

Narain Mohan Dev Vs. Mt. Krishna Ballabhi Devi and ors.

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SooperKanoon Citation : sooperkanoon.com/479603

Court : Allahabad

Decided On : Dec-12-1934

Reported in : AIR1935All292a; 158Ind.Cas.35

Appellant : Narain Mohan Dev

Respondent : Mt. Krishna Ballabhi Devi and ors.

Judgement :

ORDER

1. The plaintiffs-respondents instituted a suit in order to. obtain an injunction restraining the defendants from interfering with the service by the plaintiffs of an idol and asking the Court to frame a scheme, so that they and the defendants might be entitled to carry on the service of the idol and to enjoy the emoluments of the office separately and without interference from each other. The first relief was valued at a sum of Rs. 100 and the court-fee was paid ad valorem. The second relief was valued for the purposes of jurisdiction at a sum of Rs. 5,400, but a fixed court-fee of Rs. 10 was paid upon it. An objection has been taken by the Chief Inspector of Stamps that this was a suit for a declaration with a consequential relief of injunction and that an ad valorem court-fee should have been paid upon the value assessed on the second relief for the purposes of jurisdiction. It seems to us that there was no question of declaration. The plaintiffs maintained that they were enjoying the emoluments of the office which they claimed and that they were carrying on the worship, although they said that the defendants were inclined to interfere with them.

2. It was not maintained by the plaintiffs that the defendants had not a joint right with them to worship the idol and to enjoy the emoluments attached to the office. It seems to us that, although this cannot be described as a suit for partition, yet it is, in a sense, a suit which may be regarded as a suit of a similar nature for the purpose of estimation of court-fees. We think that this is a suit coming under Article 17(6), Schedule 2, Court-fees Act, in that it is not possible to estimate the subject-matter in dispute at a money value. Suits for partition have always been held to be governed by this article; and we suppose that the reason for this is that a person in possession as a co-sharer who asks for partition is not asking for any advantage which can be estimated at a money value. He is already entitled to a share and all that he asks is that that share for the purposes of convenience should be divided by metes and bounds, so that he may have exclusive enjoyment of part of the property instead of joint enjoyment of the whole. The present relief is of a similar nature. The plaintiffs have asked that there should be some scheme by which they can enjoy separately the fruits of the office which they hold jointly with others instead of enjoying the emoluments jointly with them at all times. We consider therefore that this is a suit to which Article 17(6), Schedule 2, applied, and we hold that the court-fee paid was sufficient.