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Court : Allahabad

Decided On : Nov-25-1936

Reported in : AIR1937All148

Appellant : Munni Singh and ors.

Respondent : Basdeo Singh and ors.

Judgement :

Sulaiman, C.J.

1. The office reports that the court-fee paid on relief (2) in the plaint was insufficient. The plaintiffs' case was that they and defendants 1 to 11 were all members of a joint Hindu family and no partition had taken place. On 21st December 1896 a document, purporting to be a deed of partition, had been executed, which the plaintiffs alleged, had been procured by fraud and was wrong, with the result that there was no disruption of the joint family. Accordingly the first relief claimed that:

A decree may be passed and by means of partition under the Hindu Law of the joint family property, detailed below, possessed by the parties, a moiety share of the plaintiffs may be separated.

2. In the alternative, the plaintiffs put forward the case that, even if a partition had in fact taken place and were proved, the properties in list B (and not in list A) had been acquired with the joint funds of the parties, and the parties were in

possession and occupation thereof jointly and the plaintiffs had a moiety share therein. As to this part of the case, the plaintiffs asked for the following relief:

If in the opinion of the Court the plaintiffs are not found entitled to relief No. 1, then on declaration of the fact that the property mentioned in list B, was acquired with the joint funds of the parties and that the parties are in joint possession and occupation thereof, the plaintiffs may be put in possession of a moiety share jointly with defendants 1 to 11.

3. The learned Counsel for the plaintiffs urges before us that relief (2) falls under Section 7, Clause (v), being a mere suit for possession and nothing else. Obviously, if the relief be merely for possession and nothing else, then Section 7(v) would be applicable. The office has however reported that the relief contains more than a mere relief for possession and is really a relief to obtain a declaratory decree where consequential relief is prayed, and accordingly it falls under Section 7(iv)(c). It seems to me that at the early stage at which the question as to the sufficiency or insufficiency of the amount of court-fee paid arises, it is really premature and may, in many cases, amount to prejudging the case to consider whether the relief asked for was a necessary relief or not, or whether it can be granted by the Court or cannot be granted by it. That is a matter for the plaintiff to decide. If he has come to Court asking for a distinct relief, it is not the function of the Court to decide whether this relief is necessary or not. The plaintiff and his legal adviser considered it necessary and have asked for it; and it is not the business of the Court to say that, on a proper construction of the whole plaint and on the case as put forward by the plaintiff in the body of the plaint, the relief was really unnecessary and that he might not have asked for it, and therefore it should be treated as a superfluous one and he should not be called upon to pay a court-fee thereon. As was pointed out by Daniels, J., in *Mst. Ganga Dei v. Sukhdeo Prasad* A.I.R. 1924 All. 612:

It is therefore besides the mark to suggest that the suit might have been framed so as to ask for different reliefs, or in other words that it might have been framed purely as a suit for possession. The plaintiff has to pay court-fees on the relief which she seeks to obtain by the suit.

4. Ashworth, J. in *Tula Ram v. Dwarka Das* : AIR1928 All248 also pointed out that:

At the time when a plaint is filed, it is impossible for a Court or an officer of the Court to go into the question whether the plaint unnecessarily asks for a declaration with the consequential relief of possession or whether it would have served the purpose of the plaintiff to ask merely for possession. When the plaintiff asks for a declaration as his first relief and possession as a second relief, it must be taken that in the opinion of the plaintiff, or at least of his legal adviser, the declaration is a necessary relief....(If it were otherwise) we should have to return the court-fee to any Litigant who could prove that he had brought an unnecessary suit.

5. It seems to me that there is a clear distinction between a case where the plaintiff merely asks for recovery of possession of a certain property and where he asks for a declaration of his proprietary title and for possession. A suit for possession may be decreed on a mere basis of possessory title. The plaintiff may be entitled to possession on the ground that he is a usufructuary mortgagee, or a lessee or a trustee and so on; but where the plaintiff does not want a decree for possession merely but wants further that it should be established that he is the owner of the property in suit and wants such a declaration coupled with possession, he is obviously asking for proprietary possession, over the property as distinct from a mere possession. Indeed, if a plaintiff, where his title is denied by the defendant, were merely to ask for possession without establishing his title, his suit might well fail. It therefore seems to me that the relief which has been actually asked for by the plaintiff should be the principal guide in such case. If the plaintiff has chosen to ask for proprietary possession, and not merely for possession, and has therefore asked for a declaration of proprietary title as well as possession, he cannot be allowed to say that his suit is for possession only. In the present case, it is quite obvious that a suit for mere possession of property, when the joint family status was not established, could not have been maintained without its having been established first that the property which had been acquired in the names of the defendants and their predecessors had been acquired with the joint funds belonging to the plaintiffs and the defendants and the plaintiffs had therefore a joint proprietary interest in it. It was under these circumstances that the plaintiffs

and their legal adviser thought that it was necessary for the plaintiffs to ask for a declaration that 'the property mentioned in list B was acquired with the joint funds of the parties.' They have in express terms asked for it in relief (2), and I do not think it is for the Court to say that such a declaration was unnecessary, although the plaintiffs themselves have considered it necessary, otherwise they would not have asked for it.

