

(1954) 10 AHC CK 0010

Allahabad High Court

Case No: F.A.F.O. No. 204 of 1947

Suraj Prasad

APPELLANT

Vs

Jagarnath Pd. and Others

RESPONDENT

Date of Decision: Oct. 12, 1954

Citation: AIR 1955 All 319 : (1954) 24 AWR 617

Hon'ble Judges: Malik, C.J; Gurtu, J

Bench: Division Bench

Advocate: M.B. Bhatnagar, for the Appellant; H.N. Seth, for the Respondent

Final Decision: Partly Allowed

Judgement

Malik, C.J.

This is an appeal u/s 6-A, Court-fees Act, and involves two short points.

2. A suit was filed for partition of joint family property. u/s 7(iv-A) in suits for partition the plaintiff has to pay court-fees as provided for in that sub-section. It appears that the plaintiff's father had entered into a compromise with his other coparceners and a partition deed had been executed by the father not only for himself but on behalf of the minor son as his guardian. This was necessary as in the partition suit the minor had also been impleaded as a party.

3. The plaintiff filed the suit, out of which this appeal has arisen, for partition of the property ignoring the previous compromise dated 13-1-1952. The plaintiff's contention was that the partition deed dated 13-1-1952, was invalid and he was entitled therefore to ignore it.

4. The lower court has held that before the plaintiff could claim partition of the property it would be necessary for him to have it adjudged, that the partition deed was void or voidable and the plaintiff must, therefore, pay court-fees in accordance with the provisions of Section 7(iv-A) which, is as follows:

"In suits for or involving cancellation of or adjudging void or voidable a decree for money or other property having a market-value, or an instrument securing money or other property having such value,

(1) where the plaintiff or his predecessor-in-title was a party to the decree or the instrument according to the value of the subject-matter, and

(2) where he or his predecessor-in-title was not a party to the decree or instrument according to one-fifth of the value of the subject-matter...."

It cannot be disputed that before the plaintiff. can claim partition it has to be adjudged that the deed, which was executed on his behalf by his father, was not binding on him. So the plaintiff has to pay court-fees u/s 7(iv-A) also.

5. Learned counsel has urged that the appellant was not a party to the document and he should, therefore, be made to pay court-fee at one-fifth of the value of the subject-matter and not on. the full market value.

6. Learned counsel has relied on a Division Bench ruling of this Court in -- B. Bhuwan Bhushan Shah Vs. B. Balbhaddar Das and Another, where it was held that "The word "party" in Sub-section (1) of Section 7(iv-A) refers to the person who is directly a party to the Instrument."

For this proposition reliance was placed on an unreported decision -- "Birbal Singh v. Jang Bahadur Singh", Civil Misc. Case No. 817 of 1940 (All) (B). The unreported decision relied on does not, however, go to that length. In that case the question for decision was whether when the Karta had executed a document on behalf of a joint family other members of the joint family could be deemed to be parties to that document. The learned Judges held that the other members of the family, who were not executants of the document, could not be said to be parties to the document. They, however, observed that:

"Ordinarily a person is said to be a party to an instrument when he had signed and executed it or possibly if he is a disqualified person when his guardian had signed and executed it for him."

Where, therefore, a minor is a party to the document and the document has been executed by his legal guardian, it cannot be said that he is not a party to the deed.

7. The only, other point that was raised and which remains for consideration is whether the plaintiff should pay separate court-fees u/s 7(iv-A) to have the partition-deed adjudged void or voidable and for partition of the property. It was held in -- " Chief Inspector of Stamps Vs. Suraj Karan " that where distinct reliefs arising out of the same cause of action are claimed in the suit court-fee is payable on the consolidated amount of all the reliefs. That decision is binding on us.

8. We, therefore, modify the order of the lower court to this extent that instead of the plaintiff being required to pay court-fee separately as directed by the lower

court the court-fee shall be payable on the consolidated amount of all the reliefs as indicated in "Chief Inspector of Stamps v. Suraj Karan (C)".

9. The appeal is, therefore, partly allowed and the order of the court below is modified. The plaintiff is directed to pay the court-fee within the time that may be allowed by the lower court on the amount mentioned above. The parties shall bear their own costs.