Sukh Lal and ors. Vs. Devi Lal and ors.

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Court : Rajasthan

Decided On : Jul-24-1953

Reported in : AIR1954Raj170

Judge : Wanchoo, C.J. and; Modi, J.

Acts : Court-fees Act, 1870 - Sections 7 - Schedule - Articles 1 and 17; Specific Relief Act, 1877 - Sections 39 and 42

Appeal No. : First Appeal No. 76 of 1951

Appellant : Sukh Lal and ors.

Respondent : Devi Lal and ors.

Advocate for Def. : Hastimal, Adv.

Advocate for Pet/Ap. : Dashrathmal, Adv.

Judgement :

Modi, J.

1. The only question which we are called upon to decide at this stage is one of court-fees. We give below a few facts out of which the present question has arisen.

2. The appellants were defendants in the trial Court. The plaintiffs-respondents are sons of the respondent Bakhtawarlal who was impleaded as defendant No. 5 in the suit. The plaintiffs' case was that their father Bakhtawarlal & the plaintiffs were members of a joint Hindu family, and that Bakhtawarlal sold certain property to defendants Nos. 1 to 4, namely, Sukhlal, Hukmichand, Kastoorchand and Gahrilal, by a sale-deed dated 10-6-1944, for a sum of Rs. 800/-, and that the said property was ancestral property of the family and had been sold to the vendees above-named without the consent of the plaintiffs and without any family necessity. The plaintiffs, therefore, prayed that the sale-deed executed by Bakhtawarlal in favour of the vendees be cancelled. The plaintiffs valued their suit at Rs. 6000/- for purposes of jurisdiction. They alleged that they were in possession of the property in question and so paid a court-fee of Rs. 7/- only. The court-fee paid in the trial Court was correct according to the Mewar Court-fees Act, Smt. 1988. The learned Civil Judge who tried the suit granted a decree in favour of the plaintiffs that the sale-deed dated 10-6-1944, was null and void and left the parties to bear their own costs. Defendants Sukhlal, Hukmichand and others filed this first appeal on 7-12-1951 against the judgment and decree of the trial Court, They have paid a fixed court-fee stamp of Rs. 10/- only on the appeal. Learned counsel for the plaintiff-respondents has raised a preliminary objection that the court-fee paid by the appellants was insufficient.

3. It is urged by learned counsel for the defendant-appellants that the correct provision of the Court-fees Act, which applied to their appeal was Article 17 (iii) Schedule II. That Article provides that in suits to obtain a declaratory decree where no consequential relief was prayed for, the requisite court-fee was a sum of Rs. 10/-. It is contended, on the other hand, by learned counsel for the respondents that the plaintiffs' suit was not one for a mere declaration only; but it was a suit for a declaration and a consequential relief and, therefore, Article 17 (iii) Schedule II did not apply at all, but that the proper court-fee payable was under Section 7(iv)(c) according to the amount at which the relief sought was valued in the plaint or memorandum of appeal, and that the plaintiffs had valued their claim for purposes of jurisdiction at a sum of Rs. 6000/- and, therefore, defendant-appellants should have paid court-fee on that amount.

4. Now, we have no doubt that in order to determine the proper court-fee payable on a plaint in a particular case, the true principle is that the plaint as a whole should be looked at and that it is the substance of the plaint and not its ostensible form which really matters. It is true further that caution must be observed so that nothing is imported into the plaint, which it really does not contain either actually or by necessary implication. It is also well-established that in construing the plaint, the Court must take the plaint as it is and not as it ought to have been. (Vide -- 'Kalu Ram v. Babu Lal', AIR 1932 All 485 (PB) (A) and -- 'Mt. Rupia v. Bhatu Mahton', AIR 1944 Pat 17 (PB) (B)).

