*, that an application under section 18 of the Land Acquisition Act I of 1894 has to be treated as a plaint and the proceedings on its basis as the proceedings in the suit and the resultant award as a decree. For purposes of determining or calculating counsel's fee while preparing the memo of costs, a decree of this Court in a land acquisition case is, thus, to be treated as if passed in a suit for specific property and the Rules contained in Chapter 6-I of Volume V of the High Court Rules and Orders relating to such a decree have to be resorted to for the above-said purpose. It is wholly unsustainable that these decrees have to be treated as decrees in miscellaneous proceedings in terms of Rule 8 of the aforesaid Rules. In fact Rule 8 only applies to miscellaneous proceedings in a suit prior to the passing of the decree and not to the decree itself. (Para 10).

*Held*, that 'property' would include debts and choses in action, or in other words the amounts that can be claimed on the basis of a legal right enforceable through a court of law. The word 'property' cannot indeed, be given a different meaning in the context of Rule 1 contained in Chapter 6-1 of Volume V of the High Court Rules and Orders. A claim for compensation for the acquired land would thus fall within the meaning of 'property' as used in this Rules. (Para 9).

*Case referred by Hon'ble Mr. Justice I. S. Tiwana on 31st March, 1981 to a larger Bench consisting of Hon'ble Mr. Justice I. S. Tiwana and Hon'ble the Chief Justice S. S. Sandhwalia for deciding the fixation of costs of the appeal on 29th May, 1981.*

*Application under section 151 of the Code of Civil Procedure praying that the papers concerning the fixation of costs of the appeals may kindly be laid before the Hon'ble Judge who decided the above-referred appeal along with other appeals so as to decide the matter on the judicial side.*

A. S. Chahal, Advocate, for the appellant.

R. K. Chhibbar, Advocate, for Chandigarh Administration.

M. J. Sethi, Additional Advocate General, Punjab.

S. K. Goyal, Advocate, for State of Haryana.

#### JUDGMENT

*I. S. Tiwana, J.*

(1) The short but significant question of law that needs to be considered by this Bench on a reference is as follows:

“How and in what manner a counsel's fee is to be assessed or quantified in the memo of costs while preparing a High Court decree in land acquisition matters in terms of Rule 7(ii), Chapter 4-H, Volume V, of the High Court Rules and Orders?”

It arises on the following facts:—

(2) In Regular First Appeal No. 148 of 1980, filed by the Union Territory of Chandigarh against the award of the Land Acquisition Court on a reference under Section 18 of the Land Acquisition Act (hereinafter referred to as the Act), the cross-objections filed by the petitioners were allowed by this Court on November 24, 1960, with proportionate costs. At the time of calculating the costs, the office, in accordance with the prevalent practice, put up the papers to the Judge to elicit his orders with regard to the quantum of counsel's fee. The learned counsel for claimant-petitioners then filed this miscellaneous petition raising an objection to this procedure being adopted and challenging it on various grounds,

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(3) The practice that is prevalent in this Court in this regard is that when a Regular First Appeal under the Act is decided by a learned Single Judge, the case goes back to the Branch for the preparation of the memo of costs. While preparing the memo of costs, the Office submits the case to the learned Judge soliciting his orders with regard to the quantum of the counsel's fee to be added. This procedure is adopted in spite of the fact that the counsel has put in his fee certificate on the Court. The fee so specified by the learned Judge is then added as counsel's fee in the memo of costs.

(4) We are told that this procedure is adopted in view of Rule 8 of Chapter 6-I of Volume V of the High Court Rules and Orders as the proceedings in the land acquisition matters are treated as miscellaneous proceedings.

(5) The stand of the counsel for the claimants is that the Regular First Appeals or the cross-objections to the same in land acquisition cases cannot possibly be treated as miscellaneous proceedings for purposes of preparing the memo of costs. Rather, according to the learned counsel, these cases have to be treated as suits for recovery of specific property and the counsel's fee has to be assessed or determined on the basis of the value of the property involved like all other cases or suits filed for the recovery of specific amounts. His stand further is that once the Court has passed orders in an appeal or the cross-objections to the same, allowing it with costs or proportionate costs, then the matter has not to be referred to the Judge for the determination of the quantum of the counsel's fee in the absence of the party or his counsel. To support his above-noted contention, the learned counsel adopts this process of reasoning.