6. There is absolutely no ambiguity so far as the first portion of relief (2), relating to the declaration of the fact that the property mentioned in list B was acquired with the joint funds of the parties, is concerned. That is perfectly clear and unambiguous. Whatever ambiguity there is, is with regard to the latter portion, where the plaintiffs ask for a declaration that the parties are in joint possession and occupation thereof and they also ask for being put in possession of a moiety share jointly with defendants 1 to 11. What was possibly intended was that the parties were merely in constructive possession of property specified in list B, and therefore the plaintiffs wanted actual possession over half; or, it may be, that the plaintiffs meant that if their claim that they are in joint possession be not established, then a decree for joint possession should be given. It seems to me that, if the plaintiffs are claiming that they are already in joint possession and occupation of the property mentioned in list B, then the proper relief that they should claim would be a relief as to declaration of title in that property. The suit would then not be for possession. But the plaintiffs have actually asked for possession, which presumably was intended to be their alternative case if joint possession is not established. Whatever might have been the intention of the plaintiffs: and their legal adviser underlying this composite relief, it is difficult to get over the fact that they have certainly asked for a declaration that the properties in list B were acquired with the joint funds of the parties, and for a declaration of joint possession, coupled with a prayer for actual possession over a half share. I am therefore unable to treat relief (2) as a relief merely for possession, pure and simple, without anything more, so as to fall within the scope of Section 7(v).

7. It may further be pointed out that the causes of action for the two reliefs, Nos. 1 and 2, are distinct and separate. The plaintiffs should be entitled to relief (1) if the joint status of the family subsists, whereas they would be entitled to relief (2) only if

it were first established that the property acquired by the defendants after the separation had been acquired out of the joint funds of the parties and all the parties have joint interest in them. In this view, it is not surprising that separate reliefs have been claimed, because the suit is a composite one, the plaintiffs having lumped together several causes of action in one suit, for which they could have sued each defendant separately in respect of the property acquired by him separately, if the joint family status had been broken up in 1896.

8. It has been urged on behalf of the plaintiffs that the relief of possession of a moiety share is not a consequential relief at all. It would seem that, when once it is declared that the property in list B has been acquired with joint funds of the parties, the relief for possession is a necessary relief, which follows as a necessary consequence, and may therefore be treated as a consequential relief within the meaning of Section 7(iv)(c). Had the plaintiffs asked for a declaration as to title and joint possession coupled with an injunction I would have had no hesitation in holding that a consequential relief was asked for. It is however not necessary to hold that it is a consequential relief, because the same Court-fee would be payable if Schedule 1, Article 1 applies.

9. In *Kalu Ram v. Babu Lal* : AIR1932 All485 decided by a Full Bench of five Judges, the plaintiffs had asked for the cancellation of a compromise and also 'cancellation' of the preliminary and final decrees based thereon. It was laid down that the relief to have the compromise adjudged void or voidable was one for cancellation of an instrument under Section 39 and not Section 42, Specific Relief Act. Although, in that case the plaintiffs might have asked for a mere declaration that the decrees were not binding upon them, they had actually asked for 'cancellation of the decree.' At p, 690, the Full Bench held that that relief for the setting aside of the decree was not a declaratory relief, and although not a consequential relief was a substantial relief falling under the residuary Article 1 of Schedule 1. But as the decree and the compromise were connected, it was held that they were no distinct subjects within the meaning of Section 17, but in reality only one subject.

10. At the same page, the Full Bench made their meaning clear by, two illustrations : (1) A suit for a declaration that the defendant is liable to pay money under a bond, and also for recovery of that amount, and (2) a suit 'for a declaration that he is the owner of certain property and is entitled to its possession and asks for, recovery of its possession.' The Full Bench distinctly laid down that the relief for the recovery of money or for the recovery of possession could not be treated as a mere consequential relief which can be arbitrarily valued at any low figure and court-fees paid on that arbitrary valuation only; and the Full Bench suggested that Schedule 1, Article 1 would govern such a case. The object of constituting a Full Bench of five Judges was to set the controversy at rest, and it is, therefore, our duty faithfully to follow that ruling. The illustration cited by the Full Bench was not wholly an obiter dictum because they were dealing with the allied case of a suit for cancellation of a decree and had to explain that when the relief claimed is not a mere declaratory one but a substantial relief, the case falls under the residuary Article 1, Schedule 1, as such a relief is not anywhere specifically provided for. In *Sri Krishna Chandra v. Mahabir Prasad* : AIR1933 All488 , the earlier Full Bench case was distinguished on the ground that there

the plaintiffs had in express terms asked for the cancellation of the compromise and a preliminary decree. Ad valorem court-fee on the consolidated prayer for the cancellation of the compromise and the decree was accordingly held to be due.