5. Applying the above principles to the plaint in the present case, we have no hesitation in saying that the contention of learned counsel for the defendant-appellants, that the plaintiffs merely asked for a declaration and did not pray for any consequential relief, is not borne out by facts. Learned counsel placed his reliance on the fact that it was not necessary for the plaintiffs to claim any consequential relief in the present case, as they were in possession of the property in dispute. We may point out, however, that even though the plaintiffs were in possession of the suit property, their suit, as laid, was clearly not for a mere declaration only but was actually and substantially for cancellation of the sale-deed. This was certainly not asking for mere declaration. The plaintiffs sued to cancel a sale-deed executed by their father in respect of the joint family property which was ancestral and such a sale would be binding on them if they did not get the sale-deed set aside or cancelled. Their suit is clearly covered by Section 39 of the Specific Relief Act, which reads as follows:

'39. Any person against whom a written instrument is void or voidable, who has reasonable apprehension that such instrument, if left outstanding, may cause him serious injury, may sue to have it adjudged void or voidable; and the court may, in its discretion, so adjudge it and order it to be delivered up and cancelled.'

6. There is a difference between a suit for the cancellation of an instrument and one for a declaration that the instrument is not binding on the plaintiff, when the plaintiff seeks to establish, a title in himself and cannot establish that title without removing an insuperable obstacle such as a decree or a deed to which he has

been a party or by which he is otherwise bound then quite clearly he must get that decree or deed cancelled or declared void in toto and his suit is in substance a suit for the cancellation of the decree or deed notwithstanding the fact that the suit may have been framed as a suit for a declaration. On the other hand, when the plaintiff is seeking to establish a title and finds himself threatened by a decree or a transaction between third parties, he is not in a position to get that decree or deed cancelled in toto. The proper remedy in such a case is to get a declaration that the decree or deed is invalid so far as he himself is concerned, and, therefore, he may sue for a declaration to that effect and not for the cancellation of the decree or the deed. See -- 'Vellayya Konar v. Ramaswami Konar', AIR 1939 Mad 894 (C).

7. In this case, it is obvious that it would be impossible for the plaintiffs to establish their title to the property in question unless they sued to remove an obstruction which would otherwise be insuperable because the sale made by the father would be binding upon the sons, unless it is set aside. We, therefore, hold that the present suit, of the plaintiffs was substantially a suit not for a declaration that a certain sale-deed was inoperative against them, but for the cancellation of the said sale-deed in toto, and that Article 17 (iii) of Schedule II cannot possibly apply to such a suit, see -- 'AIR 1932 All 485 (FB) (A)'; --'Zeb-ul-Nisa v. Din Mohammad', AIR 1941 Lah 97 (FB) (D) and -- 'AIR 1944 Pat 17 (FB) (B)', and, that, therefore, ad valorem court-fees must be paid. It is elementary that the law which will govern the payment of court-fee in the case of the present appeal, must be the law in force at the time at which the appeal was filed. The Rajasthan Court-fees (Adaptation) Ordinance came into force on 24-1-1950 and will, therefore, apply in the present case.

8. Learned counsel for the appellants relied on -- 'Ishwar Dayal v. Amba Prasad', AIR 1935 All 667 (E). That was a case of a suit filed for a declaration that a mortgage bond was unenforceable and that the family property mortgaged thereby was not liable to be sold in execution of a mortgage decree. It was held that the relief for a declaration that the family property was not saleable in execution of the decree was a declaratory relief and not a consequential relief, and, therefore, the case was governed by Schedule II, Article 17 (iii). The learned Judges who decided this case sought to distinguish it from -- 'AIR 1932 All 485 (PB) (A)'; but

with respect we must point out that they were trying to evolve a distinction without a difference. As already stated above, in deciding the question of court-fee, the Court must look at the substance of the plaint and not at the mere garb in which the plaintiff may dress it, and judged by the light of that principle, we do not see how it was possible for the plaintiff, in the case cited above, to establish his title unless he got the mortgage bond removed from his way and so also the decree based on it. We are disposed to think that the relief claimed was, in itself, a substantive one, and, therefore, the proper court-fee paid thereon should have been an ad valorem one, and not for a mere declaratory suit. We are, therefore, not prepared to accept this case as laying down the correct law.

