(1912) 06 CAL CK 0006

Calcutta High Court

Case No: None

Deokali Koer	APPELLANT
Vs	
Babu Kedar Nath and Others	RESPONDENT

Date of Decision: June 19, 1912

Acts Referred:

- Specific Relief Act, 1877 - Section 42

Citation: 15 Ind. Cas. 427

Hon'ble Judges: Lawrence Jenkins, C.J; N. Chatterjea, J

Bench: Division Bench

Judgement

Lawrence Jenkins, C.J.
This appeal raises the question whether the lower Court has rightly held that sufficient Court-fee has not been paid on the plaint. Holding that it has not, the Subordinate Judge dismissed the suit. On the appeal being opened, a preliminary objection has been raised that the memorandum of appeal is insufficiently stamped. The considerations involved in this objection are substantially those which govern the appeal.

2. The suit has been treated by the plaintiff as one to obtain a declaratory decree where no consequential relief is prayed: and so, she contends, the proper fee both on the plaint and the memorandum of appeal is ten rupees.

3. The prayers to her plaint are framed in these terms:

RELIEFS SOUGHT FOR"

"(1) That it may be declared that the registered deed, dated 1st June 1596, for Rs. 14,000, executed by defendant No. 9 in favour of the father and ancestors of defendants Nos. 1 to 8, is collusive, nominal, invalid, fraudulent and without consideration; that the decree passed on the basis thereof, which is pending execution in No. 83 of 1909 in the first Court of Subordinate Judge at Arrah, has

been collusively and fraudulently obtained and it is ineffectual, inoperative and invalid, and that for the satisfaction of that decree, the mortgaged property in question mentioned in the said decree cannot be sold.

"(2) That if the Court finds any obstacle in granting the above relief, then it may be adjudicated and declared that without the deduction of the fair value of 3-annas shares of each of the Mauzahs Sudhia, Baradhi Siri-hira, Ainlasi Khurd, Pakdibar, Pipra Shankarwar, Amarba Sadusa and Bhadandra and excluding the same, the defendants Nos. 1 to 8 have no right to lay the whole charge on the remaning property in claim and to bring about the sale of the said property and that such decree is not fit for execution and it is invalid, ineffectual and inoperative.

"(3) That any other relief, which the Court may find the plaintiff entitled to, be granted to her against the defendants and that the costs of this suit with interest till realisation may be awarded against defendants Nos. 1 to 9.

4. In the view of the Subordinate Judge, the prayer in the plaint, though it is in form a mere declaration, practically asks for consequential relief, and it is as a result of this view that he arrived at the decision that is now impugned.

5. It is a common fashion to attempt an evasion of Court-fees by casting the prayers of the plaint into a declaratory shape. Where the evasion is successful, it cannot be touched, but the device does not merit encouragement or favour.

6. The history of decrees merely declaratory is interesting, and a consideration of it may help to a solution of the question involved in this appeal. Such decrees are an innova-tion, and they first obtained authoritative sanction in England by Section 50 of the Chancery Procedure Act, 1852. Before this, it was not the practice of the Court in ordinary suits to make a declaration of right except as introductory to relief which it proceeded to administer (Set on Decrees).

7. Seven years later, India followed suit with Section 15 of the CPC 1859, where it was enacted that no suit shall be open to objection on the ground that a merely declaratory decree or order is sought thereby, and it shall be lawful for the Civil Courts to make binding declarations of right without granting consequential relief. By Act X of 1877, the CPC of that year, this section was repealed, but its place had been already taken in anticipation by Section 42 of Act 1 of the same year, the Specific Relief Act. That section provides as follows: "Any person entitled to any legal character, or to any right as to any property, may institute a suit against any person denying, or interested to deny, his title to such character a right, and the Court may, in its discretion, make therein a declaration that he is so entitled, and the plaintiff need not, in such suit, ask for any further relief:

Provided that no Court shall make any such declaration where the plaintiff, being able to seek further relief than a mere declaration of title, omits to do so.

8. It is in this section (apart from particular legislative sanction) that the law as to merely declaratory decrees, applicable in the circumstances of this case, is now to be found.

9. The terms of the section are not a precise reproduction of the provision contained in the Act of 1859 and the English law; in one direction they are more comprehensive, in another more limited. It is common tradition that the section was designed to be a substantial reproduction of the Scotch action of declaration; but whether this be so or not, is of no great moment. We have to be guided by its provisions as they are expressed. The section does not sanction every form of declaration, but only a declaration that the plaintiff is "entitled to any legal character or to any right as to any '' property:" it is the disregard of this that accounts for the multiform and at times eccentric declarations which find a place in Indian plaints.

10. If the Courts were astute--as I think they should be--to see that the plaints presented conformed to the terms of Section 42, the difficulties that are to be found in this class of cases, would no longer arise. Nor would plaintiffs be unduly hampered if the provisions of Section 42 were enforced, for it would be easy to frame a declaration in such terms as would comply with the provisions of the section where the claim was one within its policy.

11. Now what are the declarations that are sought in this case? None relate to the plaintiffs'' legal character, so only those are permissible which relate to " any right as to any property." Of the declarations in the first prayer of the plaint, none as expressed is a declaration of this character; it may be that the proposition at which the plaintiff aims is in some measure involved in those declarations, but that is not what is sanc-tioned by Section 42.

12. The second prayer is open to the same comment. The third prayer expressly seeks relief, though it is general in its terms. I fail then to see how this is Such a suit as Section 42 of the Specific Relief Act contemplates, and if it is not, then it is not a "suit to obtain a declaratory decree where no consequential relief is prayed," as sanctioned by law.

13. The proceedings of this suit confirm this view, for the plaintiff has successfully sought an interim injunction restraining the defendants, and at this moment the defendants are restrained by an injunction from pursuing the rights they assert to be theirs. That an injunction is consequential relief is, I think, clear; the language of the Specific Relief Act favours that view, and it is one that has the sanction of Indian decisions and also of the Court of Chancery in Marsh v. Keith 1 Dr. & Sm. 342 : 30 L.J. Ch. 127 : 6 Jur. (n.s.) 1182 13 L.T. 498 : 9 W.R. 115 : 127 P.R. 133.

14. I would only add this, that the limit imposed by Section 42 is on decrees which are merely declaratory, and does not expressly extend to decrees in which relief is administered, and declarations are embodied as introductory to that relief. For such declarations, legislative sanction is not required: they rest on long established

practice. But for all that, the Court should be circumspect and even chary as to the declarations it makes: it is ordinarily enough that relief should be granted without the declaration.

15. The result then is that the preliminary objection to this appeal must prevail. But we will give the appellant an opportunity of making up the deficiency of Court-fees, provided she pays the required balance within one month from this date. If that be done, then it will be open to the appellant to ask us to make a similar order in reference to the plaint.

N. Chatterjea, J.

16. I agree.