ALLAHABAD HIGH COURT

Mohri Kunwar

Vs

B. Keshri Chandra

(Dar, J.)

26.03.1941

JUDGMENT

Dar, J.

1. On 18th August 1937 plaintiff, Mt. Mohri Kunwar, instituted a suit in the Court of Civil Judge of Earrukhabad for a declaration of title to a half share in a garden known as Pannilalwalabagh situated in the district of Parrukhabad. The claim was valued at Rs. 15,000 for purposes of jurisdiction and the court-fee was paid on the plaint such as is required for a suit in which relief is claimed of a declaratory nature. The defendant, Babu Keshri Chand, contested the suit and inter alia he raised a plea that the plaintiff was not in possession of property and the claim was barred by Section 42, Specific Relief Act. As a result of this plea, the plaintiff on 16th August 1938 applied for amendment of plaint by praying that a relief be added in the plaint to the effect that if plaintiff be not deemed to be in possession of property possession might be awarded to her on payment of court-fee. This amendment was allowed on 17th August 1938 and on that date another order was passed staying the suit under Section 10, Civil P.C., till the disposal of P.A. No. 157 of 1936 pending in the High Court. By virtue of that order the case is yet pending in the Court of Civil Judge of Farrukhabad and all proceedings have been stayed.

2. On 5th November 1938, while proceedings in the suit were thus stayed, the Government Inspector of Stamps reported that the plaint was not properly stamped and he made a report for demand of additional court-fee. His contention in brief was that the garden, the subject-matter of suit, should be valued as garden and not as revenue paying land, it should be valued at Rs. 15,000 the full value of garden as given in the plaint and that ad valorem duty should be paid for the relief of declaration and possession. On 1st December 1938, the plaintiff filed objection to the report of Inspector of Stamps and on 3rd March 1939, and on 22nd April 1939, the plaintiff made two applications praying for further amendment of plaint. By these amendments, in substance, she wanted to reduce the valuation from Rs. 15,000 to half its amount the value of her share in the garden, she wanted to make out that the garden was a revenue paying land and she further wanted to amend her reliefs. By an order dated 15th May 1939, the learned Civil Judge refused the plaintiff's application for amendment, he disallowed the plaintiff an opportunity to prove that the garden in dispute was a revenue paying land. He further disallowed her objection to the report of the Inspector of Stamps and has ordered her to pay the court-fee as reported by the said Inspector.

3. Against the said order, the plaintiff has made an appeal to this Court under Section 6A, Court-fees Act as amended by Act 19 of 1938, and the respondent has taken a preliminary objection that the appeal is not competent. The contention of the respondent is that at the date when the suit was filed, viz., 18th August 193Y7 U.P. Court-fees Act, 1870 as amended by Act of 1923,1924, 1932 and 1936, was in force and there was no appeal provided in those Acts against an order for payment of Court-fee passed in pending suit.
4. On the date when the order for payment of court-fee was passed against the plaintiff, 15th May 1939, Act 19 of 1938 had come into force and Section 6A of Act 19 of 1938 gives a right of appeal to the plaintiff, but the Act of 1938 is not retrospective and it cannot take away the rights which had come into existence prior to the passing of Act of 1938 and one right which had come into existence in favour of the defendant was that orders relating to court-fee passed against the plaintiff were final and were not open to appeal and this right could not be taken away by a new enactment which came into effect after the institution of the suit. The argument is that the right of appeal is governed by the law which exists on the date when the suit is filed, and this right could not be taken away or affected by a new enactment unless it is done so expressly or by necessary implication. And, if on the date of suit, there was no right of appeal, such a right cannot be conferred so far as that suit is concerned by any enactment which comes into force during the pendency of suit. And reliance is placed for these contentions on two decisions of Judicial Committee, *Colonial Sugar Refining co. Ltd. v. Irving*[1] Delhi Cloth and *General Mills Co. Ltd. v. Income-tax Commissioner, Delhi*[2] and on a Full Bench decision of this Court, *Ram Singha v. Shankar Dayal* [3]Colinial Sugar Refining Co. Ltd. v. Irving (1905) 1905 A.C. 369 was an Australian case which went up to Privy Council. The question which arose in that case was whether the right of appeal to Privy Council which existed in favour of a suitor on the date when the claim was raised was taken away by subsequent enactment of Australian Commonwealth Judiciary Act, 1903, which allowed an appeal to the High Court of Australia and their Lordships' answer was in the negative. The suitor had taken the appeal to Privy Council and the respondent filed a petition that the appeal was incompetent. Lord Macnaghten in delivering the judgment of their Lordships observed as follows:As regards the general principles applicable to the case there was no controversy. On the one hand it was not disputed that if the matter in question be a matter of procedure only, the petition is well founded. On the other hand, if it be more than a matter of procedure, if it touches a right in existence at the passing of the Act, it was conceded that, in accordance with a long line of authorities extending from the time of Lord Coke to the present day, the appellants would be entitled to succeed. The Judiciary Act is not retrospective by express enactment or by necessary intendment. And therefore the only question is, was the appeal to His Majesty in Council a right vested in the appellants at the date of the passing of the Act, or was it a mere matter of procedure? It seems to their Lordships that the question does not admit of doubt. To deprive a suitor in a pending action of an appeal to a superior tribunal which belonged to him as of right is a very different thing from regulating procedure. In principle, their Lordships see no difference between abolishing an appeal altogether and transferring the appeal to a new tribunal. In either case there is an interference with existing rights contrary to the well-known general principle that statutes are not to be held to act retrospectively unless a clear intention to that effect is manifested.

