

Sadananda Sahu Vs. State of Orissa

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Court : Orissa

Decided On : Jan-18-1961

Reported in : AIR1962Ori102

Judge : S.P. Mohapatra and ;R.K. Das, JJ.

Acts : [Court Fees Act, 1870](#) - Sections 7

Appeal No. : Civil Revn. No. 90 of 1960

Appellant : Sadananda Sahu

Respondent : State of Orissa

Advocate for Def. : Standing Counsel and ;Y.S.N. Murty, Adv.

Advocate for Pet/Ap. : B.K. Pal, Adv.

Disposition : Revision dismissed

Judgement :

Mohapatra, J.

1. This Civil Revision under Section 115 of the C. p. c. has been filed by the plaintiff against an order dated 16th March, 1960 of the Subordinate Judge of Berhampur, demanding the plaintiff to pay court-fee under Section 7(iv)(c) of the Court-fees Act. The plaintiff paid court-fee of Rs. 22/8 on the basis that it is a suit

for partition only. The value of the share of the plaintiff in respect of the suit properties is put at Rs. 8100/-

2. The plaintiff and defendant No. 1 are brothers. Defendant No. 2 is the wife of defendant No. 1. Defendant No. 3 is the brother of defendant No. 2. Defendant No. 4 is the mother of the plaintiff and defendant No. 1. Narayan Sahu, the father of the plaintiff and defendant No. 1, died only 9 years ago leaving behind him his widow, defendant No. 4, and the two sons, the plaintiff and defendant No. 1. He had left vast landed properties and two houses which form the subject matter of the present suit. The plaintiff claims partition in respect of his one-third share which he valued at Rs. 3100/-.

3. It is important to note, the other defendants 5 to 50 are the alienees in respect of different items of properties which form the subject matter of the present suit. There are quite a number of sale deeds in favour of these alienees which is being impeached in the present suit. The important allegations in the plaint are that while the father died, both the sons were of tender age. But defendant No. 1 indeed was a major. Defendant No. 1 being in bad company cultivated bad habits on account of which he was not able to judge his actions nor could form a rational judgment of his activities. Defendant No. 1 consequently began squandering away the entire family properties so much so that he effected sales of almost the entire family properties within a short period of 3 to 4 years.

The family at present owns only the two items of the house property. The alienees could easily get at the properties and the manager of the family being a female and being always under constant threat of defendant No. 1 and his other associates could not say anything nor oppose the alienees in getting possession of the lands in dispute. The plaintiff challenges the alienations as not binding and as such claims a partition in respect of his one-third share. It is significant to note that the cause of action given in the plaint is stated to have arisen in February 1958 when demands were made for partition and also on different dates of alienations effected by defendant No. 1:

4. It will be relevant also to quote the reliefs sought:

(a) Directing a partition of the suit schedule properties into three equal shares and putting the plaintiff in possession of one such share;

(b) Directing the defendants to pay mesne profits;

(c) Granting costs of this suit and

(d) granting such other and further reliefs etc. of which the relevant elements to be considered are that the plaintiff seeks possession of his one-third share not only against the members of the family but against the alienees also who are alleged in the plaint itself to have got possession. The further important fact is for a direction against all the defendants to pay mesne profits. On a careful scrutiny of the plaint the position appears to be clear that practically the whole of the plaint is a challenge of the innumerable alienations made by the defendant No. 1, the elder brother. The different circumstances in which the alienations were made and the different grounds on account of which the plaintiff challenges the alienations have been exhaustively narrated in practically the whole body of the plaint.

There is no doubt over the position that the suit has been framed in its form only as a suit for partition. But nevertheless it requires no difficulty in getting at the real nature and substance of the plaint which are nothing less than fighting out the entire case to undo the effects of the alienations not only against the members of the family but against all the alienees who are made parties to the suit and to recover possession from out of their hands and to recover mesne profits. The plaintiff undoubtedly intends to fight out the title suit as against all the alienees who claim title and possession on the basis of different alienations at different times by the elder brother. But the suit is presented nominally to be a suit for partition. The suit therefore rightly comes within the scope of the provisions of Section 7(iv)(c) of the Court-fees Act.

5. The tests for determining the court-fee have from time to time been clearly laid down by high authorities and have been followed consistently by this High Court in previous years. The Court must take care not to be misled by the dexterity or skill of draftsmanship of the pleading but must always go deeper in order to scrutinise what is the real nature of the suit. If really the real purpose behind the suit is to

finally adjudicate the questions of title involved particularly as against the third-party alienees and without the determination of which the relief for partition in respect of the properties in suit cannot be obtained, it cannot be taken to be purely a suit for partition and cannot be stamped on the basis of a partition suit only. Indeed the scrutiny ought to be very cautious.

