

ALLAHABAD HIGH COURT

Ishwar Dayal

Vs

Amba Prasad

(Thom and Iqbal Ahmad, JJ.)

18.02.1935

JUDGMENT

Iqbal Ahmad, JJ.

1. This appeal arises out of a suit brought by the plaintiff-appellant for a declaration that the hypothecation bond, dated 2nd January 1925, executed by defendant 2, the father of the plaintiff, in favour of defendant 1, was unenforceable and that the family property mortgaged by that deed was not saleable in execution of an ex parte; decree for sale obtained by defendant 1; on the basis of the said mortgage deed. The plaintiff also prayed for a declaration that the purchase made by defendant 3 in execution of a simple money decree is null and void as against the plaintiff and the property in dispute.

2. The plaintiff valued the suit for the purpose of jurisdiction at Rs. 10,000 and paid a court-fee of Rs. 20. The plaintiff's case was that there was no legal necessity for the execution of the mortgage-deed by defendant 2, and the amount, if any, borrowed by defendant 2 was spent by him on "improper acts and immoral purposes." It was recited in the plaint that defendant 1 obtained an ex parte decree on the basis of the mortgage-deed without impleading the plaintiff. The relief as against defendant 3 mentioned above was based on the allegation that the purchase made by her was in execution of a simple money decree with respect to a debt that was taken by defendant 2 for immoral purposes.

3. Defendant 1, alone contested the suit and one of the pleas raised by him was that ad valorem court-fee on Rs. 10,000 was payable and the plaint was insufficiently stamped. The learned Subordinate Judge relying on the Full Bench decision in the case of Kalu Ram v. Babu Lal 1932 All. 485, accepted the contention of the defendants and called upon the plaintiff to pay ad valorem court-fee on Rs. 10,000. He granted time to the plaintiff for making good the deficiency in the court-fee, but as the plaintiff failed to make good the deficiency, he dismissed the suit with costs. The plaintiff has come up in appeal to this Court and it is contended on his behalf that the court-fee paid on the plaint was sufficient and the view taken by the Court below was erroneous. In our judgment this contention is well-founded.

4. The question whether the court-fee paid is or is not sufficient must be decided with reference

to the relief prayed for in the plaint irrespective of the fact whether the omission of the plaintiff to ask for some further or consequential relief would or would not entail 'the dismissal of the suit in view of some statutory provision, e.g., the provisions of Section 42, Specific Relief Act. At the stage at which the consideration of the question of court-fee arises the Court is not concerned with the question as to what reliefs should have been prayed for by the plaintiff. It has to confine its attention to the reliefs contained in the plaint and to see whether the court-fee paid by the plaintiff is or is not sufficient in accordance with the provision of the Court-fees Act. Further, in the decision of the question of court-fee the Court has to bear in mind the principle that a fiscal enactment is to be strictly construed and in favour of the subject.

5. It is contended on behalf of the plaintiff-appellant that as the plaintiff merely prayed for a declaratory decree, the case fell within the purview of Article 17 (3), Schedule 2, Court-fees Act, which provides a fixed court-fee of Rs. 10 for a plaint "to obtain a declaratory decree where no consequential relief is prayed." It is contended, on the other hand, on behalf of the defendant-respondents that the prayer contained in the plaint was not only for a declaratory decree, but also for a consequential relief and the plaintiff was therefore liable to pay ad valorem court-fee on the amount (Rs. 10,000) in accordance with Section 7(4)(c), Court-fees Act, that provides about court-fee in suits to obtain a declaratory decree or order where consequential relief is prayed.

6. The Full Bench decision in *Kalu Ram v. Babu Lal* 1932 All. 485, mentioned above has no application to the case before us. In that case the relief prayed for in the plaint was for the cancellation of an instrument and also for the cancellation of the compromise, the preliminary decree and the final decree in a certain suit: and it was held by this Court that the court-fee payable was under the residuary articles, Schedule 1, Article 1, Court-fees Act. We are not concerned in the present case with any prayer for the cancellation of any instrument or for the cancellation of any decree. The only question that we have to consider is whether the reliefs sought by the plaintiff were mere declaratory reliefs or there was also a consequential relief prayed for by the plaintiff. In the Full Bench, case mentioned above it was observed that the words "consequential relief" in Section 7(4)(c) mean some relief which follows directly from the declaration given and "cannot be claimed independently of the declaration as a substantive relief." Similarly in *Hyder Ali Sahib v. Hussain Raza Sahib* 1915 Mad. 444, it was held that consequential relief means a substantial and immediate remedy in accordance with the title that the Court has been asked to declare. In short, consequential relief means some relief which is a necessary corollary to the principal declaratory relief prayed for by the plaintiff. Instances of consequential relief within the meaning of Section 7(4)(c), Court-fees Act, are furnished by cases in which, over and above the prayer for declaration of his title, the plaintiff asks for some relief by way of injunction, or possession, or appointment of receiver, or for partition of his share, etc. Such cases must be distinguished from cases in which two or more declaratory reliefs are prayed for by the plaintiff. It may be that one of such declaratory reliefs can in one sense be said to follow from the other declaratory relief claimed by the plaintiff, but this fact alone cannot make a declaratory relief a consequential relief within the meaning of Section 7(4)(c), Court-fees Act. Instances of suits in which more than one declaratory relief were prayed for and each of the reliefs was held to be an independent declaratory relief, are furnished by the decisions of this

Court in Brij Gopal v. Suraj Karan 1932 All. 560, Lakshmi Narain Rai v. Dip Narain Rai 1933 All. 350 and Abdul Samad Khan v. Anjuman Islamis Gorakhpur 1934 All. 56. In the last mentioned case the plaintiff prayed for a declaration that a deed of gift executed by a certain person in favour of the defendant was illegal and ineffectual as against the plaintiff and that the defendant had no right to interfere with the possession of the plaintiff. It was held that a court-fee of Rs. 20 paid on the plaint was sufficient as the relief claimed in the plaint involved two declarations.

7. In the case before us the declaratory relief prayed for by the plaintiff that the hypothecation bond was unenforceable and that the family property was not saleable in execution of the decree obtained by defendant 1, was really only one declaratory relief for the simple reason that on the date of the suit the hypothecation bond had merged in the decree and had ceased to exist, and it was the apprehension of the family property being sold in execution of the decree that led the plaintiff to institute the suit and to claim the relief noted above. Indeed, if he had simply asked for a declaration that the property was not saleable in execution of the decree, the relief could, on proof of the facts alleged by the plaintiff, have been granted to him. The relief for a declaration that the family property was not saleable in execution of the decree was therefore a declaratory relief and not a consequential relief. The plaint was therefore sufficiently stamped and the Court below was wrong in dismissing the suit.

8. For the reasons given above we allow this appeal, set aside the decree of the Court below and remand the case to that Court with directions to re-admit it to its original number and to try and dispose it of according to law. Costs here and hitherto shall be costs in the cause and shall abide the result.

