

(1880) 02 AHC CK 0012

Allahabad High Court

Case No: None

Sukh Dai

APPELLANT

Vs

Ram Prasad

RESPONDENT

Date of Decision: Feb. 28, 1880

Citation: (1880) ILR (All) 720

Hon'ble Judges: Robert Stuart, C.J; Straight, J; Spankie, J; Pearson, J; Oldfield, J

Bench: Full Bench

Final Decision: Dismissed

Judgement

Robert Stuart, C.J.

Since this case was before Spankie, J., and myself I have had an opportunity of perusing the plaint, and it cannot be doubted that by it, not only a declaration of right, but that consequential relief is also prayed for. And I may observe that in my opinion the plaintiff was quite entitled to frame her suit in this form and was in no way bound to await the eventualities of a mere declaration of right; and she appears to me to have wisely considered that her object would be most effectually attained by a plaint in the form which she adopted. The plaint shows how Sukh Dai the plaintiff acquired the house which is the subject of the suit, and that her claim as owner had been interfered with by the action of the purchaser of a decree against the house, or rather one-third of it, and that she had applied to have the sale postponed, but that the Munsif had rejected her application. The plaintiff therefore prays for the following relief:--"That her right be established in respect of the said house, or one-third of the said house, valuing Rs. 1,333-5-4, by virtue of the deed of gift dated the 26th March 1873, and for her possession and enjoyment thereof being protected from sale be established." There cannot be a doubt that consequential and substantial relief is here asked for, and that the court-fee payable is that provided by Clause iv, (c), Section 7 of the Court Fees Act, and that Clause iii., Article 17, Schedule ii of the same Act has no application.

2. This is my clear opinion irrespective of any rulings on the subject by this or by any other of the High Courts. But I have looked into all those printed for us in this case, and they all appear to me to have been correctly decided and to be in strict consistence with the opinion I have formed and stated in the present case, not even excepting the ruling by PeI.L.R. 1 All. 360arson, J., and Turner, J., in Chunia v. Ram Dial , for in that case all that was prayed for was a mere declaration of right. The decision of the Privy Council of the 6th March 1874, Thakur Din Tiwary v. Nawab Syed Ali Husain 21 W.R. 340, as also the rulings by the Calcutta and Bombay High Courts are as satisfactory as they are to my mind conclusive.

Pearson, J.

3. In the suit out of which this appeal has arisen it would seem that the plaintiff asked, not only for a declaration of the plaintiff's right to the property in question, but also for its protection or exemption from sale in execution of the defendant's decree. The latter prayer was, in my opinion, superfluous; for, if the plaintiff succeeded in obtaining a decree declaratory of his right, he could on the strength thereof apply to the Court executing the decree to release the property from attachment and to refuse to proceed to the sale thereof. As, however, he was so ill-advised in framing his suit as to pray for consequential relief which he did not need to obtain by means of the decree passed in the suit, it is impossible to hold that his suit is not one of the nature described under letter c, Clause iv, Section 7 of the Court Fees" Act. I confine my remarks to the particular case under reference, and refrain from noticing or commenting on the decisions to which our attention has been drawn. The distinction between suits under letter c, Clause iv, Section 7, and suits under Clause iii, Article 17, Schedule ii of the Act is plain; the former are suits for a declaratory decree where consequential relief is prayed; the latter are suits of the like kind where no consequential relief is prayed There is no scope for argument in the matter.

Spankie, J.

4. I concur.

Oldfield, J.

5. I am of opinion that in this case, looking to the relief sought, there is a claim for consequential relief, and the court-fees should be levied under letter c, Clause iv, Section 7 of the Court Fees" Act.

Straight, J.

6. Plaintiff rightly estimated the nature of the relief she was seeking in her suit, by paying a court-fee of Rs. 60-12-0 in the first Court. It was not a mere declaration of her right at which she aimed, but she sought consequential relief as well. The defendant-appellant has therefore inadequately stamped his petition of appeal and he will have to make up the deficiency.