11. It was further observed:

Where the plaintiff chooses to ask for a definite relief for the cancellation of a decree or for the setting aside of that decree in addition to a declaration that the decree is not binding upon him, he is professedly asking for something more than a mere declaratory decree. At the stage at which the question of court-fee, arises, it is immaterial to consider whether such a relief is superfluous, redundant or useless or even impossible to be granted. Obviously, he has asked for more; and so long as he does not amend his plaint and abandon this relief he can be called upon to pay court-fee for the relief asked for.

12. The Full Bench pointed out that even where a plaintiff is asking for a declaration that a decree is not binding on him there was much force in the view

taken in other High Courts that the relief was not one merely for obtaining a declaratory decree but was for obtaining a more substantive relief, not specifically provided for in the Court-fees Act and therefore falling under Article 1, Schedule 1. But on the principle of stare decisis they did not like to disturb the course which decisions had taken in this Court. The case in *Bishan Sarup v. Musa Mal* : AIR1935 All817 , is distinguishable because there the plaintiff had asked for a declaration that a document executed by his brother was null and void and ineffectual as against him and that his rights in the joint family property were not affected thereby. He had not asked for possession at all. It was accordingly held that the claim was for a mere declaratory decree and for the cancellation of an instrument.

13. I am, therefore, of the opinion that the court-fee payable on relief (2) should be assessed on the language of that relief, quite irrespective of the question whether it was wholly unnecessary for the plaintiffs to ask for any part of it or whether any lawyer in drafting the plaint might have omitted that part of it. The plaintiffs have asked : (i) the Court to declare that the property in list B was acquired with the joint funds of the parties, and (ii) that they are in joint possession of it and (iii) also asked for actual possession over a half share. It is impossible, in my mind, to treat relief (2) as a simple relief for recovery of possession only, and nothing else, so as to come under Section 7(v). They must therefore pay an ad valorem court-fee on this composite relief as prescribed by Schedule 1, Article 1, because such a relief is not specifically provided for anywhere. I hold that the amount of court-fee paid on the basis of five times the Government revenue was insufficient and that the plaintiffs are bound to pay ad valorem court-fee.

Niamatullah, J.

14. The question raised by the Stamp Reporter is whether the second relief, prayed for by the plaintiffs, 'is to obtain a declaratory decree where consequential relief is prayed for.' In my opinion, the nature of the relief should be ascertained by a careful consideration of all the allegations to be found in the plaint and not merely of the language in which the prayer for relief is couched, which, taken by itself, may in many cases, be unintelligible or may indicate an intention which the

plaintiff never entertained.

15. In the present case, the plaintiffs' case was that the family consisting of themselves and defendants 1 to 11, formed a joint Hindu family, that the defendants or their predecessors, fraudulently brought about the execution of an instrument evidencing a complete partition in the family, that such instrument was not binding on the plaintiff's and that the family never ceased to be a joint Hindu family. Accordingly, the plaintiffs sought, in the first instance, the relief of partition of the entire family property detailed at the foot of the plaint. Such property includes certain items mentioned in list B, which had been acquired in the name of one or the other of the members of the family. As regards this class of property, it is alleged in para. 8 of the plaint that the same had been acquired with the joint funds belonging to the parties, who are in possession thereof jointly. The plaintiffs' case in the main is that the entire property, including the property which is separately detailed in list B, is the joint family property, and the plaintiffs, who claim to be members of the joint Hindu family, are entitled to half share by partition. Accordingly they claim, as the first relief, that a decree be passed for partition of the joint family property detailed at the foot of the plaint; and a moiety share thereof be awarded to the plaintiffs. In the alternative, the plaintiffs claim a second relief, which is very inartistically worded and runs as follows:

If in the opinion of the Court the plaintiffs are not found entitled to relief No. 1, then on declaration (ba istiqrar) of the fact that the property mentioned in list B was acquired with the joint funds of the parties and that the parties are in joint possession and occupation thereof, the plaintiffs may be put in possession of a moiety share jointly with defendants 1 to 11.

