

(1998) 01 PAT CK 0032
In the Patna High Court
Case No : Civil Revision No. 804 of 1996

Amarendra Nath Verma and Others	Vs	APPELLANT
Bimleshwar Nath Verma and Others		RESPONDENT

Date of Decision : 15-01-1998

Acts Referred:

Citation : AIR 1999 Patna 10 : (1998) 46 BLJR 521 : (1998) 1 PLJR 428

Hon'ble Judges : M.Y. Eqbal, J

Bench : Single Bench

Advocate : Keshav Prasad Srivastava, Drona Charya, for the Appellant; S.K. Majumdar and Mukul Sinha, for the Respondent

Final Decision : Dismissed

Judgement

M.Y. Eqbal, J.—This Civil Revision application is directed against the order dated 7-5-1996 passed by Sub-Judge IV, Betiah, in Title Suit No. 13 of 1996, whereby the learned Court below directed the plaintiffs-petitioners to pay ad valorem Court fee as the suit falls u/s 7(iv)(c) of the Court-fee Act (hereinafter to be referred to as "the said Act").

2. The contention of the learned counsel for the petitioner was that the instant suit has been filed for partition and for declaration that the compromise decree passed in Title Suit No. 16 of 1983 is void and illegal and not binding upon these plaintiffs. Defendant No. 10 had filed the aforesaid Title Suit No. 16 of 1985 with respect to ancestral joint family properties and these plaintiffs had not been made party to that suit. It was further contended that the father of the plaintiffs has not made the defendant as Karta and manager of the joint family. So any signature made on the compromise is not binding on these plaintiffs. It was, therefore, contended that the suit is not barred under the provisions of the said Act. On the other hand, the contention of the defendant was that the plaintiffs are admittedly joint with their parents constituting Mithakshara Joint Hindu family under the Kartaship of the father of defendant No. 6. Consequently, the compromise entered into by their father himself in the capacity of 1 karta of the

branch is fully binding on the plaintiffs and the decree passed in the earlier partition Suit No. 16 of 1985 operates as res judicata against the plaintiffs. It was further contended that the plaintiff, in fact, seeks declaration with consequential relief and, therefore, the suit falls within the purview of Section 7(iv)(c) of the said Act.

3. I have heard counsels appearing on behalf of the parties at great length. It is well settled that question of Court fee must be considered in the light of the allegations made in the plaint and its decision cannot be influenced either by the pleas taken in the written statement or by the decision of the suit on merit. The entire allegation made in the plaint and the relief sought for has to be looked into for the purpose of determining whether the suit falls within the purview of Section 7(iv)(c) of the said Act. Before determining this question, it is, therefore, necessary to look into the plaint, a copy of which has been annexed by the plaintiff-petitioners in the supplementary affidavit. In paragraph 22 of the plaint the plaintiffs sought the following reliefs :

"(a) on adjudication of the facts of the case a preliminary decree of partition for 1/10th share be passed in favour of the plaintiffs and their minor brother, the defendant No. 8, in the partition claimed properties mentioned in Schedule Nos. II and III of the plaint.

(b) A pleader commissioner be appointed to carve out a separate patti of 1/10th share in all the joint family properties and in terms of the report of the pleader commissioner final decree be passed in favour of the plaintiffs along with their minor brother, the defendant No. 8.

(c) A decree for permanent injunction be passed restraining the defendants from ousting the plaintiffs along with their family members from the residential house described in Schedule No. II of this plaint and also from executing any type of deed with respect to the partition claimed properties.

(d) It be adjudicated and declared that neither the alleged compromise petition in terms whereby T. Section No. 16785 was decreed as also the alleged deed of gift dated 17-10-95 alleged to be executed by Mahamaya Verma in favour of the defendant Nos. 3 to 5 do not in any way affect the interest of the plaintiffs and the defendant No. 8 in joint family properties and are also not binding upon them.

(e), Cost of the suit be given to the plaintiffs.

(f) Any other relief or reliefs deemed fit and proper be also awarded to the plaintiffs.

4. In paragraph 21 of the plaint, the plaintiffs have valued the suit in the following manner:

"The suit is valued approximately at Rs. 1.8 crores for the purpose of jurisdiction and for the purpose of partition fixed Court-fee of Rs. 29.75 is paid. Further a Court-fee of Rs. 14.65 is being paid on Rs. 100/- the value of permanent

injunction and Court-fee of Rs. 1.50 is being paid on Rs. 10/- the value of temporary injunction. A total Court-fee of Rs. 45.90 is being paid over Rs. 1,80,00,110/- the total value of the suit for the purpose of jurisdiction."