5. To the same effect is the law Lal laid down in the other two cases mentioned above. And the only question is whether it applies to this case? We are dealing here with a question of court-fee and it has been remarked in B.B. and *C.I. Ry. Co. v. Mitthu*[4] that the question whether court-fee should be paid or not is really a matter that is important from the point of view of Government

and Government alone.

6. No suitor has a vested right to insist that during the pendency of a litigation which a suitor has started the enactment relating to court-fee shall not be charged and the fee leviable shall not be increased or reduced either with regard to future applications or with regard to future appeals and he would be entitled to carry no proceedings on the basis of law as it stood when the plaint was filed even though the law is different when he comes to file an appeal or to make an application. It is also not disputed that the Legislature can pass an enactment prescribing procedure for determining the amount of court-fee which is payable on a plaint and such a procedure would be binding on a suitor although it may not have been in existence on the date when the plaint was filed. Now this is what has taken place in the case which we are considering. By Section 24-A, Court-fees Act, the statute has appointed Inspectors of Stamp by Section 6, Sub-clause (3); these Stamp Reporters are authorised to examine plaints and report deficiency and the Court is required to pass orders on the report, and by Section 6-A a right is given to a suitor to appeal against that order. We therefore think that the right of appeal given to a suitor is a part of procedure relating to determination of court-fee and is purely a matter in which the Crown is interested and in which neither the plaintiff nor the defendant has such a vested right as cannot be affected by a subsequent enactment and the rule enunciated by the Privy Council is not applicable to such a case. The Court-fees Act of 1938 which allows an appeal against the order demanding Court-fee does not take away any right which was vested in the plaintiff on the date when he filed the plaint; it only confers upon him new right and we do not think it takes away any right which was vested in the defendant either and though it may be true that the defendant can object if a plaint is not properly stamped and the defendant may also have a right to have this matter determined by a Court he has no vested right in the procedure by which it is to be determined and this procedure can be changed and a change in procedure cannot be said to deprive him of any vested right. If the respondent's contention be correct, that a suitor has a vested right in the question of court-fee and the law relating to court-fee which was prevalent on the date when the plaint was filed cannot be changed by a subsequent enactment during the pendency of suit, then it must follow that a suitor will be entitled to file his appeal at a time when new enactment is in force on the basis of old law. We cannot accede to this contention and in our view the preliminary objection has no force and the appeal is competent.

7. Now as to the merits of the case : we are of opinion that the plaintiff's applications for amendment of plaint should have been granted. The trial of the case we have already stated had been stayed at the time when application for amendment was made. A suitor has a right to amend his plaint in any manner he likes and so long as amendments prayed for are not contrary to law, or are likely to lead to injustice they should be granted. No such case was made out against these amendments and in our opinion they were wrongly refused. We further think that the opportunity should have been given to plaintiff to prove if she could the nature of property in dispute and whether the garden in dispute was revenue paying land or not. Mr. Baleshri Prasad contends that orders refusing amendments are not open to appeal because no appeal is provided and they are not liable to revision because they are interlocutory orders and the case has not yet been decided and no revision can lie till the case is decided and no revision in fact has been filed. We think that when an appeal lies against an order directing payment of court-fee incidental orders which lead up to it can be set right. We also think that so far as the question of court-fee is concerned a case has been decided within the meaning of Section 115, Civil P. C, but it is not necessary to express any final opinion upon these contentions as Mr. Man Singh, the counsel for appellant, states that

his client intends to present a fresh application for amendment of plaint incorporating his previous applications. We therefore grant leave to the plaintiff-appellant to make a fresh application in the Court of the Civil Judge where the suit is pending for amendment of plaint in such manner as the plaintiff is advised. We further direct that if such an application is made, the amendment may be allowed and on the amended plaint the question of court-fee may be considered afresh and be disposed of according to law.

Cases Referred.

1(1905) 1905 A.C. 369
2('27) 14 A.I.R. 1927 P.C. 242
3('28) 15 A.I.R. 1928 All. 437
4(31) 18 A.I.R. 1931 All. 659