Mt. Ram Devi Vs. Badlu Ram and anr.

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Court : Allahabad

Decided On : Mar-24-1947

Reported in : AIR1948All51

Appellant : Mt. Ram Devi

Respondent : Badlu Ram and anr.

Judgement :

Sinha, J.

1. This is an application for leave to appeal to His Majesty in Council under Section 110, Civil P.C. on the ground that the decree of this Court involves, 'directly or indirectly, some claim or question to or respecting property' of the value of Rs. 10,000 or even upwards. The facts, which are, for the purposes of this application, not in dispute, are briefly these.

2. The applicant, Mt. Ram Devi, brought a suit for a declaration that she was the sole owner of a certain enclosure and the defendants were not entitled to proceed against it in execution of the decree in Suit No. 183 of 1938, Badlu Ram v. Mool Chand and of the decree in Suit No, 4336 of 1934 of the Court of Small Causes at Cawnpore nor in the execution case No 205 of 1937, passed by the Munsif of Cawnpore, in the suit brought by Ambey Prasad against her husband, Mool Chand. There was a further prayer that defendant 2, Mool Chand, be restrained from realising the rents from the tenants of the said enclosure. Her case, in

substance, was that she was the owner of the property and not her husband, who had no right to deal with it. The value of the subject-matter of the suit, for the purposes of jurisdiction, was laid at Rs. 17,500 and the same was the value for the purposes of court-fee.

3. Mool Chand entered no defence. Badlu Ram and Ambey Prasad raised a defence which was, in substance, identical. They pleaded that the property belonged to Mool Chand and not the plaintiff, who was his wife. Various other defences were raised, which are not germane to the present application.

4. The learned civil Judge of Cawnpore found that the plaintiff, and not Mool Chand, was the owner of the property. He granted the plaintiff the declaration that she was the owner of the property in dispute and that it was not liable for the debt due to Ambey Prasad or Badlu Ram.

5. Badlu Ram alone came to this Court in first appeal. A Bench of this Court held that the plaintiff had failed to show that she had acquired an interest in the property. In the result, it set aside the decree of the learned civil Judge so far as it went against Badlu Ram.

6. Mt. Ram Devi now seeks to go in appeal to His Majesty in Council. It is conceded that the mortgage decree passed in favour of Badlu Ram is for a sum far below RS. 10,000. It is, however, not denied that the value of the entire enclosure is above Rs. 10,000, that is, Rs. 17,500. The question, therefore, is whether the facts of this case attract the application of the second part of Section 110, Civil P.C. In other words, even though the interest of Badlu Ram is less than Rs. 10,000, does the proposed appeal 'involve, directly or indirectly, some claim or question to or respecting property' of the amount or value of RS. 10,000

7. The intention of the Legislature is clear. The section does not merely say that the decree o this Court or the proposed appeal to His Majesty in Council must involve a claim to or respecting property of RS. 10,000 'directly', but it is enough if it involves such a claim even 'indirectly'.

8. The learned Counsel for the applicant relies on Sri Kishan Lal v. Kashmiro ('13) 35 All. 445 and Nadir Husain v. Municipal Board, Agra : AIR1937 All169 . The facts in Sri Kishan Lal v. Kashmiro ('13) 35 All. 445 were these. There was a dispute between the heirs of one Harnam Prasad as to the division of the family property. The family was possessed of property worth over Rs. 1,60,000, among which were certain mortgagee rights. The matter was referred to arbitration by the male heirs, and an award was made in 1893 by which all the property, including the mortgagee rights, was divided among the defendant, Mt. Kashmiro, the widow of the deceased, and certain persons who claimed to be members of the joint family with the deceased, the plaintiff being amongst them. The lady was given an eight anna share in the mortgagee rights, while the plaintiff was given four annas. The lady alone brought a suit upon the mortgage and recovered the money from the mortgagors. The plaintiff, thereupon, brought the present suit for recovery of his share in the mortgage money. The suit was valued at more than Rs. 10,000. The lower Court gave the plaintiff a decree for Rs. 8800. In appeal the High Court, holding that the award was fraudulent and collusive and that the family was a separate family, dismissed the suit. The plaintiff applied for leave to appeal to His Majesty in Council. This Court granted leave and observed as follows:

This Court held, reversing the decision of the Court below, that the award was not binding on the lady for reasons stated in this Court's judgment. It is the correctness of this decision which is challenged in the proposed appeal. If the decree or this Court becomes final, the question of the validity of the award will also become final as regards property other than the property in dispute in the present suit.