5. The plaintiffs-petitioners, who are sons of Rameshwar Nath Verma. The case of the plaintiffs-petitioners, who are sons of Rameshwar Nath Verma is that their great grandfather Babu Bambahadur Lal, who was resident of village Usari, in the District of Chapra, have two sons, namely, Babu Tarkeshwar Nath Verma and Babu Man keshwar Nath Verma. Defendant No. 1 and 2 are the sons of Tarkeshwar Nath Verma, while defendant Nos. 3 and 4 are the sons of Bimleshwar Nath Verma. In the year 1926, the great grand father of the plaintiffs along with his two sons came over Bettiah town for settling there and purchased their residential plots measuring 4 kathas 4 dhoors out of the joint family fund. It is alleged that Tarkeshwar became teacher while Mankeshwar started cinema business. Babu Mankeshwar Nath Verma out of his own efforts established cinema business. However, Babu Tarkeshwar Nath Verma also left the service and joined in the business with his brother and both of them purchased residential houses in the year 1950 and also in the year 1953, out of their joint family funds, some land and houses were also purchased by them adjacent to the land purchased in the year 1926 and thereafter became compact block. The plaintiffs' further case is that cinema business nourished and developed when was mainly looked after by defendant Nos. 1 and 2. Both brothers, namely, Tarkeshwar and Mankeshwar acquired various properties in the town in individual name of their sons. However, Mankeshwar died issueless leaving behind his widow who remained joint with the sons of Tarkeshwar Nath Verma. It is further alleged that after the-death of both the brothers, joint family further acquired properties out of joint family funds. Besides landed properties, joint family established several other business viz. printing press, Oil Mill and brick kiln business in Bettiah. The plaintiffs then alleged that recently there has been some differences between the plaintiff and Smt. Mahamaya Verma, who sold some joint family properties and on protest by the plaintiffs she asked them to vacate the residential house as the entire house belonged to her. On enquiry the plaintiffs came to know that Smt. Mahamaya Verma has executed a fraudulent, fabricated and illegal deed of gift in favour of the defendants 3 to 5 and further alleged that she had filed Title Suit No. 16 of 1985 in collusion with Defendant Nos. 1 and 2: She has also in collusion with the defendants disposed of various properties and plaintiffs further learnt that the decree was passed in Title Suit No. 16 of 1985, on the basis of a compromise whereby the entire house was given to her although she had claimed only 1/6th share in the house. The plaintiffs further case is that their father was a simple man and he was given to understand that some sorts of partition as regards cinema business was made for the purpose of Income Tax and on that belief and in good faith he had only signed some papers which contained the signature of other brothers also. The plaintiffs' father was not made known about the partition suit and compromise decree passed therein and his signature was obtained in the compromise petition by fraudulent method. The

plaintiffs further alleged that their father did not sign the compromise as karta for and on behalf of the joint family members including the petitioners and therefore, the decree is not binding on them. It is further alleged that the father of (he plaintiffs had 1/30th share in the joint family properties which were made the subject-matter in that previous suit and he had no legal right even to enter into the alleged compromise. On these backgrounds the plaintiffs prayed for reliefs referred to herein above.

6. From going through the entire allegations made in the plaint it is manifest that the plaintiffs sought partition after getting declaration that the compromise decree passed in the earlier suit is fraudulent and is not binding on them. The plaintiffs further sought a declaration that the gift deed and the other sale deed executed by defendant transferring the suit properties do not have any effect in the interest of the plaintiffs. It is, therefore, clear that the relief of partition claimed by the plaintiffs cannot be granted unless and until the compromise decree and/or alienation made by the defendants stands in the way of the plaintiffs is not avoided and/or until their legal title and character is not declared. In such a situation, in my opinion, the suit of the plaintiffs falls under the purview of Section 7(iv)(c) of the said Act. At this juncture, I must take notice of the decision of Dawson-Miller C. J. and Coutts, J. in the case of *Rachhya Raut v. Chandoo* AIR 1923 Pat. 113 to the effect that if in a partition suit in the forefront of their prayer in the plaint, the plaintiffs asked for a declaration of their title and possession. They are claiming, under the guise of a partition suit, a declaration of their title and they must pay ad valorem Court-fee. The aforesaid principle subsequently followed in the case of *Kanhaiya Lal Vs. Baldeo Lal and Others*, .

7. In the case of *Hasan Mirza and Another Vs. Syed Bakar Hasan*, this Court, following earlier Full Bench judgment reported in *Ramsumran Prasad and Others Vs. Gobind Das*, has held that the principle laid down by the Full Bench still continues to be this law. A passage from the decision of the Full Bench is worth to be quoted herein :

"Where the plaintiff claims relief to which he is not entitled until some decree or alienation of property which stands in his way has been avoided, or until his legal character or title, which has been called in question, has been declared by a decree of the Court, it has generally been held that such a suit comes under Clause (iv) (c) of the Section (S. 7) even though a declaration which it is necessary for him to obtain before further relief can be granted has not been in terms asked for in the plaint."

