

Saroje Mohan Chatterjee and ors. Vs. Jiban Mull Babu and ors.

Saroje Mohan Chatterjee and ors. Vs. Jiban Mull Babu and ors.

SooperKanoon Citation : sooperkanoon.com/852007

Court : Kolkata

Decided On : Jul-06-1953

Reported in : AIR1954Cal26,57CWN909

Judge : G.N. Das and ;Debabrata Mookerjee, JJ.

Acts : Court-fees Act, 1870 - Sections 7 and 8; ;[Code of Civil Procedure \(CPC\) , 1908](#) - Order 6, Rule 17

Appeal No. : Civil Revn. No. 2115 of 1952

Appellant : Saroje Mohan Chatterjee and ors.

Respondent : Jiban Mull Babu and ors.

Advocate for Def. : Apurba Charan Mukherji, Adv.

Advocate for Pet/Ap. : Hemendra Chandra Sen and ;Basanta Kumar Panda, Advs.

Judgement :

Das, J.

1. This Rule was obtained by the plaintiffs against an order passed by Mr. D. N. Chakladar, learned Subordinate Judge, Bur-dawn, dated 26-6-1952, requiring the plaintiffsto pay ad valorem fees on the aggregate value of the consideration recited

in three kobalas which are sought to be set aside by the plaintiffs.

2. Shortly stated, the plaintiffs allege that three kobalas, consideration, whereof respectively amounted to Rs. 15,000/-, Rs. 16,000/-and Rs. 21,000/-, were not binding on the J plaintiffs for the reasons stated in the plaint. The prayer (Ka) of the plaint was that according to the statements made in the plaint and the circumstances of the case, the different kobalas in respect of the property described in the schedule to the plaint are invalid, fraudulent, collusive and without consideration and that a declaration be made that they are not binding on the plaintiffs and, if necessary, the same might be set aside. Prayer Kha of the plaint was one for a permanent injunction restraining the defendants from interfering with the plaintiffs' possession.

In the Court below the contesting defend- . ants 1 to 4 raised a plea that the suit was not properly valued and proper court-fees had not been paid. The case which they made at the trial was that ad valorem court-fees should be paid on the aggregate consideration money recited in the three kobalas. On behalf of defendant 5 the position taken up was that the market value of the properties covered by the three kobalas was Rs. 81,000/- and ad valorem court-fees had to be paid on the said sum.

2a. Before the learned Subordinate Judge it was the common case of the parties that the proper section of the Court-fees Act applicable to the case was Section 7(4)(c). It was contended on behalf of the defendant that the valuation put by the plaintiffs on tthe plaint under Section 7(iv)(c) was liable to be corrected under Section 8(c), Court-fees Act. The learned Judge accepted this contention and by virtue of the powers vested in him under Section 8(c) he revised the valuation put by the plaintiffs on the plaint, namely, Rs. 5,500/- and enhanced it to Rs. 52,000/- the total consideration recited in the three kobalas.

3. The question which was debated before the learned Subordinate Judge related to the effect of the prayer for cancellation of the said kobalas. The learned Subordinate Judge seemed to be of the view that as the plaintiffs were seeking to set aside the three kobalas which recited a consideration of Rs. 52,000/-, the benefit to the plaintiffs could fairly be assessed at Rs. 52,000/- and there was an

objective standard of valuation.

4. In this Court Mr. Sen who has appeared in support of the petition has prayed before us for amendment of prayer Ka of the plaint by deleting that part of the prayer which prayed for setting aside of the three kobalas, if necessary.

It is now well settled that the plaintiffs can amend the prayers contained in the plaint even though the effect of the granting of such a prayer might be to affect the amount of court-fees payable on the plaint. As the plaintiffs did not seek to amend any of the allegations made in the plaint, but limited their prayer to a modification of the prayer portion of the plaint, no valid objection can, in my opinion, be taken to this course.

The only effect is that the plaintiffs by reason of the amendment would not be entitled hereafter to a decree for cancellation of the three kobalas. The prayer in the plaint must be limited to a prayer for a declaration that the said kobalas are not valid and are not binding on the plaintiffs and for permanent injunction. There is no dispute that a suit of the description like the present after amendment, clearly comes within Section 7(iv)(c). There can, obviously, be no objective standard of valuation of the suit as it stands after amendment.

5. Mr. Mukherji who appeared for opposite parties 1 to 4 contended that in so far as the prayer for a permanent injunction is concerned, there is an objective standard of valuation. The valuation, in his submission, should be the value of the property in terms of Section 7(v), Court-fees Act.

In my opinion, there is no substance in this contention. Section 7(v), Court-fees Act relates to a suit for recovery of possession. A prayer for a permanent injunction restraining the defendants from interfering with the plaintiffs' possession proceeds on the footing that the plaintiffs are in possession and their only complaint is that their possession is liable to be disturbed by the defendants. The plaintiffs only seek the assistance of the Court to remove the obstruction which the defendants might place in the way of their peaceable enjoyment of the property in dispute. Such a prayer, in my opinion, cannot be valued.

The value depends on various factors, namely, the ability of the plaintiffs to resist such interference or the effectiveness of the obstruction which the defendants may place in the way of the plaintiffs' enjoyment of the property.

In my opinion, therefore, the prayers in the plaint after amendment are such as are not capable of precise valuation and the Court is not competent, in the absence of rules framed for the purpose, to correct the valuation put on the plaint by the plaintiffs. It is quite true, as observed in the case of -- 'Narayanganj Central Co-operative Sale and Supply Society Ltd. v. Mafijuddin Ahmad' : AIR1934 Cal448 , that the Court has the power to correct the valuation put by the plaintiff on his plaint in a suit under Section 7(iv)(c) where the valuation is palpably absurd, manifestly illogical or arithmetically wrong. In my opinion, the present case does not fall within the exception which was made to the option of the plaintiff to value his relief just as he chooses.

6. I am of opinion that the valuation put by the plaintiffs on the plaint should, in the circumstances of the present case, be taken as final and not liable to interference by the Court under the powers conferred on it under Section 8(c), Court-fees Act.

7. In the result, this Rule must be made absolute. The order of the learned Subordinate Judge, complained of, is set aside. As the plaintiffs have succeeded on a prayer for amendment made in this Court, we direct that the parties should bear their costs in this Court and in the Court below.

Debabrata Mookerjee, J.

8. I agree.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com