It, therefore, supports the applicant's contention.

9. The facts in Mahoomed Asghar v. Abida Begum : AIR1933 All177 are not very clear from the judgment, but they appear to be these : The Municipal Board of Agra brought a suit for recovery of Rs. 17,000 against defendant 1 principally, with a prayer that defendants 2 to 4 were liable to pay Rs. 7625 under a hypothecation bond and, in the event of default, the mortgaged property was liable to be sold. There was a further relief that, in case the mortgaged property was not found sufficient to satisfy the mortgage decree, the plaintiff would be permitted to apply

for a money decree against defendant l. The value of the subject-matter in dispute in the trial Court was more than RS. 10,000 so far as all the defendants were concerned, but was less than Rs. 7625, (Rs. 10,000?) so far as defendants 2 to 4 were concerned. The Subordinate Judge held that defendant 1 was liable for the full amount, but that defendants 2 to 4 were liable to the extent of Rs. 7265 only, qua the arrears of rent which had accrued prior to the date of the security bond, but that their property was not liable for rents which accrued after the security bond. The plaintiff appealed to the High Court and this Court held that the rents which accrued after the date of the security bond also created a charge on the property which was liable to be sold in execution of such arrears. But the total liability of defendants 2 to 4 was limited to the sum of Rs. 7265 only. Defendants 2 to 4 sought leave to go in appeal to His Majesty in Council. The learned Judges allowed leave and held that:

So far as the pecuniary liability of the applicants' property is concerned it is certainly limited to the sum of Rs. 7625 only. They can never be called upon to pay more than that amount nor can more than that amount be realised out of their property. But it cannot be disputed that property worth more than Rs. 7625 can be put up for sale at auction in execution of the mortgage decree and sold. After the realisation of Rs. 7625 the balance will have to be paid to the defendants. It is also clear that at auction the mortgaged property may not fetch its full value and therefore property worth more than Rs. 10,000 may be sold at auction for realising Rs. 7625 only. The defendant can never recover the property, then once sold though he will get the surplus, if any. In cases of partition it has been held by this Court in Sri Kishan Lal v. Kashmiro ('13) 35 All. 445 and in Mahoomed Asghar v. Abida Begum : AIR1933 All177 , that although the value of the plaintiff's share may be less than Rs. 10,000 the entire property involved is of the value of Rs, 10,000 or upwards and the requirement of Section 110, Civil P.C. is fulfilled.

10. The learned Counsel for the opposite party contends that the latter is no longer good law in view of the decision of their Lordships of the Privy Council in Shevantibai v. Janardhan Ragunath 31 , inasmuch as their Lordships have specifically overruled Mahoomed Asghar v. Abida Begum : AIR1933 All177 and have distinctly held that

a question as to the title of the plaintiff to the share which he claims in the joint property does not become a question respecting the whole of the joint family estate merely because if his title is established it will result in the joint family estate being partitioned.

11. The learned Counsel is right, only in so far that partition cases cannot now afford a proper guide for the determination of the question before us. The question still remains whether the decision in Nadir Husain v. Municipal Board, Agra : AIR1937 All169 is good authority in other classes of cases.

12. Reliance is also placed on behalf of the opposite party on Hanuman Prasad v. Bhagwati Prasad ('02) 24 All. 236. The facts were these : One Paltan Singh died in 1822. One of his widows, Harnam Kunwari, sold a share in village Kot Kamerhya. Hanuman Prasad, one of the reversioners, brought a suit for cancellation of the sale deed. It was decreed by the trial Court, but dismissed by the High Court. An application under Section 596, Civil P.C. of 1882, which corresponds to Section 110(b) of the present Code, was made for leave to appeal to His Majesty in Council. The value of the suit, of the appeal to the High Court and of the proposed appeal to His Majesty in Council, was less than Rs. 10,000 but it was argued that the title of other purchasers to the rest of the villages transferred by the lady depended on the decision of the case. The learned Judges rejected the argument and held that:

It is not enough that the question decided by such decree is a question of title which may possibly affect the title of persons who are not parties to the decree to property, not the subject-matter of the suit in which the decree was passed, and concerning the title to which property there is no litigation pending.