8. In the case of *Banwari Lal and Others Vs. Madan Mohan and Others*, of this Court while considering exactly a similar question has held as under :

"In the present case, however, the plaintiffs have stated that the deed of gift with respect to Sch. I property executed by Kashi Prasad, the last male owner in favour of his daughter-in-law *Ms. Bhup Kuer* was fraudulent and executed under undue influence and so was not binding upon the plaintiffs. With respect to this

allegation, it is obvious that the deed of gift upon the allegation in the plaint is voidable and not void and it is necessary for the Court to set aside the deed of gift before granting a decree for possession in favour of the plaintiffs. The ratio of the Full Bench case in *Ramkhelawan Sahu Vs. Bir Surendra Sahi and Others*, is, therefore, not applicable and, in my opinion, the learned Subordinate Judge was correct in holding that court-fee on the plaint should be computed in accordance with Section 7, Clause (iv) (c), Court-fee Act".

9. Last but not the least in another leading case of *Bholanath Chakravarty and Others Vs. Girish Chandra Chakravarty and Another, Imam, C. J. and Das, J.* while considering a similar question exactly on similar facts has held as under (at p. 408 of AIR):

"The crux of the matter is if the present suit brought by the petitioners is really a title suit in the guise of a partition suit or is it a partition suit pure and simple in which an unnecessary declaration as to the partition document of 1911 has been asked for. The contention of Mr. Mazumdar is that relief No. (a) relating to a declaration about the partition of 1911 is unnecessary, and he has relied on certain observations made by the Privy Council in *T.P. Pethar Parmal Chetty v. Munniandi Sarvar* (1908) 35 I.A. 98, the observation being at page 104. Dealing with the question of limitation raised in that case, their Lordships referred to a particular conveyance in that case and said that being an inoperative instrument, it did not bar the plaintiffs' right to recover possession and that it was unnecessary for the plaintiffs to have it set aside as a preliminary to obtaining the relief which he claimed. Mr. Mazumdar has urged that it is unnecessary for the petitioner to have the partition of 1911 set aside before they can obtain the relief of partition. The answer to Mr. Mazumdar's argument is that we must take the plaint as it stands. In construing the plaint the Court cannot import a relief which has not been asked for; nor can it ignore a relief which the plaintiff in specific terms asked for. It is now well settled that in so far as a suit purporting to be a suit for partition is really in the nature of a title suit, ad valorem court-fees are payable (see *Ramautar Sao Vs. Ram Gobind Sao and Others*, . It was pointed out in that case that a distinction must be drawn between voidable documents and wholly void documents and between declaration in the true sense and declaration so-called. In the case under our consideration, I doubt if the partition document of 1911, affirmed, later by a compromise decree to which the petitioners were parties, can be said to be void in the sense of the decision in *Ramautar Sao v. Ram Govind Sao*. In that case the document was executed by a minor who could not enter into a contract at all. In the case before us, three brothers of Rameshwar, according to the plaint, has signed the partition document of 1911; it had been affirmed also in the compromise decree. The plaint itself made these averments and then in specific terms asked for declaration that the partition document of 1911 was illusory, fraudulent, inequitable and void. We must remember that the word "void" is sometimes very loosely used, even to include documents which are really voidable and not ab initio void. In my opinion, the principle to be applied in the present case is the

principle laid down in the Full Bench decision of Mt. Rupia Vs. Bhatu Mahton and Others, namely, when in substance the plaint aims at setting aside a deed formally executed, or specifically asked for a declaration that the document is not binding, and also asked for possession by means of partition as a consequential relief, as has been done in the present case, Section 7(iv)(c) is attracted and ad valorem court-fee had to be paid. u/s 7(iv)(c), the plaintiff can put his own valuation, but if the valuation is arbitrary, the Court can fix a reasonable valuation (See Salahuddin Hyder Khan and Others Vs. Dhanoo Lal Choudhary and Others,

10 In the light of the principles of law discussed herein above, I am of the definite opinion that in the instant case, in view of the averments made in the plaint and nature of the reliefs sought for, ad valorem Court-fee is payable as the suit falls within the purview of Section 7(iv)(c) of the said Act. One more aspect has to be looked into i.e. the way the plaintiffs valued the suit. The plaintiffs themselves paid separate Court-fee on the relief of partition, on the relief of declaration and also on the relief on injunction, although for all purposes the suit has been valued for Rs. 1.8 Crores for the purpose of jurisdiction. The valuation so given by the plaintiffs in the plaint is not in accordance with the provisions of Section 8 of the Suit Valuation Act. It is well settled that if in a suit the plaintiffs seek declaration and also injunction together with partition then there shall be one valuation and ad valorem Court-fee on that shall be payable. In" that event also, I am of the opinion that the learned Court below was fully justified in directing the plaintiffs to pay ad volarem court-fee.

11. Having regards to the facts and circumstances Of the case, I, therefore, do not find any illegality and/or any infirmity in the order passed by the learned Court below. This Civil revision application has, therefore, no merit, which is hereby dismissed. No order as to costs!