LAHORE HIGH COURT

Prithvi Raj

Vs

D.C. Ralli

(Mahajan, J.)

04.10.1944

JUDGMENT

Mahajan, J.

1. This is an appeal from an order rejecting a plaint under the provisions of Order 7, Rule 11, Civil Procedure Code, on account of refusal in the payment of court-fee on the plaint as directed by the Court. This was an ordinary suit by a Hindu son to challenge a decree passed on the foot of a mortgage against the father and the grand-father of the plaintiff. The son challenged the decree on the ground of want of consideration and necessity and further on the ground of immorality and illegality of the debt. The plaint was valued at L 10 for purposes of court-fee and L 30,000 for purposes of jurisdiction. An objection was taken on behalf of the defendants that the plaint was not properly stamped and that it should be stamped ad valorem on the valuation of the property, that is, court-fee should be paid on the sum of L 30,000. This objection prevailed in the trial Court with the result that the plaintiff was called upon to pay the requisite court-fee. This he declined to do and hence his plaint was rejected.

2. The determination of the question of court-fee depends on whether the case is governed by the provisions of Section 7, Clause (iv), Sub-clause (c), Court-fees Act, or by the provisions of Article 17, Sub-clause (iii) of Schedule 2. In other words, the question resolves itself into this, whether the plaintiff can get an effective declaration in this case without praying for a consequential relief. The mortgage has now merged into a decree of Court and this decree against the father is executable against the share of the son in the mortgaged property and is binding on the son till set aside. If the matter rested only at the mortgage stage, a pure declaratory relief could have been effectively given to him and it would have ended the matter. I asked Mr. Mahboob Elahi, learned Counsel for the appellant, whether his client could be given a declaratory decree which would help him and stop-the creditor in executing the mortgage decree. He very frankly conceded that a pure declaration would be of no use and unless the decree was set aside by appropriate proceedings it would remain executable. If that is so, then, the setting aside of a decree is a consequential relief and a further relief in this case and, therefore, the case

must fall under the provisions of Section 7(iv)(c) and not under the provisions of Schedule 2, Article 17. It may be stated that it is a well-established proposition of Hindu law that a decree against the father is a good decree against the son though the son has been given a special remedy for setting aside the decree on the ground of a few special defences that are open to him. These are those defences which are not open to the father. In other matters the father effectively represents the whole family; because the father cannot take up those special defences which are only peculiar to the son, to that extent he cannot be said to represent the whole estate. But that proposition does not lend colour to the argument that the decree can be ignored by the son though it is quite correct to say that he is entitled to have it set aside if he establishes those defenses that are peculiar to him.

3. In my view, therefore, it is essential in a suit of this nature, where a decree has been obtained on the foot of a mortgage, to ask for setting aside of the decree as a consequence to the declaration claimed and to pay court-fee under the provisions of Section 7(iv)(c). The view that I have taken of this matter was taken by a bench of this Court in *Sohindar v Shankar*[1] and that view of the Division Bench has now been upheld as the correct view of the law on the subject by a Full Bench of this Court in *Mt. Zeb-ul-Nisa v. Din Mahammad*[2] of the report the following observations occur:

> For instance, when a sale or mortgage of joint family property is effected by a manager of a joint Hindu family, the alienation is binding on the other members of the family until and unless it is set aside. Similarly a decree passed against the manager will be binding on the other members of the family. If, therefore, a coparcener sues for a declaration that such an alienation or decree is null and void, the declaration must, I think, be held to include consequential relief in the same way as in those cases in which the plaintiff is himself a party to the alienation or the decree, which is sought to be declared null and void.
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> The Full Bench, therefore, has settled the law on the subject and we are bound by that decision. In my view, the learned Subordinate Judge rightly held that ad valorem court-fee was payable on the sum of L 30,000. The plaintiff himself had valued the suit for purposes of jurisdiction at that figure and the above mentioned Full Bench has also settled the question that that must be taken to be the value for purposes of court-fee. The result, therefore, is that this appeal is without force and I would therefore dismiss it with costs.

Harries, C.J.

4. I agree.

[1] A.I.R. 1936 Lah. 166
[2] A.I.R. 1941 Lah. 97