

MANU/BH/0103/1922

Equivalent Citation: AIR1922Pat615, 68Ind. Cas.700, 68Ind. Cas.700

IN THE HIGH COURT OF PATNA

Decided On: 01.08.1922

Appellants:**Ramsumran Prasad and Ors.**

Vs.

Respondent:**Gobind Das**

Hon'ble Judges/Coram:

Thomas Fredrick Dawson Miller , C.J. B.K. Mullick , Jwala Prasad , W.S. Coutts and Das , JJ.

JUDGMENT

Thomas Fredrick Dawson Miller, C.J.

1. This matter came before a Division Bench on a question of Court fees in an appeal preferred to this Court on behalf of the plaintiffs. The plaintiffs as the reversionary heirs of Benarsi Pershad instituted the suit to recover possession of a portion of his estate to which they were entitled as reversionary heirs on the death of his widow Jainti Kumari. The defendant claims to be in possession of the property in suit under a deed of gift executed by Jainti Kumari during her life time. She died in 1916 and the plaintiffs on endeavouring to obtain possession and to have their names entered in register D in the Land Registration Department were opposed by the defendants who set up the deed of gift executed by the widow. The plaint alleges that the plaintiffs are the next reversionary heirs of Benarsi Pershad and that the property in suit formed part of his estate, that his widow Musammat Jainti Kumari, after his death, name into possession by right of inheritance as a Hindu widow and that on her death the plaintiffs became entitled to possession, but that their possession was opposed by the defendants who set up a deed of gift executed by Jainti Kumari. They further plead that the deed of gift made by the widow is not legally binding on the plaintiffs and that the defendant is not entitled to retain possession. There are other allegations which it is unnecessary to refer to in detail. In the prayer portion of their plaint they claim the following reliefs:

That on consideration of the above facts the Court may be pleased to hold that the properties in dispute constitute the estate of Babu Benarsi Pershad, that the plaintiffs, as reversionary heirs of the said Babu, are entitled to get possession of the properties in dispute since the death of Musammat Jainti Kumari, that it is illegal on the part of the defendant not to give up possession of the properties, and that the defendant's possession is quits illegal and wrongful.

That on adjudication of the above points a decree may be passed in favour of the plaintiffs in respect of the properties in dispute by dispossessing the defendant or such person as may be found in possession at the time of delivery of possession.

2. With their plaint the plaintiffs deposited a Court-fee upon a valuation of 10 times the Government revenue, treating it as a suit for possession of land under Section

7(v) of the Indian Court Fees Act. On appeal to this Court they again paid the fee calculated on the same basis with their memorandum of appeal, The Stamp Reporter, whose duty it is so see that the proper fee is attached to the memorandum of appeal, reported that the fee payable in such a case was that provided by Section 7(iv)(c) of the Court Fees Act, which provides for suits to obtain a declaratory decree or order where consequential relief is prayed, in which case the stamp fee payable is an ad valorem fee according to the amount at which the relief sought is, valued in the plaint or memorandum of appeal. If the fee is payable under Clause (iv) and not under Clause (v) of the section, the plaint and the memorandum of appeal were both insufficiently stamped by a sum of Rs. 1,025. The question came up before the Taxing Officer who referred it to the Taxing Judge, who held that the case fell within, Section 7 Clause (iv) (c) of the Court Fees Act and that on the memorandum of appeal the deficit Court-fee should be paid. Upon this question his decision as to the fee payable on the memorandum of appeal is final and the deficit has been paid. The question whether the deficit payable on the plaint should be deposited before the appeal should proceed was placed before the Bench for determination. As there appeared to be some conflict of opinion between the decision in the case of Khetra Mohon Mohapatra v. Ganesh Lal Pandit 61 Ind. Cas. 565 : 6 PLJ 101 : 2 PLT 607 and the case of Ram (sic) Jawhi Tewari v. Mhacdeo Upadhyaya decided by the Taxing Judge, Mr. Justice Roe in August 1917, First Appeal No. 242 of 1917 the Division Bench thought that the question should be heard by a Special Bench and it now comes before us for determination.

3. The question is, whether the present suit is one to obtain a declaratory decree where consequential relief is prayed under Clause (iv) (c) of Section 7, in which case the fee paid on the plaint is deficient by Rs. 1,025, or whether it is a suit for the possession of land under Clause (v) of that Section. A practice appears to have sprung up in the subordinate Courts of this Province, and possibly in other Provinces, of claiming declarations in cases where such relief is altogether unnecessary. This practice frequently gives rise to questions of some nicety as to what is the proper fee payable in such cases. In cases where such a declaration has been claimed, although it is not necessary in the particular case to enable the plaintiff to obtain possession of property or other relief for which the suit is really brought, it has sometimes been held that if he frames the suit in that way he must pay a Court fee upon a suit so framed. Further, where the plaintiff claims relief to which he is not entitled until some decree or alienation of property which stands in his way has been avoided, or until his legal character or title, which has been called in question, has been declared by a decree of the Court it has generally been held that such a suit comes under Clause (iv) (c) of the section, even though the declaration which it is necessary for him to obtain before the further relief can be granted has not been in terms asked for in the plaint. In the present case the plaintiff asks for an adjudication upon certain points and for a decree in his favour for delivery of possession by dispossessing the defendant. He does not in terms ask the Court for any declaration either as to his legal character or title or as to the invalidity of the gift in favour of the defendant. The Court is in all cases bound to adjudicate upon the matters in issue between the parties and it is unnecessary for the plaintiff to pray that this should be done. The real relief which the plaintiff seeks is delivery of possession of the property by dispossession of the defendant, and if he asks for a decree in those terms when he is not bound first to ask for a declaration before such relief can be granted I do not think that, merely because he asks the Court to adjudicate upon the matters in issue, the suit should be treated as a suit to obtain a declaratory decree with consequential relief. The real question for determination appears to me to be whether or not the plaintiff can obtain in the present suit a decree for possession without first seeking a