16. There is a clear distinction between a case in which a plaintiff claims a formal declaration of his right and possession and the one in which he merely claims possession on proof of his title. In the former, the decree is to declare his right and award possession, and in the latter it awards-possession making no reference to his title. The question in this case is whether the plaintiffs are claiming a formal declaration of their right and possession or merely possession on proof of their title. Reading the second prayer for relief with the allegations contained in the rest

of the plaint, I am unable to hold that the plaintiffs first claimed a declaratory relief and thereafter a consequential relief, as contemplated by Section 7(iv)(c), Court-fees Act. Para. 8 of the plaint, to which reference has already been made, supplies the key to the solution of the difficulty which arises from the inartistic language used in framing the second prayer. In the earlier paragraphs the plaintiffs have alleged facts which entitled them to the first relief, and if the Court finds that the entire family continues to be joint in spite of the deed of partition relied on by the defendants and characterised by the plaintiffs as fraudulent, the entire property detailed at the foot of the plaint, including the items in list B, be treated as joint family property and partitioned as such between the plaintiffs and defendants 1 to 11, half and half. In para. 8 they have stated facts, which entitle them to the second relief, and if the Court finds against the plaintiffs on the first part of the case and holds that the deed of partition, impugned by them, is valid and binding on them, so that the family can no longer be considered to be joint and a partition should be deemed to have taken place between the plaintiffs and the defendants, then the property entered in list B, which was presumably not brought into the hotchpot, should be considered to be still joint between the parties, in which case the plaintiffs should be considered to be owners to the extent of half. The identity of the language employed in para. 8 of the plaint and of the second prayer for relief is noteworthy. The plaintiff's do not in my opinion, claim any declaration at all. They are taken to have done so because of the word 'istiqrar', which is the equivalent of the English word 'declaration', but in its etymological sense it merely means a finding,, decision or what the Court holds on a given point. Read with para. 8 of the plaint I do not think it is used in its technical sense. Properly translated the second prayer runs as follows:

If in the opinion of the Court the plaintiffs are not found entitled to relief No. 1, then on proof of the fact that the property mentioned in list B was acquired with the joint funds of the parties, who are in joint possession and occupation thereof, the plaintiffs may be put in possession of a moiety share jointly with defendants 1 to 11.

17. All that the plaintiffs should be deemed to have prayed for is that, if the Court finds in favour of the plaintiffs on the allegations contained in para. 8 of the plaint,

then joint possession be awarded to them to the extent of half of the property mentioned in list B. In this view there can be no doubt that the plaintiffs have not claimed any declaratory decree with a consequential relief, as contemplated by Section 7(iv)(c). Assuming that the plaintiffs have claimed the relief of declaration, as is construed by the office, in my opinion no consequential relief directly flowing from the declaration has been asked for. In *Kalu Ram v. Babu Lal* : AIR1932 All485 , it was held that 'the expression 'consequential relief in Section 7(iv)(c) means some relief which would follow directly from the declaration given'. In the present case, the relief of declaration is not confined to the declaration of the plaintiffs' right, but also includes the declaration of the fact that the plaintiffs are in joint possession and occupation of the properties entered in list B. Then follows the prayer that the plaintiffs may be put in possession of a moiety share jointly with defendants 1 to 11. Taking literally, the allegation is absurd. Since the plaintiffs ask the Court to declare that they are already in possession, they cannot as a result of such declaration be put in possession. It may be said that the plaintiffs have asked for a declaration of right and of their existing possession, and further that if they are not found to be in possession, they may be put in possession. But this will amount to amendment of this part of the plaint which the Court has no right to amend and should take as it finds it. As already said the absurdity arises from the reference, in identical terms to the Plaintiffs' case mentioned in para. 8, wherein the plaintiffs' existing possession is definitely alleged.

18. There may be cases in which the relief claimed by the plaintiff is so plainly worded and free from ambiguity as to make it wholly unnecessary to refer to other parts of the plaint. In such cases, it is true, the Court will not be justified in holding by referring to the other allegations in the plaint that the relief was unnecessarily asked for and should be treated for the purposes of court-fee as superfluous. If a plaintiff deliberately asks for a relief which need not have been claimed but he does so to be on the safe side, it cannot be ignored for the purposes of court-fee. Where, however, it is ambiguously worded and may be taken to imply that a reference to the title is incidentally made and a formal declaration is not claimed the case rests on the construction of the plaint and the necessity or otherwise of the relief becomes a relevant consideration, and the Court may well consider whether the plaintiff need have asked for a formal declaration of his right in

addition to possession. Ordinarily a plaintiff does not pray for a relief involving expense, if it is unnecessary to do so.

