

SUPREME COURT OF INDIA

State of U.P.

Vs.

Ramkrishan Burman

C.A.No.444 of 1966

(J. C. Shah, V. Ramaswami and A. N. Grover, JJ.)

26.09.1969

JUDGEMENT

SHAH, J.:-

1. One Radhey Lal instituted Suit No. 4 of 1950 in the Court of the Civil Judge, Jaunpur, for a declaration that he was the "owner in possession" of the estate left by Dhan Devi. To that suit Ram Krishan Burman was impleaded as a party-defendant. This suit was decreed ex parte. Ram Krishan then filed Suit No. 14 of 1956 in the Court of the Civil Judge, Jaunpur, against the heirs of Radhey Lal (who had died since the passing of the decree in Suit No. 4 of 1950), claiming that he was "appointed an heir by Dhan Devi" of properties described in lists B, J and D in the plaint, that the dispute concerning the inheritance to the estate left by Dhan Devi was settled between him and Radhey Lal, that Radhey Lal admitted his title to the properties in Lists B, J and D and it was agreed that in the properties in Lists A, B, J and D Radhey Lal had 11/16th share and that he had 5/16th share, that a memorandum was drawn up in that behalf, and that Radhey Lal represented to him that a compromise decree will be obtained in that suit, but thereafter taking advantage of his ignorance Radhey Lal obtained a decree ex parte. The following substantive reliefs were claimed by the plaintiff.

"(a) that a declaratory decree in favour of the plaintiff and against the defendants declaring the plaintiff as the owner of the properties in Lists A, B, J and D be passed;

(b) in case in the opinion of the Court prayer (a) cannot be granted, then, alternatively, declaration declaring the plaintiff as the owner of properties in B J and D being the stridhana of Rani Dhan Dei Kaur be issued, decree in Suit No. 4 of 1950 has no adverse effect on the rights of the plaintiff; "

The plaintiff valued the properties in dispute at Rs. 5,99,503/6/3, but on the footing that he had claimed a mere declaration paid Rs.18/12/- as Court-Fees as in a claim under Sch. II Cl 17 (iii) of the Court-Fees Act.

2. The Inspector of Stamps reported to the Civil Judge that in his view the case fell within Sec. 7 (iv-A) as incorporated by the U. P. State Legislature, and court-fee was chargeable according to the value of the subject-matter, and the plaintiff was liable to pay Rs. 3,522/8/- as court-fee on the plaint. The Civil Judge ordered the plaintiff to amend the plaint and to pay the court-fee remaining due.

3. The plaintiff appealed against the order of the Civil Judge to the High Court of Allahabad. The High Court held that the court-fee paid by the plaintiff was proper and set aside the order holding that the case did not fall within S. 7 (iv-A) of the Court-Fees Act. The State of U. P. has appealed to this Court with special leave.

4. Section 7 (iv-A) of the Court-Fees Act as enacted by the U. P. State Legislature insofar as it is relevant, reads:

"In suits for or involving cancellation of or adjudging void or voidable a decree for money or other property having a market value, or an instrument securing money or other property having such value.

(1) where the plaintiff or his predecessor-in-title, was a party to the decree or the instrument, according to the value of the subject-matter, and

x x x x x"

There is no dispute that the plaintiff claimed a declaration adjudging void the decree in Suit No. 4 of 1950 declaring Radhey Lal to be the "owner in possession of the estate of Dhan Devi". The plaintiff by his Plaint had claimed two declarations in the alternative, and prima facie, the plaint was of the description in Sch. II, Cl. 17 (iii) of the Court-Fees Act. But counsel for the State of U. P. contends that the reliefs claimed fell within Sec. 7 (iv-A) of the Court-Fees Act. Counsel says that the expression "decrees for money or other property" does not mean a decree awarding money or other property, but a decree concerning or relating to money or other property, and he says that where the Court declares the plaintiff's title to money or property simpliciter the decree is one for money or for other property. We are unable to agree with that contention. The expression "for" occurs twice in the opening part of the clause. Evidently the expression "for" when it occurs for the first time means, "for obtaining a decree ordering (payment or recovery of)". The expression "for" also occurs in several other clauses of the Court-Fees Act. In Sec. 7 of the Court-Fees Act as amended by the U. P. Legislature which deals with computation of court-fee payable in certain classes of suits, following clauses occur :

"(i) In suit for money * * *

(ii) (a) In suits for maintenance and annuities or other sums payable periodically

* * * *

(b) In suits for reduction or enhancement of maintenance and annuities or other sums payable periodically

(iii) In suits for moveable property other money, where the subject matter has a market value -

(iv) In suits: -

(b) for accounts.

(iv) B. In suits -

(a) for a right to some * * * to arise out of land.

(iv) C. In suits -

(a) for the restriction of conjugal rights,

(b) for establishing or annulling or dissolving a marriage,

(c) for establishing a right to the custody or guardianship of any person.

(v) A. In suits for possession * *

(v) B. In suits for possession between rival tenants -

(vi) A. In suits for partition.

(vii) In suits for the interest of an assignee of land-revenue.

(ix) In suits against a mortgagee for the recovery of the property mortgaged.

(x) In suits for specific performance -

(xi) In the following suits between landlord and tenant -

(a) for the delivery by a tenant of the counter-part of a lease,

* * * *

(c) for the delivery by a landlord of a lease.

(cc) for the recovery of immoveable property from a tenant,* * *

(f) for abatement of rent,

(g) for commutation of rent

* * * *

In all these clauses the expression "for" is used as meaning "for obtaining a decree ordering (payment or recovery of)". If the expression "for" occurring for the first time in Section 7 (iv-A) means in the context in which it occurs obtaining a decree for cancellation of or adjudging void or voidable a decree, it would be difficult to hold that the expression "decree for money or other property " has a wider connotation and means a decree which concerns or relates to money or other property

5. A decree for declaration of title to money or other property is not a decree for money or other property. In our judgment the expression "decree for money or other property" means only a decree for recovery of money or other property. It does not include a decree concerning title to money or other property.

6. It was urged that in any event the plaintiff had sued for adjudging void or voidable an "instrument"? securing money or other property having market value. But a decree in invitum is not an instrument securing money or other property: such a decree is a record of the formal adjudication of the Court relating to a right claimed by a party to a suit. It does not by its own force secure money or property. A consent decree in certain cases may be regarded as an instrument securing money or other property, where the decree proceeds upon a contract which had that effect, but that is only because a consent decree is a record of the contract between the parties to which is super added the seal of the Court. In our view the High Court was right in holding that the court-fee paid on the plaint was proper. It may be pointed out that the plaintiff had claimed nothing more than a declaration with regard to certain properties.

7. We are also unable to accept the contention of counsel for the State that the relief for declaration was a mere device or subterfuge intended to conceal the true purport of the claim. It is evident that the District Magistrate, Jaunpur was in possession of the property in dispute and if the Civil Court declared the title of the plaintiff, he would be entitled to secure recognition of his rights.

8. Before parting with the case we must observe that we have felt greatly perturbed by the course which this litigation has taken. The suit was filed in 1956. And after 13 years only the question of court-fee payable on the plaint is decided. In the meanwhile the ordinal plaintiff died. The delay is largely attributable to the rigid attitude of the State which has by insisting upon a comparatively small claim, held up the proceedings for all these long years by raising contention which had no merit. We trust the Court of First Instance will take up this suit for hearing with the least practicable delay and dispose of the suit according to law. The State to pay in this appeal the costs of the heirs of the original plaintiff.

Appeal dismissed.