The Court is not to import into the plaint anything which (it?) does not really contain, either actually or by necessary implication. That is to say, the Court is to take the plaint as it is and not as it may think it ought to have been in the way that the relief, not asked for deliberately, and the plaintiff takes the risk in that behalf, cannot be imported into the plaint. To illustrate, where the plaintiff deliberately omits to sue for the relief of possession but gets himself satisfied by merely asking for the relief for declaration of title, the Court cannot compel the plaintiff to add a prayer and to pay court-fee. But at the same time the court must see through the game of an attempt to avoid court-fee on the presentation of a deceptive form while the real purpose and the substance behind is something different.

Here we have attached weight to three features : (i) the dominating purpose and intention running through all the allegations of the plaint which is to fight out a title suit in the face of a number of alienations; (ii) the alienees have been made parties so that the decree that will be obtained on their contest and in their face will be binding finally as against them; and (iii) not only that the plaintiff asserts in the plaint that the alienees have got into the possession of the entire suit properties excepting the two houses but also asks for possession which is not only against the members of tile family but also as against the alienee-third-parties. He has prayed also for mesne profits against all.

6. The test in such cases was exhaustively dealt with and very clearly discussed and laid down by a Bench decision of the Patna High Court in the case of Ramautar Sao v. Ram Gobind Sao, AIR 1942 Pat 60. The duties of courts in cases of this nature have been comprehensively but nevertheless precisely indicated. This decision has been approved by a subsequent Full Bench of the Patna High Court in the case of Mt. Rupia v. Bhatu Mahton, AIR 1944 Pat 17 (FB). We may just refer to another subsequent Bench decision of the Patna High Court

in the case of *Tejpal Saraogi v. Mahadeo Lal*, AIR 1951 Pat 526 as it is more in line with the facts of the present case. On the basis of the same principle, the facts of that case were examined and the position was clarified.

That was a suit for partition of two houses by the plaintiffs alleging that they had 12 annas share in the properties and the defendant had four annas share. The defendant executed a sale deed in respect of his four annas share in favour of a stranger and therefore the plaintiffs desired partition and separation of their 12 annas share. Some of the alienees were strangers to the family of the plaintiffs and the defendant and were not co-sharers or co-owners against whom partition could be claimed. Their Lordships held :

'It could not be said that any incidental finding of fact was necessary in order to give the main relief which the plaintiffs claimed so far as the stranger-alienees are concerned. Either the plaintiffs were claiming no adjudication against the stranger-alienees or they were claiming an adjudication to displace their title. As there could be no relief of partition against the strangers, the only relief claimed against them was the displacement of their title based on transfers made in their favour. That would undoubtedly be an independent declaration of title not necessarily connected with the relief of partition. If no relief was claimed against the strangers, then they should not have been made parties to the litigation. Hence, so far as the stranger-defendants were concerned, the suit was in substance, a suit for a declaration of title in the guise of a partition suit.'

7. We will avail of this opportunity to clarify certain difficulties and misunderstandings arising on account of some Single Judge decisions of this Court reported in the Law Reports of the year 1960- We will first take up the decision reported in ILR (1960) Cut 704: (AIR 1962 Orissa 47), *Suryamani Sahu v. Darsini Sahu*. There in a suit for partition the plaintiffs alleged in the plaint that certain deeds of transfer in respect of the joint family properties were fraudulent, not acted upon and were made to deprive them their legitimate shares. His Lordship held that the court-fee payable was not under Section 7(iv)(c) but on the basis that it was purely a partition suit. His Lordship laid down the real test to be whether the plaintiff was a party to the proceedings or to the document which was

being impeached and emphasis was laid on the position that if the plaintiff was not eo nomine a party to the proceeding or to the document, court-fee payable was not under the provisions of Section 7(iv)(c).

This decision followed an earlier decision by another Judge of this Court in the case of T. Viswanadham v. T. Narayanmurty reported in the same volume of the ILR series at p. 58: (AIR 1960 Orissa 153). There also it appears, the test was inaccurately put as whether the plaintiff was eo nomine a party to the proceeding or to the document which is being impeached in the suit. In our view, the real test cannot be laid down within the short compass whether the plaintiff is a party to the document or to the proceeding challenged. Neither the position that the relief is merely one for partition is sufficient to determine the court-fee payable. On the contrary, the real test is an, emphasis always put on the features as indicated above, particularly the real substance of the suit on a thorough and proper scrutiny of the entire pleading the Court being always cautious not to be misled by the skill or dexterity in drafting nor by the form of the relief sought nor even the mere feature that the plaintiff is not eo nomine party.