(6) According to sub-section (2) of section 26 of the Act, which sub-section was brought in by way of amendment by section 2 of the Land Acquisition (Amendment) Act XIX of 1921, every award given by the Land Acquisition Court has to be deemed to be a decree and the statement of grounds of every such award a judgment within the meaning of section 2, Clauses (2) and (9), respectively, of the Code of Civil Procedure. An appeal against such an award or a part thereof lies to the High Court and further against the decree of the High Court is maintainable in the Supreme Court.

Therefore, according to the learned counsel, it follows that a decision of the High Court on appeal from a judgment and decree is also a judgment and decree. It is on the basis of this legal position that an appeal against the award of the Land Acquisition Court is treated as a Regular First Appeal for purposes of court fee and limitation *et cetera* and a Letters Patent Appeal is maintainable before a Division Bench against the decree passed by the learned Single Judge. It is also pointed out that in view of the provisions of section 53 of the Act, the Code of Civil Procedure is applicable to all proceedings before a Court under the Act save in so far as that procedure is not consistent with anything contained in the Act. This necessarily attracts the applicability of section 35 of the Civil Procedure Code to the proceedings under the Act as there is nothing inconsistent in that provision to the provisions of the Act. We find that the above-noted legal position as brought out by the learned counsel is wholly tenable.

(7) Section 35 of the Civil Procedure Code lays down that subject to such conditions and limitations *as may be prescribed* the costs of and incident to all suits shall be in the discretion of the Court and the Court shall have full power to determine by whom, out of what property and to what extent such costs are to be paid and to give all other necessary directions for the purposes aforesaid. "Prescribed" is defined in the Code as meaning prescribed by the Rules and "Rules" mean Rules and forms contained in the first Schedule or made under Section 122 or Section 125 thereof. Thus it is apparent that the discretion of the Court under Section 35, Civil Procedure Code, can only be taken away by the conditions and limitations which may be prescribed by law. If any rule is contained in the High Court Rules and Orders, referred to above, which Rules have undisputably been framed in exercise of the powers of this Court under Section 122 of the Code, then the power to assess or determine costs has to be regulated by the rules covering the matter and is not left to the discretion of the learned Judge. The Rules which according to the learned counsel for the claimants govern the matter in hand are laid down in Part I of Chapter 6-I, Volume V of the High Court Rules and Orders. Out of these rules, which according to the learned counsel, specifically deal with the fee payable as costs by a party in respect of the fee of his adversary's Advocate in suits for the recovery of specific property and which squarely apply to the facts of the case in hand, is rule 1, on which primary

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reliance is placed by the learned counsel in support of his plea and this rule reads as follows:

1. In suits for the recovery of specific property or a share of specific property, whether moveable or immoveable, or for the breach of any contract or for damages—
  - (a) If the amount or value of the property, debt, or damages decreed shall not exceed rupees five thousand according to the valuation for purposes of appeal to the Court, the fee shall be calculated at seven and a half per cent ( $7\frac{1}{2}$  per cent) on the amount or value decreed, but the Court, may, in any case, otherwise order and fix such percentage as shall appear to be just and equitable;
  - (b) If the amount or value decreed shall exceed rupees five thousand, the fee payable shall be calculated at such a percentage as shall appear to the Court to be just and equitable.”

Rule 12 of these Rules lays down that in appeals fee shall be calculated on the same scale as in original suits and the principles of the above rules as to original suits shall be applied as nearly as may be in appeals.

(8) The only contention raised by the counsel appearing on the other side is that the above-noted rule does not in terms apply to claims for compensation of the acquired property and rather applies to a decree which has been awarded in a suit for the recovery of a specific property or a share of the specific property moveable or immoveable. According to the counsel, a claim for compensation in acquisition proceedings cannot be said to be a suit for the recovery of any specific property. To examine the respective contentions of the learned counsel for the parties, it is but necessary to know the scope of the term “property” and whether a reference under section 18 can be treated as a suit.

