

Nageshwar Vs. Chandmal

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Court : Madhya Pradesh

Decided On : Mar-26-1957

Reported in : AIR1957MP134

Judge : Dixit, J.

Acts : Court-fees Act, 1870 - Sections 7 - Schedule - Article 17; [Code of Civil Procedure \(CPC\) , 1908](#) - Order 6, Rule 17

Appeal No. : Civil Revn. No. 30 of 1953

Appellant : Nageshwar

Respondent : Chandmal

Advocate for Pet/Ap. : G.L. Oza, Adv.

Disposition : Petition rejected

Judgement :
ORDER

Dixit, J.

1. The facts of this revision-petition are that the plaintiff-applicant instituted a suit against Chandmal, Bhagwantibai and Gendalal for a declaration that a money decree for Rs. 2.700 which Chandmal had obtained against Bhagwantibai in Civil

Suit No. 4/2003 from the Court of District Sub-Judge, Ujjain, was collusive and not binding on the plaintiff and that the decree be declared null and void and be also set aside. The plaintiff sued as a reversioner and paid a Court-fee of Rs. 10 only on the plaint.

On an objection being taken with regard to sufficiency of court-fee, the trial Court held that the Plaintiff should have paid ad valorem court-fee on the valuation of the decree sought to be set aside. The order of the trial Court was upheld by Khan J. of Madhya Bharat High Court in Civil Revn. No. 136 of 1949 (A). When the case went back to the lower Court, the plaintiff was directed to pay up the deficient court-fee within a certain time. The plaintiff then made an application for deletion of his prayer that the decree be set aside and contended that as his suit was now confined to the relief of a mere declaration that the decree was not binding on him, therefore, the suit could proceed on the court-fee of Rs. 10 already paid by him. This contention was rejected by the trial Court. Hence this revision-petition by the plaintiff.

2. Mr. Oza learned counsel for the applicant relying on *Alam Khan v. Mt. Bhag Bhari*, AIR 1941 Lah 159 (B), argued that as the plaintiff-applicant was not a party to the decree which Chandmal obtained against Bhagwantibai, he was not bound by the decree and that therefore it was not necessary for him to get the decree set aside in order to protect his interest and that therefore, he could sue only for a declaratory relief and pay the requisite fixed court-fee.

When it was pointed by me to the learned counsel that the declaratory decree might be ineffective to protect his interest, learned counsel replied that in the matter of court-fees what had to be seen was the actual relief prayed by the plaintiff and not what would be the effect of his success; that a mere declaratory decree may be of no help to the plaintiff in protecting his interest but when he is distinctly asking for merely a declaratory decree and is not praying any consequential relief to set aside a decree, then he cannot be called upon to pay ad valorem court-fees on the amount of that decree.

3. In my judgment this petition must be rejected. The point that arises in this case is covered directly by a decision of this court in *Vinayakrao Anardrao v. Mst.*

Mankunwarbai, AIR 1943 Nag 70 (C). In that case Bose J., held:--

'Ordinarily a decree only binds parties and privies. One who is not a party and who does not claim through the judgment-debtor is not bound, and if he is not bound it is not necessary for him to get the decree modified or set aside in order to protect his interests. But if for one reason or another he is bound then there is implicit in the declaration a prayer that the former decree be modified so as to exonerate his interests.'

The ratio decidendi of Vinayakrao's case (C), is that if a plaintiff though not a party to a decree is nevertheless bound by it and the decree is executable against him as it stands unless and until he does something to get it modified then in a suit by the plaintiff for a declaration that the decree is not binding on him, the prayer that the decree be modified so as to exonerate his interest will be taken as implicit. It cannot be disputed here that the decree obtained by Chandmal against Bhagwantibai is binding on the plaintiff as a reversioner and would be executable against him as it stands.

That being so, the plaintiff is under an obligation to have the decree modified or set aside if he contends that the decree is not binding on him. Therefore, even if the plaintiff were now to omit the prayer that the decree be set aside then, on the authority of AIR 1943 Nag 70 (C), the prayer that the decree be set aside would still be regarded as implicit and involved in the declaration that the decree is not binding on him. In Vinayakrao's case (C), Bose J., also observed that in such a case the consequential relief to set aside the decree must be insisted on by the Court.

Accordingly the plaintiff-applicant cannot be allowed to omit the prayer that the decree be set aside so as to escape the payment of ad valorem court-fees. Whether the prayer of having the decree set aside is omitted or retained, in either case the plaintiff here would still be liable to pay ad valorem court-fees.

4. For these reasons this petition is rejected with no order as to costs.