

Abdul Shakur Vs. Badaruddin

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Court : Allahabad

Decided On : Aug-18-1936

Reported in : AIR1936All874

Appellant : Abdul Shakur

Respondent : Badaruddin

Judgement :

1. These two cases have been put up before us because of the report that there are deficiencies in the amounts of the court-fees paid in the Court below. In First Appeal No. 115 of 1932 the relief claimed by the plaintiffs was in the following terms:

It may be declared that the properties in suit are waqf-alal-aulad and are not attachable and salable for satisfaction of the debt due by defendant 1 to defendants 4 to 19.

2. In First Appeal No.166 of 1932 the relief claimed was:

It may be declared that the property in suit is owned and possessed by the plaintiffs and is not fit for attachment and sale in satisfaction of a decree in favour of the respondent against the pro forma defendant.

3. In both the suits the plaintiffs paid only Rs. 10 as court-fee for a declaratory relief. The question is whether the two sums of Rs. 10 paid in the two cases are

sufficient. It seems to us that where the relief sought consists of two parts which are such that the first is the foundation for the second and the second part is a necessary consequence of the granting of the first part then the two can be taken together as really constituting one relief which is quite enough for the purpose of decreeing the plaintiff's claim. On the other hand, if the two parts are such that the second does not necessarily follow from the first or that the first goes further than what is necessary for the granting of the second part of the relief, then one sum of Rs. 10 would not be sufficient. So far as First Appeal No. 115 of 1932 is concerned, the declaration that the property is wakf-alal-aulad is the foundation for and would necessarily involve the granting of the relief that the property is not attachable and salable for the satisfaction of the debt due by defendant 1 to defendants 4 to 19. On the other hand, in First Appeal No. 166 of 1932, the plaintiffs would succeed if they establish that they were the owners of the property which was sought to be attached and put up for sale in satisfaction of the decree.

4. It is not necessary for them to establish that they were actually in possession of the property at the time of the suit. Indeed, so far as the ownership of the property and the non liability of the property to attachment and sale are concerned, the dispute is between the plaintiffs on the one hand and the attaching creditor on the other. The question whether the plaintiffs are actually in possession of the property raises a dispute between them on the one hand and possibly the judgment-debtor on the other, and in asking for a declaration as to possession the plaintiffs are asking for more than is actually necessary for the granting of the second part of the relief. It therefore seems to us that two distinct reliefs have been claimed by the plaintiffs and two sums of Rs. 10 should be paid. The case in *Phul Kumari v. Ghanshyam Misra* (1908) 35 Cal 202, is in point. In that case the plaintiff who had been in possession of immoveable property under a purchase raised objections in the execution department against the execution of the property which was attached by a creditor of another person. Her claim was rejected and she thereupon brought a suit for a declaration of her title to the property and for an injunction restraining, defendant 1 from executing the decree against it. Their Lordships ruled that the case fell under Article 17, Sub-section 1 of Schedule 2, and that a Court-fee of Rs. 10 was payable as it was a suit to alter or set aside a summary decision or order of a civil Court not established by Letters Patent.

5. The relief as to her right to the property and for injunction were not considered as separate and distinct. But in that case the plaintiff had been in possession of the property and had not asked for any declaration as to her possession. In *Lakshmi Narain Rai v. Dip Narain Rai* 1933 ALJ 311 the Bench held that where a declaration had been asked for that the plaintiff was the owner in possession of the property in suit and there was a further declaration that a certain decree was accordingly null and void, illegal and ineffectual, two sums of Rs. 10 were payable. We are therefore of the opinion that the amount of Rs. 10 paid in First Appeal No. 115 of 1932 is sufficient, but that a further Court- fee of Rs. 10 is required for the Court below in First Appeal No. 166 of 1932. The matter should now go back to the Taxing Officer with regard to the amounts paid on the memorandum of appeal in this Court. In First Appeal No. 166 of 1932 we grant two weeks' time to make good the deficiency.