(1954) 06 CAL CK 0028

In the Calcutta High Court

Case No : Civil Revision Case No. 3072 of 1952

Ananta Kumar Chatterjee APPELLANT

Vs

Jadunath Mukherjee and Another RESPONDENT

Date of Decision : 02-06-1954

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 7 Rule 1(i)

Citation : 59 CWN 726

Hon'ble Judges : Debabrata Mookherjee, J;Das Gupta, J

Bench : Division Bench

Advocate : Apurbadhan Mukherjee and Benoy Behari Sen, for the Appellant;Jitendra K. Sen Gupta and Bijan Behari Das Gupta, for the Respondent

Judgement

Das Gupta, J.—The petitioner instituted a suit in which he made prayers for the following reliefs :

(a) for a declaration that the plaintiff and the defendant No. 1 are equal partners of the business carried on in the name of the said Mr. J.N. Mukherjee;

(b) declaration that the land development and building scheme at Behala carried on in the name of proforma defendant No. 2 and mentioned in the plaint is a joint partnership business wherein plaintiff and defendant No. 1 have equal shares;

(c) declaration that other properties, investments, securities, deposits, bank, accounts or any other property of any kind acquired or made with the funds of the aforesaid partnership business form parts thereof;

(d) dissolution of the said partnership business;

(e) Accounts;

(f) Receiver;

(g) Distribution of the profits and assets of the partnership together with all accretions, and investments according to their shares;

(h) Costs; and

(i) any other relief or reliefs to which the plaintiff may be entitled in law or equity.

The relevant averments on the basis of which these reliefs were asked for were that in 1943 the plaintiff and defendant No. 1 entered into a partnership for carrying on some business in the way of execution of contracts in Cox''s Bazar, that the last contract executed at Cox''s Bazar was in the first part of 1945, that accounts of the said partnership business "were gone into on the 21st July, 1945, and on a rough estimate it appeared that there was a profit of Rs. 600000 and thereupon the defendant No. 1 issued a crossed cheque in favour of the plaintiff''s wife for Rs. 25,000 being the capital contributed by the plaintiff as aforesaid and as regards profits it was agreed that the defendant No. 1 would pay him Rs. 100000 in cash and that the remaining portion of his share of profits i.e., Rs. 200000 along with an equal sum from out of the defendant No. 1''s share of the said profits would be invested in a land development and building scheme at Behala and that the said business was conducted in the benami of the proforma defendant No. 2 and in it the said partners have equal shares as usual", that in July, 1949, the defendant No. 1 repudiated the aforesaid partnership and alleged that the plaintiff was an employee of his and as such was paid his remuneration; that on the 16th September, 1949, the plaintiff sent a notice dissolving the aforesaid partnership business on and from the 1st day of October, 1949, and demanding accounts. The plaintiff valued his relief tentatively at Rs. 5100 and paid court-fees on that basis undertaking "to pay additional court-fees on any additional sum that may be found due to him on accounting.

2. Obviously the plaintiff proceeded on the basis that this case was to be governed by the provision of section 7(iv) (f) of the Court-fees Act. Objection having been taken to this, the learned Subordinate Judge was of opinion that this was not a simple suit for accounts and as "the plaint contains clear admission that the plaintiff is out of possession and that the defendants deny that the plaintiff is their partner in these two businesses" and he asked for certain declaration, "he must show in his plaint the values of these properties and pay ad valorem court-fees upon them." He also directed a statement of valuation to be furnished under Order 7 rule 1 (i) of the CPC and said Mere tentative valuations will not do.

3. The decision of the question whether the learned Subordinate Judge acted illegally in the exercise of his jurisdiction depends on the answer to the question whether the suit is substantially one for dissolution of partnership and accounts. The mere fact that certain declarations were asked for besides the prayer for dissolution of partnership and distribution of profits and assets of the partnership would not attract the provision of section 7 (iv) (c) of the Court-fees Act. The law as laid down in a long line of cases of this and other High Courts is that the substance of the reliefs asked for in the plaint and not the mere form in which it

is asked for has to be considered by the Court in deciding the proper classification of the suit for the purpose of assessing court-fees. An application of this very principle is to be found in the matter of lunatic Nanda Lal Mukherjee, 35 C.W.N. 942, where Chief Justice Rankin accepted the contention that in a case, where the plaintiff alleged that he was in possession of joint property and virtually claimed the relief that his interest and possession might be protected from consequences of another co-sharer having dealt with the property on the basis that it was his own, but he included declaration of title and a permanent injunction amongst the reliefs he sought, the declaration of title and the claim for injunction were purely empty things and the appeal was ordered to be treated as one concerning partition liable to court-fees on that basis.

4. I am, therefore, clearly of opinion that the mere fact that declarations have been asked for is no reason to think that this is a case of declaration with a prayer for consequential relief What is to be seen is what relief in substance is being asked for in the plaint. From the averment of the plaint which I have already stated above I am clearly of opinion that what the plaintiff was averring was that he and the defendant No. 1 started a partnership business in course of which they engaged in some ventures at Cox''s Bazar, made some profits, had some calculation about the profits due and decided to invest part of those profits in another venture and then went on with that latter venture namely, the land development and building scheme at Behala; and that it was for the dissolution of this one partnership and accounts thereof and distribution of profits of the partnership that he asked for. Mr. Sen Gupta has tried to convince us that the plaint really avers the existence of two partnerships. Whether or not in fact the first partnership was closed and another partnership was started is not a matter for us to decide now. Reading the plaint as a whole and the repeated use of the word "the aforesaid partnership business" I have no doubt in my mind that the plaintiff averred the existence of one partnership and not of two. It appears to me to be equally clear that the reliefs asked for though couched in the form of a prayer for declaration and several other reliefs was in substance a prayer for relief for dissolution of partnership and accounts.

5. The learned Subordinate Judge has in my judgment erred in thinking otherwise and by passing the order he did, holding that tentative valuation would not do and asking the petitioner to submit a valuation under Order 7, rule 1(i) of the CPC he has acted illegally in the exercise of his jurisdiction. In a case like this the plaintiff is entitled to put a tentative valuation on his relief.

6. I would accordingly set aside the order passed by the learned Subordinate Judge and direct him to dispose of the case in accordance with law on the basis as held above that the plaint has been properly stamped on the tentative valuation which the plaintiff is entitled to make in the circumstances of this case. The Rule is accordingly made absolute with costs.

Debabrata Mookerjee, J.

I agree.

