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Court : Madhya Pradesh

Decided On : Apr-20-1957

Reported in : AIR1957MP173

Judge : Newaskar, J.

Acts : Court-fees Act, 1870 - Sections 7 - Schedule - Article 17; [Code of Civil Procedure \(CPC\) , 1908](#) - Sections 115

Appeal No. : Civil Revn. No. 31 of 1957

Appellant : Laxminarayan

Respondent : Ram Sarup

Advocate for Def. : Krishna Sarup, Adv.

Advocate for Pet/Ap. : Naokar, Adv.

Disposition : Petition allowed

Judgement :

ORDER

Newaskar, J.

1. This revision-petition arises out of a suit filed on behalf of plaintiff Laxminaram S/o Tulsiram minor by his mother Anandibai as his guardian against defendants

Ramsarup and plaintiff's father Tulsiram under the following circumstances. There are two houses in Lashkar, which are said to be the ancestral property of plaintiff and his father. Plaintiff claimed half share in these houses. These two houses were mortgaged by plaintiff's father Tulsiram with defendant No. 1 Ramsarun and the money thus procured had been wasted for illegal and immoral purposes including gambling and not for the purposes of the family.

The defendant Ramsarup later filed a suit and obtained a decree against Tulsiram and sought to sell the mortgaged property in execution of that decree. Plaintiff's case is that the decree obtained by Ramsarup was collusive & was intended to cause loss to his rights. A case was also set up in the alternative that there had been partition between him and his father Tulsiram and that the plaintiff was in possession as owner. The plaintiff prayed for the following relief on these allegations.

(1) The plaintiff is entitled to one half share in the property in suit and is in possession of the same as owner and the said property is not liable to be sold in execution case No. 233 of 1956;

(2) Such other relief which the Court may deem it proper to grant in plaintiff's interest.

2. The plaintiff valued the suit for purposes of jurisdiction at Rs. 4000 and paid fixed Court-fee of Rs. 20 on the ground that the relief claimed was of declaratory character.

3. The defendant Ramsarup inter alia contended that the plaintiff ought to have paid ad valorem Court-fees on the basis of valuation of the property and that payment of fixed Court-fee in this case is not proper.

4. The trial Court relying upon the decision reported in *Kisanlal Ridhokaran v. Narayandas Lahoti*, AIR 1946 Nag 251 (A), held that payment of ad valorem Court-fee was necessary. He therefore granted 25 days to the plaintiff to make good the deficiency.

5. The present revision-petition by the plaintiff is directed against that order.

6. The plaintiff in this case was not a party to the suit against the father. The decree obtained against the father was on the basis of a mortgage and the son contends in effect and in substance that the alienation is not binding upon him. He prays for a declaration as to his title and his possession of the property in his own right and as to non-executability of the decree as against his interest.

7. In *Pandurang Mangal v. Bhojalu Usanna*, AIR 1949 Nag 37 (B), Sen J. referred the earlier Division Bench decision of that Court reported in *Katansinsh V. Raghurajsingh*, AIR 1946 Nag 30 (C), and observed as follows:

'The plaintiffs were not parties either to the mortgage or to the decree. The plaintiffs' case was that the mortgage was not for legal necessity or for payment of the antecedent debt. The mortgage as such was not binding on the sons. A son is under a pious obligation to pay off the debt of his father. If a decree is passed on a debt incurred by the father, not only the interest of the father in the joint family property including the share of the sons is liable to sale. An alienation, however, stands on a different footing. An alienation in order that it may be binding on the interest of the sons must be for legal necessity or for the payment of antecedent debt of their father.

If it is neither for legal necessity nor for the payment of antecedent debt, qua mortgage, it is not binding on the sons and the sons are entitled to a declaration that as the mortgage is not binding, the decree & the sale does not affect their interest. In the present case, the sons do not seek to set aside the mortgage decree or the sale held in pursuance thereof. They merely seek a declaration that the sale does not affect their interest.

This is a suit for a pure declaration in which no consequential relief is involved and ad valorem Court-fee was not payable under Section 7(iv)(c), Court-fees Act, but a fixed court-fee was payable under Article 17 (iii), Schedule 2 of the Act. The Court-fee paid in this case was proper.'

8. The aforesaid observations fully apply to the present case.

9. In view of the opinion expressed in the aforesaid Nagpur Cases reported in AIR 1946 Nag 30 (C) and AIR 1949 Nag 37 (B), it is not necessary for me to consider cases cited on behalf of the applicant which appear to take a somewhat different view. The decision in AIR 1943 Nag 251 (A), relied upon by the Lower Court has no application. In that case plaintiff was a party to the suit, in which the decree was passed against him and he sought a declaration that the same is not binding. This was construed in substance to a suit to set aside the decree.

10. It is also clear from the aforesaid decision of Sen J., in AIR 1949 Nag 37 (B), that an order demanding additional Court-fee is revisable. The reason given by the learned Judge is that in case the additional Court-fee is not paid there is a refusal on the part of the Lower Court to exercise jurisdiction which is vested in it to decide the suit and that consequently the question of jurisdiction is involved.

11. I therefore hold that the Court-fee paid in this case is quite proper and the order of the Trial Court demanding Court-fees ad valorem deserves to be set aside.

12. The petition for revision is therefore allowed with costs accordingly.