Waman Vinayak Paranjpe Vs Narayan Hari

Court: Bombay High Court

Date of Decision: Aug. 15, 1945

Acts Referred: Court Fees Act, 1870 â€" Section 7(iv)(c)

Citation: AIR 1946 Bom 363 : (1946) 48 BOMLR 193

Hon'ble Judges: Sen, J; Rajadhyaksha, J

Bench: Division Bench

Final Decision: Allowed

Judgement

Sen, J.
This is an application by one of the defendants in a suit filed in the Court of the Second Class Subordinate Judge (as he then was)

at Roha. The plaintiff-opponent alleged that he was the son of Hari, the adopted son of Narayan, Narayan being one of the two sons of Ballal and

the other son of Ballal being one Antaji, whose wife was Laxmibai, that Laxmibai, after Antaji''s death, had sold property purporting to be Antaji''s

property in 1912 for Rs. 2,000 and that as the two brothers, Atvtaji and Narayan, had not separated, he was entitled, as the sole surviving co-

parcener, to the property which had been alienated by Laxmibai. Secondly, his case in the alternative seems to have been that even in case Antaji

and Narayan had become separate, he was entitled to challenge the sale-deed, as not being based on legal necessity, after Laxmibai''s death in

1930. His third alternative case was that the sale-deed which purported to have been effected by Laxmibai was in reality a mortgage and that,

therefore, he was entitled to redeem the property. The plaintiff, besides asking for possession and for redemption, asked for two declarations: (1)

that the document of 1912 was an illegal document and was not binding on the plaintiff and (2) that the properties were of the ownership of the

plaintiff. He paid court-fee on the basis of the relief as regards redemption valued at Rs, 2,000, which according to him was higher than the

valuation regarding the two declarations as aforesaid, the claims for possession being, according to the plaintiff, consequential to the declarations

sought by him.

2. The learned Judge held that the suit would, so far as the declarations and consequential reliefs sought by the plaintiff were concerned, fall u/s

7(iv) (c) of the Court-fees Act, 1870, that the plaintiff would be entitled to put his own valuation thereon at. not less than Rs. 5, and that, therefore,

the last relief prayed for by him being valued u/s 7(ix) of the Act at Rs. 2,000, such valuation would govern the amount of court-fees payable. He

also held that in case the market value of the property in question had to be determined, it must be the market value at the date of the alienation,

i.e. in 1912, the consideration stated in the document of sale being Rs. 2,000. In the result he held that the valuation for purposes of jurisdiction

could not be higher than Rs. 2,000, and, therefore, holding that he had jurisdiction to try the suit, he ordered the suit to be set down for further

hearing.

3. Mr. Dharap on behalf of the applicant-defendant has contended that in this case the declarations sought by the plaintiff, viz. a declaration that the

document in question was illegal and that the plaintiff was the owner of the property in question, were unnecessary, and that, therefore, the suit

being substantially one for possession, it should be valued u/s 7(w) of the Act. According to defendant No. 1, the valuation of the three houses in

suit should be taken as between Rs. 10,000 and Rs. 12,000'' arid the valuation of the land in suit at Rs, 300, so that if this valuation be accepted,,

the suit must, according to Mr. Dharap''s contention, be valued at a figure above the pecuniary jurisdiction of the Second Class Subordinate Judge.

We think that this contention must be upheld. In Bijoy Gopal Mukerji v. Srimati Krishna Mahishi Debi (1906) L.R. 34 IndAp 87: 9 Bom. L.R.

602 there was a suit for a declaration that an ijara granted by a Hindu widow of her husband''s estate had become inoperative as against the

plaintiffs (heirs of her husband) since her death, and for khas possession of the properties in suit with mesne profits It was held, inter alia, that there

was no necessity for the declaration prayed, or cancel or to set aside the ijara. In Kalu Ram v. Babu Lal I.L.R.(1932) All. 812 the reliefs claimed

were: (1) that the mortgage deed be declared (or adjudged) void and be cancelled; and (2) that the compromise, the preliminary decree and the

final decree be cancelled. It was held by a Full Bench that a relief for the cancellation of a decree, or to be more accurate, for the setting aside of a

decree, was not a declaratory relief only, and that the effect was not merely a declaration as to a person''s character or status as contemplated by