19. I do not think that it was at all necessary for the plaintiffs in the present case to ask for a declaratory relief at all. If the plaintiffs' allegations in the plaint, namely, that the properties entered in list B had been acquired with joint funds and are in possession of the parties, is found to be correct, they will certainly be entitled to possession of their share, and the Court would be bound to decree it, even though they have not specifically claimed the relief of declaration. In every suit for possession based on title, the plaintiffs have to establish their title, and they need not ask a separate relief of declaration of right. Nor do I think that the joinder of the two causes of action, on which the two reliefs claimed by the plaintiffs are based, is open to objection. Order 2, Rule 3, Civil P.C., entitled them to join two causes of action against the same defendants. Whether this view is correct or otherwise, the question, in my opinion, is wholly immaterial for the purposes of court-fee. Whatever relief the plaintiffs be found to have claimed, rightly or otherwise, they must pay court-fee thereon. Neither the defendants nor the trial Court construed the plaint as claiming more than a mere possessory relief in the alternative. The plaintiffs' conduct in paying court-fee on five times the land revenue is also an indication of what they intended to claim.

20. For the reasons already stated, I am of opinion that the second relief, read with para. 8 of the plaint, should be construed as a relief of possession, pure and simple. They have paid ad valorem court-fee for this relief on five times the Government revenue, which, in my opinion, is enough. In any case, the plaintiffs cannot be deemed to have asked, for a declaration and a consequential relief following the declaration asked for by them. If they be considered to have asked for a declaration and also for possession, in my opinion the relief of possession is not a consequential relief flowing from the declaration, which includes the declaration of existing possession. If the latter view be taken to be correct, the plaintiffs are liable to pay an additional court-fee of Rs. 10 for the declaration that they are entitled to the properties entered in list B and are in possession thereof. They have already paid court-fee on the relief of possession which they, in this view, inconsistently ask for and which is in no sense a relief consequential on the

declaration in the above sense.

21. As we are divided in our opinion as to (1) whether Section 7(iv)(c), Court-fees Act, applies and Schedule 2, Article 17(3), does not apply; or, in the alternative, the relief claimed is a substantial and not a mere declaratory relief, and therefore Schedule 1, Article 1, applies, as it is not otherwise provided for, or (2) whether Section 7(v) and, in the alternative, Schedule 2, Article 17(3), read with Section 7(v) applies, let the questions mentioned above be laid before the Hon'ble the Chief Justice for reference to a third Judge.

Allsop, J

22. As the result of a difference of opinion between my Lord the Chief Justice and my brother Niamatullah, the following two questions have been referred to me, viz.:

(1) Whether Section 7(iv)(c), Court-fees Act, applies and Schedule 2, Article 17(3) does not apply; or in the alternative, the relief claimed is a substantial and not a mere declaratory relief and therefore Schedule 1, Article 1, applies, as it is not otherwise provided for; or (2) Whether Section 7(v) and in the alternative Schedule 2, Article 17(3) read with Section 7(v) applies.

23. The questions arise, because there is a controversy whether the plaintiffs in a certain suit had paid a sufficient court-fee. The reliefs claimed were as follows: (1) A decree may be passed and by means of partition under the Hindu law of the joint family property, detailed below, possessed by the parties, a moiety share of the plaintiffs may be separated; (2) If in, the opinion of the Court the plaintiffs are not found entitled to relief No. 1, then on declaration of the fact that the property mentioned in list B was acquired with the joint funds of the parties and that the parties are in joint possession and occupation thereof, the plaintiffs may be put in possession of a moiety share jointly with defendants 1 to 11. The office reported that the reliefs were alternative and that the court-fee was payable on the major relief, namely the second relief which was one for a declaration with possession. The report was that an ad valorem court-fee was payable. The report further stated that the valuation of the property given in list B was Rs. 7,889-4-10 and that

an ad valorem court-fee should be paid upon that sum. The plaintiffs who had valued their whole suit at Rupees 48,975-9-9 had stated that the sum of Rs. 4,972-10-2 represented five times the Government revenue of the whole property and that the sum of Rs. 1,098-9-1 represented five times the Government revenue on the property mentioned in list B. They also said that the court-fee payable on the claim for partition was Rs. 10, but presumably they actually paid the court-fee on the sum representing five times the Government revenue on the property mentioned in Schedule B because the office has reported that they paid a court-fee of Rs. 80 which would be the sum due on a valuation between Rs. 1,000 and Rs. 1,100.

