

Ram Chandra and anr. Vs. Ram Lal and anr.

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Court : Allahabad

Decided On : Dec-16-1937

Reported in : AIR1938All254

Appellant : Ram Chandra and anr.

Respondent : Ram Lal and anr.

Judgement :

ORDER

Bennet, Ag. C.J.

1. This is a report by the Taxing Officer to me as Taxing Judge asking for a decision on the question of the deficiency of stamp duty on this first appeal which is brought by Ram Chandra and another, alleged garnishees. There was an application made for realization of a sum of money as a debt due from Ram Chandra, to the judgment-debtor in Original Suit No. 85 of 1926. Ram Chandra made an objection that this was not a debt due personally but was part of the purchase-money which might be charged on immovable property which was purchased on a sale deed by Ram Chandra from the judgment-debtor and therefore that Ram Chandra could not be made personally liable. The two issues framed by the Court below were:

1. Whether the money left with Ram Chandra is such a debt to which garnishee proceedings cannot apply and 2. Whether there was a charge or not and whether

this charge was such as to exclude the application of the garnishee rule?

2. The finding was against Ram Chandra and he has therefore brought this appeal. Learned Counsel for Ram Chandra refers to Order 21, Rule 139 which is as follows:

(1) Where the liability of any garnishee has been tried and determined under these Rules, the order shall have the same force and be subject to the same conditions as to appeal or otherwise as if it were a decree.

(2) Orders not covered by Clause (1) shall be appealable as orders made in execution.

Illustration. - An application for a garnishee order is dismissed either on the ground that the debt is secured by charge or that there is no prima facie evidence of debt due. This order is appealable as an order in execution.

3. At first it appeared to me that the present case was one covered by the Illustration and would therefore come, under Sub-rule (2) and this was the argument of learned Counsel for the appellant. There are however the following difficulties in this interpretation of the Rule. In the first place the Illustration is a converse case where the application for a garnishee order has been dismissed. In the present case the application has been allowed. Now there is no doubt that the liability of the garnishee has been tried under these Rules and therefore the case comes prima facie under Sub-rule (1). The question is what distinction did this Court intend to draw between Sub-rule (1) and Sub-rule (2). The case mentioned in the Illustration of a defence made to an application for a garnishee order where the defence alleges that the debt is secured by a charge will always give rise to an issue on which the liability of the garnishee will be tried. Therefore every such case would come under these words in Sub-rule (1). What therefore was the distinction which was drawn for Sub-rule (2)? It appears to me that Sub-rule (2) is intended to cover the case where the decision is that the application should be dismissed, and Sub-rule (1) is intended to cover the case where the application is allowed. I do not know whether the words 'tried and determined' are intended by the Rule to amount to more than the more usual expression 'tried and decided'.

4. It is possible that the word 'determined' has been used in some further sense to indicate that the Court found that there was a liability. Learned Counsel points out that there might be defences made of limitation or that the debt due was less than the amount claimed. Such defences however would involve a decision of the liability of the garnishee and therefore no distinction could be drawn between these cases and the case where the defence is made that there is a charge or that no debt is due. A further question would arise as to what would have been the object and intention of drawing the distinction between the application being allowed and the application 'being dismissed. It appears to me that the distinction may be that where the application is dismissed an appeal would be brought by the decree-holder. Now the decree-holder has already paid court-fees on his plaint and for this reason the Rule may intend to exempt him from a further ad valorem payment. But where the liability of the garnishee is held to exist, as in the present case, the appeal will be brought by the garnishee and the garnishee has not paid any court-fees in the lower Court and the intention of the Rule may probably be that he should pay an ad valorem court-fee in this Court, and if he succeeds in this Court he will no doubt be able to recover that court-fee from the opposite party.

5. Now granting that the present case does fall under Sub-rule (1), learned Counsel argued that still an ad valorem court-fee should not be paid. He argued that the definition of 'decree' given in Section 2(2), Civil P.C., states : 'It shall be deemed to include...the determination of any question within Section 47 or Section 144.' And he pointed out that in the case of execution appeals, there was no ad valorem court-fee and. referred to the Court-fees Act. Schedule 2, Article 11 is for a memorandum of appeal when the appeal is not from a decree or an order having the force of a decree. Now the case of these two sections, Sections 47 and, 144, is different from the present case because these cases are between parties to-the decree. The present case is between the decree-holder and a stranger. Moreover it is not from any words in the definition of 'decree' in Section 2, Civil P.C., that the present appeal is held to be an appeal from a decree. It is on account of the special provision in Order 21, Rule 139(1). Those words are 'be subject to the same conditions as to appeal or otherwise as if it were a decree.'

6. The words are not that it should be treated as a decree in the same manner as the determination of any question within Section 47. The words refer to the conditions for an appeal as if it were a decree. One of those conditions of an appeal from a decree for money is the payment of ad valorem court-fees. Accordingly therefore I consider that in the present case it is necessary that there should be an ad valorem court-fee.

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