(9) So far as the first aspect of the matter is concerned, it received consideration of their Lordships of the Supreme Court in *Madan Mohan Pathak and another v. Union of India and another* (1), while examining the matter in the context of the grant of bonus

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(1) A.I.R. 1978 S.C. 803.

to Class III and Class IV employees of the Life Insurance Corporation of India. The specific question posed and answered by their Lordships was as to whether the debts due and owing from the Life Insurance Corporation were the property of Class III and Class IV employees within the meaning of Article 31(2) of the Constitution of India. This is what was observed by their Lordships in this regard:—

“It is clear from the scheme of fundamental rights embodied in Part III of the Constitution that the guarantee of the right to property is contained in Article 19(1) (f) and Clauses (1) and (2) of Article 31. It stands to reason that ‘property’ cannot have one meaning in Article 19(1) (f), another in Article 31, Clause (1) and still another in Article 31, Clause (2). ‘Property’ must have the same connotation in all the three Articles and since these are constitutional provisions intended to secure a fundamental right, they must receive the widest interpretation and must be held to refer to property of every kind.”

After referring to a chain of authorities, wherein this matter had been considered earlier, their Lordships further concluded as follows:

“It would, therefore, be seen that property within the meaning of Article 19(1) (f) and Clause (2) of Article 31 comprises every form of property, tangible or intangible, including debts and choses in action, such as unpaid accumulation of wages, pension, cash grant and constitutionally protected Privy Purse. The debts due and owing from the Life Insurance Corporation in respect of annual cash bonus were, therefore, clearly, property of Class III and Class IV employees within the meaning of Article 31(2).”

It is thus clear from the above observations of the Supreme Court that “property” would include debts and choses in action, or in other words the amounts that can be claimed on the basis of a legal right enforceable through a Court of law. To our mind, the word “property” cannot be given a different meaning in the context of the above-quoted rule. We are, therefore, of the considered opinion, that a claim for compensation for the acquired land would thus fall within the meaning of “property” as used in this rule.

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(10) As regards the other aspect of the matter, as noticed earlier, we find that the same is not *res integra* so far as this Court is concerned. In *Phuman and others v. The State of Punjab and others*, (2), a specific argument was raised that an application under section 18 of the Act could not be equated with a suit and the applicant could not be called a plaintiff but the same was repelled, holding that an application under section 18 of the Act is to be treated as a suit and the applicant as a plaintiff. For this pronouncement, reliance was placed on earlier judgments dealing with the matter in *Ezra v. Secretary of State for India* (3), *Fakir Chand and others v. Municipal Committee Hazro* (4), and *In the Matter of Rustamji Jijibhai and another* (5). Otherwise also, we find that the word "suit" has not been defined in the Code. In terms of section 26 of the Code, it can be taken to be a civil proceeding instituted by the presentation of a plaint or in any such other manner as may be prescribed. If the award of the Land Acquisition Court has to be deemed to be a decree in terms of section 2(2) of the Code of Civil Procedure in view of the provisions of sub-section (2) of section 26 of the Act, then the process or the proceedings which result in that decree have to be treated as in a suit. This is the true legal result if full effect is to be given to the "deeming provision" contained in sub-section (2) of section 26 of the Act. This proposition of law is well supported by the following observations made by Lord Asquith of Bishops-clee in *East End Dwellings Co. Ltd. v. Finebury Borough Council* (6), which observations were later approved by the Supreme Court in *M. K. Venkatachalam, I.T.O. and another v. Bombay Dyeing and Mfg. Co. Ltd.* (7) :

"If you are bidden to treat an imaginary state of affairs as real, you must surely, unless prohibited from doing so, also imagine as real the consequences and incidents which if the putative state of affairs had in fact existed, must inevitably have flowed from or accompanied it. One of those in this case is emancipation from the 1939 level of

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(2) I.L.R. 1963 Punjab 442.