24. My Lord the Chief Justice has held that the second relief was one for a declaration and for possession, that it was not necessary to hold that the latter was a consequential relief because the residuary article, Schedule 1, Article 1 would in any case apply and that an ad valorem court-fee must be paid on the value of the property as set forth in the plaint. My brother Niamatullah, on the other hand, has held that the second relief is one for possession only and that the court-fee should be paid ad valorem on the sum represented by five times the Government revenue payable on the property. In *Kalu Ram v. Babu Lal* : AIR1932 All485 the plaintiffs had claimed the following reliefs, viz., (1) that a certain registered mortgage deed may be adjudged void and ineffectual as against the plaintiffs, and that it may be cancelled; (2) that the compromise, the preliminary decree and the final decree in a certain suit may be cancelled. It was held that both the reliefs were governed by Article 1, Schedule 1, Court-fees Act. The case was decided by a Bench of five Judges. There is the following passage in the judgment:

In our opinion, the expression 'consequential relief,' in Section 7(4)(c) means some relief which would follow directly from the declaration given, the valuation of which is not capable of being definitely ascertained and which is not specifically, provided for anywhere in the Act and cannot be claimed independently of the declaration as a substantive relief. A consideration of all the Clause (a) to (f), Sub-section (4), Section 7, Court-fees Act, leads to the same conclusion.... If a substantive relief is claimed though clothed in the garb of a declaratory decree with a consequential relief, the Court is entitled to see what is the real nature of the relief and if satisfied

that it is not a mere consequential relief but a substantive relief it can demand the proper court-fee on that relief irrespective of the arbitrary valuation put by the plaintiff in the plaint on the ostensible consequential relief. Suppose a plaintiff asks for a declaration that the defendant is liable to pay him money due under a certain bond and also asks for recovery of that amount : or suppose that he asks for a declaration that he is the owner of a certain property and is entitled to its possession and asks for recovery of its possession; surely the relief for the recovery of money or for the recovery of possession cannot be treated as a mere consequential relief which can be arbitrarily valued at any low figure and court-fees paid on that arbitrary valuation only.

25. In the circumstances of that case the Court held that a relief for cancellation of an instrument was not a declaratory relief. They further held that a relief for the cancellation of a decree or for the setting aside of a decree is not a declaratory relief only. They certainly said that in the case before them the second relief did not ask for any declaration at all, but it seems to me that the basis of their decision very clearly was that a relief for a declaration followed by a further claim to some substantive relief was not to be described as a relief for a declaration with a consequential relief attached thereto. They construed the expression consequential relief in a very narrow way. They decided that no relief came within the meaning of that expression unless (a) it would follow directly from the declaration given, (b) the valuation of it was not capable of being definitely ascertained, (c) it was not specifically provided for anywhere in the Act, and (d) it could not be claimed independently of the declaration as a substantive relief. This is evident from their remark that a person who asks for a declaration that he is the owner of certain property and is entitled to its possession and asks for recovery of its possession can surely not value his relief in an arbitrary manner as he would, be entitled to do if the relief was governed by the provisions of Section 7 (4)(c), Court-fees Act, I must say that the passage which I have quoted from their judgment is difficult to reconcile with a passage in the judgment in *Ishwar Dayal v. Amba Prasad* : AIR1935 All667 , which was decided after the case in *Kalu Ram v. Babu Lal* : AIR1932 All485 . The passage to which I refer is as follows:

In short, consequential relief means some relief which is a necessary corollary to the principal declaratory relief prayed for by the plaintiff. Instances of consequential relief within the meaning of Section 7(iv)(c), Court-fees Act are furnished by cases in which, over and above the prayer for declaration of his title, the plaintiff asks for some relief by way of injunction, or possession, or appointment of receiver, or for partition of his share etc.

26. In these circumstances, I propose to deal with the question in the first instance as though it were *res integra*. Section 6, Court-fees Act, is as follows:

Except in the Courts hereinbefore mentioned, (the High Courts and Courts of Small Causes in Presidency Towns) no document of any of the kinds specified as chargeable in Schedule 1 or Schedule 2 to this Act annexed shall be filed, exhibited, or recorded in any Court of Justice, or shall be received or furnished by any public officer, unless in respect of such document, there be paid a fee of an amount not less than that indicated by either of the said schedules as the proper fee for such document.

27. Article 1. Schedule 1, deals with plaints not otherwise provided for in the Act and directs that an ad valorem fee shall be paid on them in accordance with the amount or value of the subject matter in dispute. The amount of fee upon different amounts or values is given in Col. 3 of the Schedule. Article 2 deals with plaints in suits for possession under Section 9, Specific Relief Act, and says that the proper fee shall be one-half of the amount prescribed in the scale given in Article 1. There is no other reference to plaints in Schedule 1 which deals with documents upon which ad valorem court-fees are to be paid. In Schedule 2 which deals with fixed fees Articles 4 and 5 mention plaints in particular suits with which we are not concerned. Article 17 deals with plaints in other particular suits on which a fixed court-fee is to be paid. This article is divided into six different parts. The first deals with suits to alter or set aside a summary decision; the second to alter or cancel an entry in a register of the names of proprietors of revenue paying estates; the third with suits to obtain a declaratory decree where no consequential relief is prayed; the fourth with suits to set aside an award; the fifth with suits to set aside an adoption and the sixth with every other suit where it is not possible to estimate at a

money value the subject matter in dispute and which is not otherwise provided for by the Act. Section 7 of the Act says that:

The amount of fee payable under this Act in the suits next hereinafter mentioned shall be computed as follows....

