

Tula Ram Vs. Dwarka Das and anr.

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Court : Allahabad

Decided On : Jan-10-1928

Reported in : 115Ind.Cas.655

Judge : Ashworth, J.

Appellant : Tula Ram

Respondent : Dwarka Das and anr.

Judgement :

Ashworth, J.

1. This is a reference by the Taxing Officer for a decision as to the proper Court-fee to be paid in a suit out of which has arisen First Appeal No. 322 of 1925. According to the plaint the plaintiff and his nephew were co-parceners in respect of certain property. On the 15th of September, 1913, the nephew, Roshan Lal, executed a usufructuary mortgage in favour of defendant No. 1. On the death of Roshan Lal, some eight or nine months later the mortgagee brought a suit for foreclosure against Musammat Kausila, widow of Roshan Lal and got a decree, The plaintiff asks for a declaration that the mortgage deed was void and ineffectual as Roshan Lal had no right to transfer the family property. There is no statement in the plaint whether Roshan Lal was the manager or not of the family. The second relief claimed was possession of the property.

2. Now in a suit for possession it is not necessary for the plaintiff to sue for a declaration as to his title. At any rate in a suit of this nature for possession it is not necessary for him to do so. The plaintiff's Counsel consequently maintains that the Court-fee should be valued merely as a suit for possession. In support of this contention he invokes a Full Bench decision of the Patna High Court, Ramsumran Prasad v. Gobind Das 68 Ind. Cas. 700 : 2 Pat. 125; (1922) Pat. 291 : 4 U.P.L.R. (Pat.) 75 : 3 P.L.T. 701 : A.I.R. 1922 Pat. 615 : 1 Pat. L.R. 1. That decision is not, in my opinion, applicable to the present case. In that case, although the plaintiff asked for an adjudication upon his title, he did not include amongst the reliefs claimed a prayer for a declaration as to his legal character or title or as to the invalidity of a certain transfer. Next I am referred to a single Judge decision of this Court, Tika Ram v. Salig Ram 57 Ind. Cas. 494 : 2 U.P.L.R. (A.) 216 : 18 A.L.J.903. In that case the plaintiff did ask for a declaration as one of the reliefs which he claimed. It was held by Mr. Justice Tudball, that as it was unnecessary for the plaintiffs to ask for a declaration the suit should have been treated as an ordinary suit for possession of property. The learned Judge invoked the fact that 'suits of this nature are very common and they have always been treated as ordinary suits for possession of property and Court-fee is paid on five times the Government revenue'. On the other hand, I have been referred to a single Judge decision of this Court, Ganga Dei v. Sukhdeo Prasad 84 Ind. Cas. 624 : 47 A. 78 : A.I.R. 1924 All. 612 : 2 A.L.J. 945 : L.R. 5. 3 A. 618 Civ. In that case Daniels, J., stated as follows:

Now the suit as framed is clearly one for a declaration with consequential relief. It is, therefore, beside the marks 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-fee on the relief which she seeks to obtain by the suit.

3. I entirely concur with the decision of Justice Daniels in Ganga Dei v. Sukhdeo Prasad 84 Ind. Cas. 624 : 47 A. 78 : A.I.R. 1924 All. 612 : 2 A.L.J. 945 : L.R. 5. 3 A. 618 Civ and dissent from the contrary view taken by Tudball, J., in Tika Ram v. Salig Ram 57 Ind. Cas. 494 : 2 U.P.L.R. (A.) 216 : 18 A.L.J.903. 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 the argument invoked by Tudball, J., were pressed to its logical conclusion, we should return the Court-fee to any litigant who could prove that he had brought an unnecessary suit. As regards Tudball, J.'s invocation of the practice of this Court, I am of the opinion that practice cannot override the language of a Statute. There is no necessity of giving effect to a wrong view merely because that wrong view has not been challenged for a long time, that is to say, where the question is the construction to be put upon a certain enactment.

4. I hold that the test in such cases invariably should be whether the plaintiff includes amongst the reliefs claimed not only a request for possession but also, as paving the way to such request, the relief of a declaration of title. This view derives support from a consideration of what would happen in a reverse case where the plaintiff fails to ask for a declaratory relief but is found not to be entitled to possession without first obtaining a declaration. In such a case the plaintiff would be required to amend his plaint and to pay the extra Court-fee. Similarly in a case, such as this case is, it is clear that the plaintiff can only be excused from the Court-fee if he gets the permission of the Court to amend the plaint and strike out the relief for a declaration.

5. For the above reasons my answer to the Taxing Officer is that the view taken by the office is correct, and that, the deficiency reported should be made good. The Taxing Officer may allow such time as he thinks fit for the payment of the deficiency. As Counsel for the plaintiff-appellant did not appear, this order is delivered ex parte.