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Court : Madhya Pradesh

Decided On : Oct-03-1974

Reported in : AIR1975MP39

Judge : Shiv Dayal, J.

Acts : Court Fees Act, 1870 - Sections 7

Appeal No. : Civil Revn. No. 471 of 1973

Appellant : Ashok

Respondent : Narasingh Rao and ors.

Advocate for Def. : A.R. Naolekar, Adv.

Advocate for Pet/Ap. : G.P. Agarwal, Adv.

Disposition : Revision dismissed

Judgement :
ORDER

Shiv Dayal, J.

1. The plaintiff is aggrieved by an order of the trial Court whereby it has been held that the plaintiff must pay proper ad valorem court-fees.

2. Earlier a suit for ejectment and arrears of rent was instituted by Nara-singhrao (now defendant No. 1) against the plaintiff and defendants Nos. 2 to 8. That was Civil Suit No. 150-A/1968 in the Court of Civil Judge Class II, Gwa-lior. In that suit, the plaintiff was described as a minor and Kishan defendant No. 3 was appointed as guardian ad litem. Eventually, in that suit a compromise decree was passed. That decree is being challenged in the present suit on the ground that the plaintiff (there defendant) had attained the age of majority and further it was misrepresented in the compromise that he was under the guardianship of his mother Smt. Ramabai (defendant No. 5). It is alleged in the plaint that fraud was practised upon the court by his mother, defendant No. 5, who arrogated to herself the position of a guardian. The decree is challenged as null and void and as fraudulently obtained. 3. In the relief clause, there is no proper prayer for setting aside the decree, but merely declaration has been sought that the decree is ineffective and void as against the plaintiff.

4. The trial Court has held that the suit for mere declaration is not maintainable. It was necessary for the plaintiff to claim consequential relief of setting aside the decree and further that the plaintiff had to pay ad valorem court-fees.

5. In this revision it is contended for the plaintiff that the decree is not binding on him and, therefore, it is not necessary for him to pray for setting it aside,

6. The learned Counsel for the petitioner in his long address endeavoured to show:--

(1) that in the earlier suit since Kishan was appointed under Order 32, Rule 3, Civil Procedure Code as a guardian ad litem, Smt. Ramabai could not act as a guardian though she be his mother and natural guardian.

(2) The signature of Kishan on the compromise petition was in his individual capacity as defendant and not as guardian of the minor defendant (now plaintiff).

(3) That there was specific application by Smt. Ramabai for permission of the court to compromise on behalf of the minor in which she described herself as guardian of the minor, and Shri K. L. Batham, Advocate, who signed the compromise

petition was also counsel for Smt. Ramabai by virtue of a separate Vakalatnama. He was also counsel for the guardian ad litem under a separate Vakalatnama, dated March 28, 1970, in which he signed as guardian of the minor.

(4) The other Vakalatnama in favour of Shri Kishanlal Batham is on behalf of Smt. Rama Bai, Kailash Chandra, Kishan and Suresh Chandra, defendants.

(5) The decision of the Supreme Court in Kaushlya Devi v. Baijanth, AIR 1961 SC 790 does not apply here because it was not as if the compromise was entered into by the guardian ad litem although without leave of the court. Here in fact the compromise was entered into not by the guardian ad litem but by another defendant on behalf of the minor, that defendant arrogating to herself the capacity of a guardian.

(6) Since the impugned decree was not passed on adjudication by the court, but on a compromise, which in the eye of law is a contract, the decree is not binding on the defendant after his attaining majority For this he relies on Sanyasi v. Lanka Yerran Naidu, AIR 1928 Mad 294.

7. In my opinion, whatever may be the force in these contentions, the question today is whether the plaintiff is within the dictum of their Lordships' decision in Shamsher Singh v Rajinder Prasad, AIR 1973 SC 2384 where it has been held that--

'(1) The court in deciding the question of court-fees should look into the allegations in the plaint to see what is the substantive relief that is asked for Mere astuteness in drafting the plaint will not be allowed to stand in the war of the court looking at the substance of the relief asked for.

(2) Where a decree is otherwise binding on the plaintiff, a suit though couched in a declaratory form, is in substance a suit either for setting aside the decree or for a declaration with a consequential relief of injunction restraining the decree-holder from executing the decree against the judgment-debtor and the plaintiff is liable to pay ad valorem court-fee under Section 7(iv)(c) of the Court Fees Act.'

8. In the present case, the plain-tiff was a defendant in the earlier suit and the impugned decree was passed against him. That decree is per se binding on him and it can be executed against him. Even if he has grounds to show that the decree is liable to be set aside, unless and until he establishes those grounds and the decree is in fact set aside by another decree of a competent court, the existing decree subsists as binding on him. The suit is, therefore, within the above dictum of the Supreme Court. In the relief clause the prayer for setting aside the decree is implicit.

9. The revision is dismissed. Par-ties shall bear their own costs.

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