We will refer to another Single Judge case of this Court reported in 26 Cut LT 63, Lakhana Mohakudo v. State of Orissa. There the learned Judge of course decided on the facts appearing that where a suit for partition includes properties alienated by the Karta of the joint family and the properties are in possession of the alienees the Court-fee is payable under Section 7(iv)(c). The conclusion is absolutely correct His Lordship relied upon a Full Bench decision of the Madras High Court in the case of Ramaswami v. Rangacharier, AIR 1940 Mad 113 (FB), in respect of the item of properties which passed into the possession of the strangers where the Judges consisting of, the Full Bench were unanimous. In all the three Single Judge decisions of this Court a reference has been made and reliance has been placed upon some observations of the Full Bench of the Madras High Court. It is very unfortunate that the aforesaid two Patna decisions of 1942 Patna and 1944 Patna were never placed before any of the learned Judges of this Court even though the above decisions of the Patna High, Court are quite familiarly known as having exhaustively dealt with this pertinent question. In the Madras decision, it was decided; 'Where a minor in a suit for partition, against his father challenges the

validity of transactions entered into by his father as manager of the family, he must pay court-fees in accordance with the relief which he is actually seeking. He cannot be allowed to evade payment by omitting to ask for relief when the success of his suit depends on relief being granted to him.'

Their Lordships also observed:

'The Court must look at the real nature of the suit and decide what the plaintiff is asking for. Therefore, where the plaintiff in effect asks in, respect of alienations where possession has passed to the alienees that they be set aside and that he be placed in possession of his share of the properties alienated he must pay court-fee in respect of such transactions not on the basis that it is a partition suit, pure and simple.'

There is another point on which all the judges were not unanimous.

"In respect of alienations by father to which the minor was not eo nomine a party and which are challenged by him in the suit for partition against his father, the plaintiff need not contain a prayer for a declaration or cancellation, as the prayer is for a purely incidental but unnecessary relief. When there is no such prayer there is no justification for implying them and then demanding a fee for it. There is no force in the argument that the position is altered by the joinder in the suit of the parties to the transactions who are interested in supporting them. Whether they are before the Court or not, the Court is bound as between the members of the family to decide which are the debts binding on the family, before directing division.'

This was the majority view; but the third Judge dissented from the view and observed substantially to the effect:

'Where in a suit for partition against father, the minor challenges the transactions or decrees to which he was not eo nomine a party, the minor can ask for a partition of the property without having any regard to such alienations and can insist that no funds need be reserved at the time of partition for payment to such decree-holders, if the plaintiff does not implead the alienees or creditors in the suit

and does not ask for a decree for accounts. If the plaintiff wants the court to go into these questions and prays for a relief which must in the circumstances be taken to be tantamount to asking for an adjudication of the questions relating to his liability for the decrees passed against his father or to the binding nature of the alienations of family property, there is no reason why the plaintiff should not pay the Court-fee with regard to them.'

In the first two single Judge decisions of this Court as referred to above, the test whether the plaintiff was eo nomine a party to the transaction or not was emphasised. But in our view this is not exactly in accord with the mere basic and true tests which have been so accepted by the majority view of the Madras High Court, that is, that the plaintiff cannot be allowed to evade payment by omitting to ask for relief when the success of his suit depends on relief being granted to him. The Court must look at the real nature of the suit and decide what the plaintiff is asking for. We must observe, the view expressed by the dissenting Judge is more in accord with the real principle enunciated above. We are in agreement with the view expressed by the dissenting Judge.

8. In conclusion, therefore the contention raised by the plaintiff-petitioner cannot be accepted. The plaint cannot be valued merely as a partition suit. The Civil Revision is, therefore, dismissed. It may be observed at this stage, in the light of the above observations, the plaintiff may think fit, as far as he is permitted under the provision of law, to recast his plaint by putting a petition for amending the plaint before the Court below which may be considered and disposed of in accordance with law by the trying Judge. We may further observe, in the last part of the order passed by the court below it appears the plaintiff has been called upon to furnish particulars of the different alienations. In our opinion, this is unnecessary.

The Peripatetic Stamp Reporter reported that court-fee is payable under Section 7(iv)(c). The learned Subordinate Judge has passed the order on that basis. The plaintiff has put his valuation at Rs. 3100/- for the relief claimed. There is no suggestion in the four corners of the record nor is there material from which it can be inferred that the valuation is arbitrary or grossly inadequate. The valuation is accordingly accepted and the plaintiff is to pay court-fee on Rs. 3100/- within, two

months from to-day. There will be no order as to costs of this Court.

R.K. Das, J.

9. I agree.

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