13. Reliance is also placed on Sudaman Prasad v. Mahomed Abdul Ahm 28 A.I.R. 1941 Oudh. 407 and Prasg Narain v. Mt. Fakhrul Nisa 9 A.I.R. 1942 Oudh. 174. The latter only follows the earlier. In Sudaman Prasad v. Mahomed Abdul Ahm 28 A.I.R. 1941 Oudh. 407 the applicant, Sudaman Prasad, had a decree for a sum of Rs. 9937-5-3, that is less than Rs. 10,000, but the property against which he sought attachment was worth more than Rs. 10,000. Leave was refused on the ground that

The suit must involve rights and claims to property which rights and claims are worth Rs. 10,000 and upwards, not that the rights affect properties whose value is Rs. 10,900 and upwards.

14. The learned Counsel has also taken his stand upon Abid Husain Khan v. Ahmad Husain 10 A.I.R. 1923 P.C. 102. Their Lordships held that, although the property liable for the payment of the annuity was worth more than Rs. 10,000, nevertheless, as the value of the annuity itself was Jess than Rs. 10,000 the case did not come within Section 110(b), Civil P.C.

15. In so far as the learned Judges, in Sudaman Prasad v. Mahomed Abdul Ahm 28 A.I.R. 1941 Oudh. 407 refused to follow the decision of this Court in Nadir Husain v. Municipal Board, Agra : AIR1937 All169 , I must, with all respect, dissent from their view. No reason has been assigned, except that it runs counter to the view expressed in some cases of Bombay an Madras. All the Bombay cases were partition and partnership cases. It is not possible to ascertain the nature of the suit from one of the Madras cases; the other is based upon an earlier partition case of Bombay. These cases form a class by themselves. As I have observed above, after the decision of their Lordships of the Judicial Committee in Shevantibai v. Janardhan Ragunath they cannot afford a proper guide.

16. Coming to the cases of our own Court the preponderance of authority seems to be in favour of the applicant. The decision in Sri Kishan Lal v. Kashmiro ('13) 35 All. 445, decided in 1913, is certainly not reconcilable with the earlier decision in Hanuman Prasad v. Bhagwati Prasad ('02) 24 All. 236 in 1902. In a case which was decided in Asha Begum v. Mt. Kundan Jan : AIR1946 All184 to which one of us was a party, both these cases came up for consideration and it was held that it was difficult to reconcile the two decisions.

17. It remains to consider whether the decision of their Lordships of the Judicial Committee in Abid Husain Khan v. Ahmad Husain 10 A.I.R. 1923 P.C. 102 is really against the applicant. It is true that the value of the property affected by the annuity was more than Rs. 10,000, but the applicant, who was entitled to the annuity, was interested only in the annuity or property which could secure that annuity and no more. Here the applicant is interested directly in the whole of the

enclosure, which is worth more than Rs. 10,000 and one of the reliefs claimed was a declaration that she was its sole owner. There is a reference to this point in Sudaman Prasad v. Mahomed Abdul Ahm 28 A.I.R. 1941 Oudh. 407, when the learned Judges say that no appeal lies under Section 110 unless the value of the loss or detriment which the applicant has suffered by the passing of the decree or order and from which he seeks to be relieved by His Majesty in Council is Rs. 10,000 or upwards.

18. I feel bound to say, however, that they did not pursue their observation to its logical conclusion. Possibly, they lost sight of the intention of the Legislature when it says that the order must involve not only directly but even indirectly a claim or question to property of the value of Rs. 10,000.

19. The view taken in Asha Begum v. Mt. Kundan Jan : AIR1946 All184 and Nadir Husain v. Municipal Board, Agra : AIR1937 All169 appears to be warranted by the language of the Statute than that taken in the Oudh cases relied upon by the learned Counsel for the opposite party. The case, therefore, fulfils the requirements of Section 110(b), Civil P.C. and I would so certify.

Verma, C.J.

20. I agree.

Per Curiam

21. It is certified that, as regards amount or value and nature, the case fulfils the requirements of Section 110, Civil P.C.