(1955) 09 AHC CK 0024

Allahabad High Court

Case No: Civil Revision No. 625 of 1950

Chief Inspector of Stamps		APPELLANT
	Vs	
Jash Pal Singh and Others		RESPONDENT

Date of Decision: Sept. 2, 1955

Citation: AIR 1956 All 168

Hon'ble Judges: Upadhya, J

Bench: Single Bench

Advocate: J. Swarup, for the Appellant;

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

Upadhya, J.
This is a revision by the Chief Inspector of Stamps from an order passed by the Additional Civil Judge, Agra, holding that the court fee paid on the plaint in suit No. 52 of 1949 was sufficient.

2. The plaintiffs in the suit were the sons of one Kr. Nau Nihal Singh who had become an insolvent and the receiver appointed by the Court, defendant 1 in this case, had sold a house in which the plaintiffs alleged they had a three fourth share while only one-fourth belonged to the insolvent. The plaintiffs prayed for a declaration that the transfer by the receiver was illegal and not binding on them. The relief was claimed in the following language:--

"(1) It be declared that the sale of the ancestral residential house of the plaintiffs by the Official Receiver defendant 1 in favour of Babu Lal father of defendant 2 is illegal, without authority land not binding on the plaintiffs or on their three fourth share in the said house and therefore no right, title or interest in the said house or at least in the plaintiffs'' share did pass to defendant 2."

The Stamp Inspector, it appears, reported that ad valorem court-fee was payable and that a fee of Rs. 165/10/- was chargeable on the plaint and that there was a deficiency of Rs. 146/14/-. The learned Civil Judge, Agra, did not accept this report. He held that the precise language in which the relief had been couched was material and that the court fee paid was sufficient. -

3. In this revision learned counsel for the State has urged that Section 7(IV-A)(2), Court Fees Act was, applicable and that ad valorem court-fee should be held to be paid. Reliance was placed on a decision by Hon. Malik, J, (as he then was) in -- '' Kamta Nath Vs. Chiranji Lal and Another, . In that case the plaintiff''s father had become an insolvent when the plaintiff was a minor and the receiver appointed had taken possession of certain pro parties as belonging to the plaintiff''s father and wanted to sell the same. A suit had been brought on behalf of the plaintiff under the guardianship of his uncle for a declaration that the share of the plaintiff was not saleable by the receiver in insolvency proceedings.

The suit was decreed by the trial Court, but on appeal to this Court the -appeal was partly successful and this Court held that the village property was saleable and dismissed the plaintiff''s suit, with respect to that property. On attaining majority the plaintiff filed another suit on the allegation that his guardian was grossly negligent in the earlier litigation and he prayed for a declaration that a one-sixth share of the village property belonging to the plaintiff along with his father was not liable to be sold in the insolvency proceedings against his father. The plaintiff did not claim any other relief but added a prayer to the effect that the plaintiff be granted such other relief which might be properly granted to him under the circumstances of the case.

On a report of the Chief Inspector of Stamps ad valorem court-fee was ordered. The learned Judge deciding the case was of opinion that by merely putting this relief in vague words the plaintiff could not be said to be not claiming the relief which was so obviously claimed by him in the case. He was a party to the earlier litigation and the Court took the view that it was necessary for him to get that decree set aside or avoided before getting the consequential relief sought by him. That case is materially different from the case now before me. In this case the plaintiffs were no parties to the insolvency proceedings.

It is not contended that the father became an insolvent as representing the family and if the properties of the father alone were sold by the Official Receiver it cannot be assumed that the sale also purported to convey the properties of the ''plaintiffs. The plaintiffs claimed not the avoidance of, the sale toy the receiver of the property which belonged to their insolvent father. What they wanted was a declaration that the sale made by the receiver had no effect so far as their interest in the property was concerned. It was not necessary for them to ask for the setting aside of the sale made by the receiver at all.

4. Another case to which my attention has been invited is the one reported in -- '' Kamla Devi Vs. Sunni Central Board of Waqfs, U.P., Lucknow and another . This is a Division Bench case and enunciates the well-settled rule that the plaint has to be read as a whole and the Court is not to be guided merely by the lan guage used by the plaintiff and that the sub stance of the relief claimed should be looked at in order to find the amount of court fee payable. In this casa the facts were that one Qazi Mohammad Khalil has executed a deed of wakf of his pro perties and the appellant had purchased a share in this property from an heir of Qazi Mohammad Khalil. The Sunni Central Board notified the property of Qazi Mohammad Khalil as a wakf to which the provisions of the U. P. Muslim Wakfs Act applied.

The appellant filed a suit under Sub-section 2 of Section 5, U. P. Muslim Wakfs Act, 1936, for a declaration that the property was not subject to a wakf and that the appellant was the owner of the share which she had purchased from an heir of Qazi Mohammad Khalil. Applying the provisions of Sub-section IV-A of Section 7, Court Fees Act the learned Judges of this Court took the view that it was essential for the plaintiff to get the wakf executed by her transferor-predecessor avoided before she could get the declaration sought. It was held that substantially she did want that relief and the view taken was that the court-fee payable was u/s 7(IV-A).

This case also differs materially from the case now before me. In that case the plaintiff could not get the declaration she wanted without getting avoided the deed of wakf which had been executed by her predecessor (transferor''s ancestor). In the present case it is not) alleged that the plaintiffs derived any title through their father who had become insolvent and whose property had been taken possession of and sold by the receiver. They come to the Court on the basis of their own independent rights.

5. Another point that arises for consideration is whether this is a suit ''for or involving cancellation of or adjudging void an instrument securing money or other property having such value (market) value.'' The learned counsel for the State was not able to cite any authority to support the contention that a sale deed was a document securing property within the meaning of sub-s. IV-A of Section 7 Court Fees Act.

The expression ''an instrument securing money'' obviously means a document creating a charge or hypothecation bond or a mortgage deed or any other document intended to assure payment of money. The expression ''an instrument securing other property'' should have, unless, the context does not permit it, a similar meaning. A deed of sale hardly secures property. It conveys property and transfers the title of the property to the transferee.

For this reason also it appears that Section 7(IV-A) cannot be correctly said to cover the present case. The suit brought by the plaintiffs, does not involve the cancellation of the sale deed, and further, the sale deed itself does not appear to be a document

securing money or other property within the meaning of this statutory provision.

6. I am, therefore, of opinion that there is no ground to interfere, and this revision is accordingly dismissed.