28. There are 11 Sub-sections to this section. In none of them is it said what the Court-fee payable shall be. It is merely said that the fee shall be payable according to certain valuations. The section clearly does not take any suits out of the provisions of Article 1 to Schedule 1. It is intended merely to indicate how the amount or value of the subject matter is to be calculated in particular instances. Sub-section (iv)(c) deals with suits to obtain a declaratory decree or order where consequential relief is prayed. In order to interpret the provisions of this clause it is necessary to attach meanings to the terms 'declaratory decree' and 'consequential relief.' In his judgment in the case which is before me my brother Niamatullah has mentioned that the Urdu word which has been translated as declaration is 'istiqrar.' He has said that this word in its etymological sense merely means a finding, decision or what the Court holds on a given point, and I understand him to intend that the question whether a declaration has been asked for or not should depend in some measure upon the exact vernacular term used by the plaintiff in claiming his relief. I regret that I am unable to agree with him upon this point. When a plaintiff claims a relief he must naturally allege certain facts, and if he can induce the Court to hold that those facts exist he will obtain a decree in his favour. No relief can be given unless the Court comes to a decision upon the facts alleged in the plaint. In my opinion a plaintiff asks for a declaration when he wishes the Court not only to come to a finding about any particular fact but to set forth its finding about that fact in a formal manner in the operative part of the decree. I do not think it matters what word is used by the plaintiff. He must be held to have asked for a declaration if he wishes the finding to be set forth in the manner which I have indicated. That is what I think is the meaning of the term 'declaratory decree' as used in Section 7(iv)(c), Court-fees Act. If it were not for the decision in *Kalu Ram v. Babu Lal* : AIR1932 All485 . I should think a consequential relief is a relief which follows from the decision upon the fact declared in favour of the plaintiff. I would agree with the views expressed upon this point in *Ishwar Dayal v. Amba Prasad* :

AIR1935 All667 which I have already quoted. In this view of the matter it may seem difficult to understand the intention of the legislature in enacting the provisions of Section 7(iv)(c), Court-fees Act, because according to Sub-section (iv), Section 7 the amount or value of the suit will be the amount at which the relief sought is valued in the plaint in suits to which that Sub-section refers. The plaintiff is required to state the amount at which he values the relief sought. It seems to me quite clear that it is left to the plaintiff to value his relief at any sum in his discretion although no doubt the valuation which he puts upon his relief would affect the question of jurisdiction and the question of the costs which he could claim. If there had been no previous decision upon this point I should think that the explanation lay in this that the legislature intended in Section 7(iv)(c) merely to describe the manner in which the court-fees chargeable on a relief for a declaration should be calculated. I think what the legislature probably meant was that the court-fees on the declaration where a consequential relief is prayed should be fixed by the plaintiff at his discretion in setting out the value of the declaration itself to him and that the court fees payable on the consequential relief should be valued separately in the manner set forth in the Act for calculating the court-fees on that relief itself. Under Section 17 of the Act, where a suit embraces two or more distinct subjects, the plaint shall be chargeable with the aggregate amount of fees to which the plaints embracing separately each of such subjects would be liable under the Act.

29. It might be argued that a declaration and a relief flowing from it were not distinct subjects, but I think that there is not necessarily much force in this argument because it is difficult to conceive of a consequential relief which could not be granted quite apart from a declaration of any fact which would lead to the granting of that relief. I think that the difficulty which has arisen in interpreting the provisions of Section 7(iv)(c), of the Act would disappear if the intention of the legislature was such as I deem it to have been. If a plaintiff asked merely for a declaratory decree without any consequential relief he would pay a fixed court-fee. If he asked for a declaratory decree and also for a consequential relief he would pay court-fees upon the consequential relief according to the provisions of the Act and he would be allowed to value his declaratory decree in his discretion. As there has been a decision however of a Bench of five Judges of this Court in *Kalu Ram*

v. Babu Lal : AIR1932 All485 . I agree with my Lord the Chief Justice that the decision in that case should be strictly followed. I do not, however, in one particular, agree with the interpretation placed upon that ruling by my Lord. As I have already said, it seems to me from a perusal of the passage in the judgment which I have quoted above, that the learned Judges intended to hold that a relief for possession attached to a prayer that a certain right or title should be declared was not a consequential relief within the meaning of Section 7(iv)(c) of the Act. I think they intended to hold that in such circumstances the prayer for a declaration should be ignored because the plaintiff was substantially asking for possession of the property and it would follow from that that a relief of the nature sought in the case before me was substantially one for possession of the property and that it should be valued accordingly and the court-fees calculated on the valuation in accordance with the provisions of Article 1, Schedule 1.