9. The next question for consideration is whether court-fee must be held to be leviable under Section 7(iv)(c) or Article 1, Schedule I of the Court-fees Act. The question assumes some importance, as although both under Section 7(iv)(c) and Article 1, Schedule I ad valorem court-fee is required to be paid, the basis of valuation is not the same. According to Section 7(iv)(c), ad valorem court-fee has to be paid on the amount on which the relief sought is valued in the plaint or the memorandum of appeal; whereas Article 1, Schedule I requires the court-fee to be paid on the amount or value of the subject-matter in dispute. The difference arises inasmuch as under the first provision, it is open to a plaintiff to put any arbitrary value upon the relief claimed by him; whereas in the latter case, the value is not arbitrary and is to be put according to the value of the subject-matter in dispute.

10. It appears that there is divergence of judicial opinion on this point. Some High Courts have held the view that suits for the cancellation of a document under Section 39, Specific Relief Act are suits for declaration with consequential relief within the meaning of Section 7(iv)(c), Court-fees Act, and an ad valorem court-fee has to be paid on the valuation put by the plaintiff however arbitrary it may be. See -- 'Samiya Mavali v. Minammal', 23 Mad 490 (F), -- 'Kuber Saran v Raghubar', AIR 1929 Oudh 491 (G) and - 'Parvatibai v. Vishvanath', 29 Bom 207 (H). The other view is that a relief for the cancellation of an instrument is in itself a substantive relief different from a mere declaratory one. The language of Section 39 of the Specific Relief Act clearly supports such a conclusion as pointed out in --'Kaluram v. Babu Lal (A)'. Section 39 of the Specific Relief Act finds a place in a chapter by

itself headed as 'Of the cancellation o Instruments', whereas the next following chapter deals, with 'Of Declaratory Decrees'. Their Lordships in the Allahabad case further pointed out that 'consequential relief' in Section 7(iv) (c) means some relief which would follow directly from the declaration given, the valuation of which is not capable of being definitely ascertained and which is not specifically provided for anywhere in the Act and cannot be claimed independently of the declaration as a substantive relief. Having given our careful consideration to this matter, we find ourselves in respectful agreement with the view that the relief for cancellation of a document is in itself a substantive relief.

11. We are further supported in this view by the observations of their Lordships of the Privy Council in -- 'Tacoordeen Tewarry v. Nawab Syed All Hossein Khan', 1 Ind App 192 (PC) (I). That was a suit for confirmation of possession and for setting aside a fraudulent and fabricated deed of sale. It was held by the High Court in disagreement with the trial Court that the plaintiffs were not in possession and the High Court gave a declaration that the deeds were not genuine but stopped short there and thought that it could not give any substantive relief beyond declaring the plaintiffs' title to the estate. As to this, their Lordships of the Privy Council held that the High Court erred in coming to that conclusion and that the prayer in the plaint that the deeds be set aside was a prayer for substantive relief and that the deeds should have been set aside. Their Lordships accordingly, holding that the plaintiff had prayed for substantive relief in the shape of setting aside the deeds, granted the said relief. We are, therefore, of the opinion that a suit like the present does not fall under Section 7(iv)(c) but under the residuary Article 1, Schedule I of the Court-fees Act, and that the court-fee payable in the present case is governed by that Article.

12. The court-fee payable under the aforesaid Article is on the value of the subject-matter of dispute. Now, the plaintiffs sued in the present case for the cancellation of the sale-deed executed by their father for a sum of Rs. 800/- only. We hold that the defendants appellants should, therefore, pay court-fee on this appeal as on Rs. 800/- only, as we consider this to be the amount of the subject-matter of dispute for the purposes of the present appeal. We grant the defendant-appellants a period of 30 days within which to make good the deficiency. We

further direct that on the deficiency being made up, this appeal will be transferred to the Court of the learned District Judge, Udaipur, for disposal according to law. The appeal being valued at Rs. 800/- only, it would be within the jurisdiction of the learned District Judge to hear and determine it according to law. In the circumstances of the case, we pass no order as to costs in this Court.