

Basantilal Vs. Mt. Sajjan Devi and ors.

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SooperKanoon Citation : sooperkanoon.com/750813

Court : Rajasthan

Decided On : Sep-03-1973

Reported in : AIR1974Raj26

Judge : B.P. Beri, C.J. and; M.L. Joshi, J.

Acts : Rajasthan Court-fees and Suits Valuation Act, 1961 - Sections 39 and 48(1); [Code of Civil Procedure \(CPC\) , 1908](#) - Sections 48 - Order 21, Rules 58 and 63

Appeal No. : Civil First Appeal No. 123 of 1972

Appellant : Basantilal

Respondent : Mt. Sajjan Devi and ors.

Advocate for Def. : Kheariwal, Adv. for Respondent No. 4

Advocate for Pet/Ap. : K.N. Tikku, Adv.

Judgement :

B.P. Beri, C.J.

1. Appellant Basantilal valued this appeal at Rs. 20,000/-and therefore, the Registrar by his order dated August 18. 1972, admitted it. An ad interim injunction was claimed for which notice was issued to the respondents and some of them are present before us. An objection has been taken that the Registrar had no

jurisdiction to admit this appeal and its valuation has been erroneously fixed.

2. We might notice a few facts necessary for the disposal of the point raised before us. On October 3, 1963, Basantilal obtained a decree against Manoharlal in the sum of Rs. 7640/- exclusive of costs. Basantilal levied execution on December 3, 1963, and Pot attached a house in Mahavir Chowk. Tonk. Judgment-debtor Manoharlal's wife Smt. Saiian Devi. objected to the attachment but was unsuccessful. She, therefore, instituted a suit under Order 21 Rule 63 of the Code of Civil Procedure on June 3, 1963, claiming the house under attachment to be her own. Manohar Lal was made a party to this suit but he joined no issue with his wife. Sajjan Devi, however, succeeded in establishing her claim by virtue of a judgment and decree dated 10th May, 1972, passed by the learned Additional District Judge. Tonk. Against that judgment and decree, decree-holder Basantilal has come up in appeal and he has valued it at Rs. 20,000/- as already mentioned.

3. Mr. Kheiarawal learned counsel for respondent No. 4 Sobhagmal raised two objections. The first is that this was a Single Bench appeal and ought not to have been admitted by the Registrar and the second is that the injunction issued by us should be vacated.

4. In support of the question of jurisdiction Mr. Kheiarawal cited before us Moolchand v. Ramkishan AIR 1933 All 249 (FB). Puttamma v. Veerabhadra. AIR 1951 Mys 22, Renganatha v. Subramanian AIR 1956 Mad 402 and Nandlal v. Mt. Baratan, AIR 1960 Pat 82. All these authorities took the line which we might extract from the head-note of Moolchand's case AIR 1933 AH 249 (FB), namely, that where a claimant whose objection to an attachment in executing a decree against a judgment-debtor is dismissed, files a declaratory suit that the property attached is his own, the valuation of the suit in cases where the value of the property is greater than the amount of the decree, is the amount of the decree.

5. Mr. Tikku learned counsel for the appellant invites our attention to DawDut v. Daw Kwi AIR 1932 Rang 20 and Gaindalal v. Ramsingh AIR 1954 All 782. These two authorities lay down the proposition that where the claim for removal of attachment of the property is dismissed and a suit is instituted against, the attaching creditor as well as the judgment-debtor for a declaration that the plaintiff

is the owner of the property with respect to which his claim has been dismissed, then, if the value of the Property attached is more than the value of the decree obtained by the attaching decree-holder, the value which governs the jurisdiction of the court to deal with the suit is the value of the property itself and not merely the value of the decree. The reason advanced for this view in the Rangoon case AIR 1932 Rang 20 is that if the claimant is unsuccessful in his suit for declaration not only will the attaching decree-holder realise the value of the decree but as regards any surplus remaining that will also go to the judgment-debtor and the claimant will lose the whole value of the attached property.

6. The correct solution to this controversy in our opinion can be gathered by making a reference to the relevant statutory provisions in this behalf. Section 39 of the Rajasthan Court Fees and Suits Valuation Act, 1961, hereinafter called the Act, reads as under:--

'39. Suits to set aside attachment etc. (1) In a suit to set aside an attachment by a Civil or Revenue Court of any property, movable or immovable or of any interest therein or of any interest in revenue, or to set aside an order passed on an application made to set aside the attachment, fee shall be computed on the amount for which the property was attached or on one-fourth of the market value of the property attached, whichever is less.

(2)

.....'

7. In this context it will be pertinent to remember that Sajjan Devi in the suit instituted by her in paragraph 7 of the plaint referred to this provision and paid court fee on the sum of Rs. 5000/-being 1/4th of the value of the house attached pursuant to the aforesaid section. Another provision of the Act which is attracted is Section 48 (1) which reads:

'48. Suits not otherwise provided for all In a suit as to whose value for the purpose of determining the jurisdiction of Courts specific provision is not otherwise made in this Act or in any other law, value for that purpose and value for the purpose, of

computing the fee payable under this Act shall be the same.'

(2)

Mr. Tikku conceded frankly that there is no specific provision in the Act or in anyother law regulating the fixation of valuation of suits instituted for the establishment of a claim under Order 21 Rule 63 of the Code of Civil Procedure and this, makes the applicability of Section 48 beyond dispute.

8. A remarkable feature of this dispute is that Smt. Saiian Devi the wife of the judgment-debtor is claiming the house as entirely her own and the husband Manoharlal judgment-debtor does not controvert her claim. The resultant position is that the judgment-debtor is a mere Pro forma defendant and will be content if the attached property is declared to be that of his wife. In Khetrapal v. M. Mumtaz Begum AIR 1915 All 436 a passage wherefrom has been quoted in extenso by the Full Bench of the Allahabad High Court in Moolchand's case AIR 1933 All 249 (FB), it has been recognised that where a wife did not allege a cause of action against her husband in a similar situation the husband was merely a pro forma defendant and the whole of the property attached was not in dispute. Gendalal's case AIR 1954 All 782, is clearly distinguishable because the learned Judges did not even refer to their own Full Bench decision of Moolchand's case AIR 1933 All 249 (FB) on account of certain statutory amendments which had taken place in the U. P. Court Fees Act after the decision of the Full Bench. The view taken in Rangoon's case AIR 1932 Rang 20 no doubt supports to some extent the contention of Mr. Tikku but we regret our inability to agree with the view propounded by the learned Single Judge.

9. In our opinion, therefore, having regard to the circumstances of the case and specially when the judgment-debtor has not joined any issue with the objector this suit on a combined reading of Sections 39 and 48 of the Act is of a value equivalent to the decretal amount and therefore, must be laid before a learned Single Judge for admission. The order of admission by the Registrar is set aside. The ad interim injunction issued in favour of the appellant by us also vacated. It will be laid before the learned Single Judge tomorrow. Mr. Tikku takes notice.