Section 42 of the Specific Relief Act, but that the effect would be to render the decree void and incapable of execution and would free the plaintiff

from all further liability under it. ''The claim, therefore, was held not to be merely for a declaratory relief falling under sch. II, Article 17(iii) or u/s

7(iv)(c) of the Act, Their Lordships expressed the opinion that the expression ""consequential relief"" in Section 7(iv)(c} meant some relief which

would follow directly from the declaration given, the valuation of which was not capable of being definitely ascertained and which was not

specifically provided for anywhere in the Act and could not be claimed independently of the declaration as a substantive relief. Their Lordships

further observed that if a substantive relief was claimed, though clothed in the garb of a declaratory decree with a consequential relief, the Court

was entitled to see what was the real nature of the relief, and that if satisfied that it was not a mere consequential relief but as substantive relief, it

could demand the proper court-fee on that relief, irrespective of the arbitrary valuation put by the plaintiff in the plaint on the ostensible

consequential relief. In Ramkhelawan Sahu v. Bir Swendra Sahi ILR (1937) Pat. 766 it was held by a Full Bench that Section 7(iv)(c) has

application to declarations properly so called, such, for instance, as declarations of public status, or a declaration that the plaintiff holds a public

office, or a declaration as to the meaning of a will or a trust-deed or other public document, and that it has no reference to the kind of declaration

in the sense of a finding of fact as to the plaintiff''s title necessary for granting a decree for possession.

4. Mr. Desai on behalf of the opponent has admitted that he could have brought a suit for possession without asking for a declaration of any kind.

But he has relied on the case of Tula Ram v. Dwarka Das ILR (1928) All. 610 which was decided by a single Judge who held that where the

plaintiff elected to ask for a declaration of his title as well as for possession of certain property, when he need only have sued for possession

simpliciter,, he would have to pay court-fees as on a suit for a declaration with consequential relief. We are unable to agree with that ""decision,

which cannot be said to be good law in, view of the later decision of the same Court in Kalu Ram v. Babu Lal. In Ram-khdawaii Sahu v. Bir

Surendra Sahi it was observed (p. 784):,

In every suit for possession the plaintiff cannot succeed unless he proves the facts necessary to establish his title, but the real) remedy which he

seeks is a decree for delivery of possession. The distinction between the remedy sought and the finding of fact necessary to-justify the granting of

that remedy may be simply tested by considering whether the plaintiff obtaining an order for possession but having been refused a formal

''declaration'' in the decree could come to the appellate Court with a complaint that he had not received the whole-of the remedy for which he had

asked.... The plaintiff should only allege the facts necessary to establish his title and that the defendant is wrongfully in possession. If he goes on to

claim, in the manner so beloved of pleaders, a declaration of title in addition to an order for possession, the Court may and should treat the case as

a claim for possession pure and simple, and ignore entirely the claim for a '' declaration of title.''

5. With respect we think that the principle enunciated in the two full bench cases; should govern the facts of the present case. Both those cases

emphasise the necessity for the Court to ascertain the real nature of the relief sought, irrespective of the form in which the prayer or prayers for

relief are framed; for instance, in every case it would perhaps be possible to ask for some kind of declaration, but it is obvious that every one of

such cases is not intended to be covered by the words used in cl.""(c) of ""s. 7(iv) of the Court-fees Act, and That in the present suit the claim for

the declarations in question cannot be treated as a claim really necessitated by the nature of the suit, the real or principal remedy sought by the

plaintiff being a decree for possession. The provisions of the Court-fees Act applicable, therefore, so far as that remedy is concerned, are those of

Section 7(v). We do not also agree with the view of the trial Court that the market value of the houses in suit should be determined by the

consideration for the transaction of 1912. That value must obviously be determined by reference to the rates prevailing in the market at the date of

the suit.

6. Accordingly, we must make the rule absolute with costs, set aside the order of the trial Court and direct that Court to determine the valuation

both for the purpose of court-fees and for the purposes of jurisdiction; and if it be found that the valuation for the purposes of jurisdiction is beyond

the limits of its jurisdiction, the plaint should be returned to the plaintiff for being presented to the proper Court.