

Mohammad Ismail Vs. Liyaqat Husain

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Court : Allahabad

Decided On : Dec-02-1931

Reported in : AIR1932All316; 140Ind.Cas.191

Appellant : Mohammad Ismail

Respondent : Liyaqat Husain

Judgement :

Niamatullah, J.

1. This is an application for revision against the order of the Subordinate Judge of Agra declaring that a sum of Rs. 160 was payable by the applicant as deficiency of court-fee and directing that the same be recovered by attachment of his property.

2. It appears that the applicant was the plaintiff in a suit in which he claimed a declaration that a certain decree, obtained by the defendant, was void and ineffectual against him, the same having been obtained by the exercise of fraud. No consequential relief was claimed. The suit was dismissed by the first Court. An appeal was also dismissed by the learned Subordinate Judge. Some time during the pendency of the litigation, the Chief Inspector of Stamps reported that the plaintiff was liable to pay Rs. 160, the ad valorem court-fee on the consequential relief which he ought to have claimed. No action appears to have been taken on this report before the appeal was decided by the learned Sub-Judge. Somehow the matter was brought to his notice on 2nd February 1931, after the appeal had

been decided when he passed the order sought to be revised. The Court has no right to say that the plaintiff should have claimed consequential relief, and that not having done so he should be deemed to have claimed the consequential relief and is therefore liable to pay the court-fees., If, having regard to the nature of his claim, the plaintiff ought to have claimed consequential relief and has not done so, his suit might fail under the proviso to is. 42, Specific Relief Act. The question of court-fees must be determined with reference to the plaint as it is and not as it ought to have been.

3. The learned Sub-Judge had no power to direct the recovery of the court-fees by attachment of the applicant's property, even if the court-fees in question was payable in law. There is no provision in the Court-fees Act which justifies a process of attachment for recovery of court-fees after the Court finally parts with the seisin of the case. This view is in accord with what was held by this Court in *L. Daulat Ram v. Mt. Chawali*, Civil Revision No. 330 of 1928 decided by the Hon'ble the Chief Justice on 15th February 1929.

4. In these circumstances, this revision must succeed. The order of the lower Court is set aside. No order is 'passed as to costs.