30. The value of a relief for possession over immovable property is calculated under the provisions of Section 7(v), Court-fees Act. It has been held in some cases that the value of a suit for purposes of court-fees must be the same as the valuation for purposes of jurisdiction. There is a specific provision in the Suits Valuation Act that the valuation for purposes of jurisdiction shall be the same as that for purposes of court-fees. It seems to me on a strict interpretation of the section in the Suits Valuation Act that it is the question of court-fees which has first to be considered and that the jurisdiction follows upon the valuation for purposes of court-fees. A plaintiff would not be entitled to say that he valued his suit for purposes of court-fees at a certain sum and for purposes of jurisdiction at another sum, but the Court in deciding the question of jurisdiction would say that the jurisdiction depended upon the valuation for purposes of court-fees alone. If there were two valuations I doubt whether it would be right to say that the valuation for court-fees should be assumed to be the same as that for jurisdiction. It would be more proper to say that the valuation for purposes of jurisdiction should be the same as that for court-fees. Even if the contrary is true, that would not avoid the difficulty which was felt by the Bench which decided the case in Kalu Ram v. Babu Lal : AIR1932 All485 . A man who was claiming possession of landed property to the value of several lakhs of rupees might choose to ask also for a declaration that he was entitled to the property.

31. If it were held that he was asking for a declaration with a consequential relief he might value his relief for purposes both of jurisdiction and of court-fees at say a sum of Rs. 50 and get his suit decided by a Munsif on payment of a court-fee of negligible amount. This result could be avoided either by interpreting the Act as I should have interpreted it in the absence of authority, namely that Section 7(iv)(c) refers only to the declaratory part of the relief or by interpreting it as it was interpreted in *Kalu Ram v. Babu Lal* : AIR1932 All485 , as I understand that ruling in the sense that a substantial relief combined with a declaration is not a consequential relief within the, meaning of Section 7(iv)(c), but is a relief which must be valued as it would have been valued if no declaration had been claimed. In the present case the second relief was curiously worded because it would appear if the plaintiffs were in joint possession of the property that they would require no decree for possession. I agree with my Lord the Chief Justice that a relief must be valued in accordance with its obvious meaning. It is not for the Court to decide whether the relief is necessary or unnecessary or whether it can be granted or cannot be granted. The plaintiff must pay court-fees in accordance with the relief which he chooses to claim. The explanation in this case of the nature of the relief claimed may possibly be that the plaintiffs, although they said they were in joint possession, might have thought that they were in joint possession as sharers owning less than half a share. However that may be, it is clear enough that the plaintiffs did ask for possession and they are consequently chargeable with the fees which they should pay on a relief for possession.

32. The only particular I think in which my opinion is not the same as that of my Lord the Chief Justice is that he has considered that a Court in applying the provisions of Article 1, Schedule 1, Court-fees Act, to a suit in which the relief claimed is one for a declaration followed by possession should hold that the amount or value of the subject matter is that which is set forth in the plaint for purposes of jurisdiction, whereas I consider that the amount or value of the subject matter should be calculated in accordance with the provisions of Section 7(v) of the Act. As I have already mentioned Section 7(v) of the Act read by itself would not enable the amount of court-fees in any suit to be calculated. For instance, in suits for possession of lands, houses and gardens it is set forth in that section that the court-fees shall be paid according to the value of the subject matter and such

value shall be deemed to be a certain multiple of the revenue or in certain circumstances a multiple of the profits or in other circumstances the market value of the land. The rate of the court-fee on the valuation can only be discovered by applying the provisions of Article 1 of Schedule 1. In *Kalu Ram. v. Babu Lal* : AIR1932 All485 the substantial relief was one for cancellation which was not specifically provided for in the Act elsewhere than in Article 1 of Schedule 1, because it was apparently thought that the amount, or value of the subject matter could be ascertained. In the present case the substantive relief is one for possession and it is set forth clearly in the Act that the value, of the substantive relief in such cases shall be deemed to be a certain multiple of the revenue.

33. I hold that Article 1, Schedule 1 does apply, but that it must be applied in connection with Section 7(v) of the Act and that the court-fees payable are those that would be payable, if the suit had been one for possession without any mention of a, declaration.

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