

Surendra Narain Sinha Vs. Sheikh Hafijur Rahaman and ors.

Surendra Narain Sinha Vs. Sheikh Hafijur Rahaman and ors.

SooperKanoon Citation : sooperkanoon.com/856489

Court : Kolkata

Decided On : Jun-14-1915

Reported in : 30Ind.Cas.379

Judge : Sharfuddin and; Mullick, JJ.

Appellant : Surendra Narain Sinha

Respondent : Sheikh Hafijur Rahaman and ors.

Judgement :

1. This appeal is by the defendant in a suit in which the plaintiff sued the principal defendants for a declaration of his title by adverse possession and for confirmation of possession.

2. It was the plaintiff's case that a cloud was thrown upon his title by an entry in the Record of Rights in favour of the principal defendants. The suit was lodged in the first instance before a Munsif. Upon an objection made by the defendants, the Munsif made an inquiry into the valuation of the property, and coming to the conclusion that the value was Rs. 3,090 he returned the plaint to the plaintiff for presentation to a proper Court. The plaintiff then filed the plaint before the Subordinate Judge with a Court-fee of Rs. 17-8. Valuing the relief for confirmation of possession, at Rs. 100, he paid Rs. 7-8 as stamp-fee for that relief and for the relief in respect of the declaration he paid a fee of Rs. 10. The Subordinate Judge came to the conclusion that the plaint was insufficiently stamped and that the

proper fee payable was on a valuation of Rs. 3,000. As the plaintiff failed to pay the full fee the Subordinate Judge rejected the plaint. There was an appeal against that order before the district Judge. The District Judge, while agreeing with the Subordinate Judge that the proper fee payable was upon a valuation of Rs. 3,000, allowed the plaintiff to strike out his prayer for confirmation of possession and convert the suit into one for mere declaration of title upon which a fee of Rs. 10 was sufficient. So, holding that the plaint was sufficiently stamped as amended he set aside the Subordinate Judge's order rejecting the plaint and directed the suit to be tried. Against that order the defendant now files the present appeal.

3. The first defect that we have to notice in the learned District Judge's proceedings is that he should not have entertained the appeal before him without a stamp-fee calculated upon the valuation which had been arrived at by the Subordinate Judge.

4. The second and main defect is that by allowing the plaintiff at the appellate stage to amend the plaint, he has seriously prejudiced the defendant. The learned District Judge relies upon Order XLI, Rule 33, Civil Procedure Code, in justification of the amendment; but that rule is subject to general principle that no order for amendment can be passed where it deprives a party of a substantial right or privilege or otherwise prejudice a party. In the present case a fresh declaratory suit would under Article 120 of the Limitation Act be admittedly barred. The defendant, therefore, has acquired a substantial right and it is manifestly unfair at the appellate stage to order an amendment of the plaint and deprive him of that right. The order of amendment, therefore, was, in our opinion, wrong.

5. In these circumstances, the appeal must succeed, the order of the learned District Judge is set aside and that of the Subordinate Judge restored with costs in all Courts. We assess, the hearing-fee in this Court at one gold mohur.