declaration that the gift to the defendant by Jainti Kumari is not binding. If a gift in such circumstances is binding as against the reversioner until it is set aside by the decree of the Court then it is, in my opinion, essential that he should first ask for a declaration setting it aside. This question appears to me to be governed by the decision of the Judicial Committee in *Bijoy Gopal Mukerji v. Krishna Mahishi* Debt 34 AC 329 : MANU/PR/0017/1907 : 11 CWN 424 : 5 CLJ 334 : 9 Bom LR 602 : 2 MLT 133 : 17 MLJ 154 : 4 ALJ 329 : LR 34 I. A. 87 where it was decided in a suit by a reversioner on the death of a Hindu widow to recover Immovable property of her husband, of which the widow had granted a lease for a term extending beyond her own life, that the reversioner might at his option affirm the alienation or treat it as a nullity without the intervention of any Court, there being nothing to set aside or cancel as a condition precedent to the heir's right to recover the property. In that case the plaintiffs had in fact by their plaint prayed for a declaration that the lease was inoperative as against them and further asked for delivery of possession. It was held, however, that it was not necessary for them to claim a declaration and that they might merely have claimed possession leaving it to the defendants to plead and (if they could) prove the circumstances which they relied on for showing that the lease or any derivative dealings with the property were not in fact voidable but were binding on the reversionary heirs. Their Lordships accordingly held that Article 91 of the Limitation Act which limits to three years the period for bringing a suit to cancel or set aside an instrument was no bar to a suit for possession after the three years had expired.

4. It follows, therefore, that in the present case there was no necessity for the plaintiff to seek a declaration that the gift was not binding as a necessary preliminary to his right to recover possession nor did he in fact do so. I can see no reason why the wording of the prayer portion of the claim which asks the Court to consider and adjudicate upon the matters alleged in the plaint and then grant a decree for possession should be interpreted as asking for a declaratory decree. The Court was bound to determine the questions in issue and the plaintiff was not bound to seek a declaration in the form of a decree. The only decree asked for was one for possession after dispossessing the defendant and the rest of the prayer was merely unnecessary surplusage which I regret to say is so often a distinctive feature of the pleadings which come before us.

5. The cases of *Ugra Mohan Chaudhuri v. Lachhmi Prasad Chaudhuri* 56 Ind. Cas. 422 : 5 PLJ 339 : (1922) P 6 and *Khetra Mohan Mohapatra v. Ganesh Lal Pandit* 61 Ind. Cas. 565 : 6 PLJ 101 : 2 PLT 607 were relied upon by the learned Government Advocate who appeared on behalf of the Board of Revenue. In the former case the plaintiffs' claim to recover a large estate depended upon the validity of his adoption which had been distinctly challenged and he brought the suit to establish his status as an adopted son as well as to recover the estate. It was, therefore, held that the suit was one for a declaratory decree with consequential relief. In the second case the plaintiff asked in terms for a declaration that she was the sole heir of her father and that the defendants who claimed under a transfer from her mother when in possession of the estate as a Hindu widow had no right to the properties in suit. Even if such a declaration was not necessary the plaintiff asked for it and it was competent to her to do so. The fee in both cases was held to fall under Section 7(iv)(c) of the Act. Those cases however, do not afford any authority for the proposition that where a declaration is neither necessary nor in terms asked for the suit should be treated as one coming under Clause (iv) (c) of the section.

6. It was further argued that as the Deputy Collector had refused to enter the

plaintiff's name in the register he was bound to seek a declaration of big title. I am unable to follow this argument. The title of the plaintiff in no way depended upon the act of the Deputy Collector nor was anything done by that officer an obstacle which required to be removed before the plaintiff could assert his title and claim possession. In my opinion the fee paid on the plaint was the proper fee and the cage tare within Clause (v) and not Clause (iv) (c) of the 7th Section of the Court Fees Act. The plaint was properly stamped and the appeal should be allowed to proceed.

B.K. Mullick, J.

7. I agree.

Jwala Prasad, J.

8. I agree with the order proposed by my Lord the Chief Justice.

W.S. Coutts, J.

9. I regret I am unable to agree with my Lord the Chief Justice and my learned brothers.

10. As I read the plaint, the suit is one for a declaratory decree with a consequential relief, and this being so, the Court-fee is payable under Section 7(iv)(c) of the Court Fees Act. The Court Fees Act is a purely fiscal Act, and in deciding what Court-fee is payable on a plaint, the question of whether any relief asked for is necessary or not does not, in my opinion, arise.

Das, J.

11. I agree with the order proposed by my Lord the Chief Justice.

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