(3) I.L.R. 32 Cal. 605

(4) 59 P.R. 1913.

(5) I.L.R. 30 Bombay 341.

(6) 1952 A.C. 109.

(7) A.I.R. 1958 S.C. 875.

rents. The statute says that you must imagine certain state of affairs; it does not say that having done so, you must cause or permit your imagination to boggle when it comes to the inevitable corollaries of that state of affairs”.

Further precedents are not lacking where the applications or petitions filed under different Acts have been treated as suits. In *Balram Singh v. Dudh Nath and others*, (8), an application filed under section 12 of the U.P. Agriculturists' Relief Act was treated to be a suit in view of the words “in such other manner as may be prescribed” occurring in section 26 of the Code of Civil Procedure. An application under section 110 of the Motor Vehicles Act was treated to be a suit in *Hayatkhan and others v. Manqilal and others* (9), while considering the question of applicability of section 6 of the Limitation Act to those proceedings. Similarly, in *S. P. Consolidated Engineering Co. (P) Ltd v. Union of India and another* (10) an application under section 20 of the Arbitration Act was considered to be a suit even though the proceedings instituted were considered not to have been instituted on the presentation of a plaint. Thus we have the least hesitation in holding that an application under section 18 of the Act has to be treated as a plaint and the proceedings on its basis as the proceedings in the suit and the resultant award as a decree. In view of the above-noted legal position, we accept the submission of the learned counsel for the claimant-petitioners to the effect that for purposes of determining or calculating counsel's fee while preparing the memo of costs, a decree of this Court in a Land Acquisition case is to be treated as if passed in a suit for specific property and the Rules contained in Chapter 6-I of Volume V relating to such a decree have to be resorted to for the above said purpose. It is wholly unsustainable that these decrees have to be treated as decrees in miscellaneous proceedings in terms of Rule 8 of the above-noted rules. In fact Rule 8 only applies to miscellaneous proceedings in a suit prior to the passing of the decree and not to the decree itself.

(11) In the light of the discussion above, the Office is directed to prepare the memo of costs in the light of the observations made

(8) A.I.R. (36) 1949 Allahabad 110.

(9) A.I.R. 1971 M.P. 140.

(10) A.I.R. 1966 Calcutta 259.

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above and the rules contained in Chapter 6-I, Volume V of the High Court Rules and Orders.

S. S. Sandhawalia, C.J.—I agree.

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S. C. K.

Before S. S. Sandhawalia, C.J. and S. C. Mital, J.

**BIKKAR SINGH**,—Appellant.

*versus*

**SMT. MOHINDER KAUR**,—Respondent.

L.P.A. No. 146 of 1979.

June 2, 1981.

*Hindu Marriage Act (XXV of 1955)—Section 12—Marriage solemnised by playing fraud on the husband—Husband claiming decree for nullity of marriage on the ground of fraud—Single act of sexual intercourse between the two spouses—Whether amounts to condonation—Husband—Whether disentitled to the decree.*

*Held*, that condonation to be effective has both a factual and mental element. There is to be both a factum of reinstatement and a clear intention to forego and remit the wrong. Therefore, an effective and total condonation can arise only from a conscious and deliberate ratification of the marital status by the aggrieved spouse which may lead to a strong inference of a total wiping off a matrimonial offence. There is no inflexible rule that a solitary freakish act of sexual intercourse would raise an irrebuttable presumption of total condonation or forgiveness of a gross matrimonial offence. The statute declares that it is no marriage in the eve of law where one of the parties was induced to enter into a matrimonial alliance under coercion, duress or fraud evidencing lack of free consent. Therefore, a marriage procured by force or fraud has no sanctity and is voidable at the election of the injured party. This being the substantive provision, the legislature, however, bars a decree of annulment of marriage as an exception if the specific conditions spelt out in sub-section (2) of Section 12 of the Hindu Marriage Act, 1955, are satisfied. An analysis of this provision relevant to