

(1916) 07 CAL CK 0039
In the Calcutta High Court

Bagala Sundari Debi

APPELLANT

Vs

Prosanna Nath Mookerjee

RESPONDENT

Date of Decision : 14-07-1916

Acts Referred:

Citation : 35 Ind. Cas. 797

Hon'ble Judges : Teunon, J;Fletcher, J

Bench : Division Bench

Judgement

1. This is a Rule obtained by the petitioner, the plaintiff in a suit pending before the Subordinate Judge of the second Court at Burdwan, calling on the opposite party, the defendant in that suit, to show cause why the order complained of should not be set aside. The order complained of is the order of the learned Subordinate Judge as to the amount of the. Court-fee to be paid on the plaint in the suit instituted. Many cases have been cited on the section of the Court Fees Act dealing with the. point; but they are not uniform. It may be, as the learned Vakil who appears for the defendant says, that it is difficult to reconcile them. But after all, the Court has got to look at and see in each particular case what is the nature of the relief claimed and, for that purpose, it must look at the allegations that are contained in the plaint. Now, what do we find in this case? The plaintiff asks for a declaration that a certain decree is invalid. What is the nature of the decree that she asks to be declared invalid? The decree is purely a declaratory decree. It was an ex parte decree declaring that certain alienations were not valid, and all that the plaintiff asks in this suit is for a declaration that the declaration made in the former suit is not valid or binding on her. The decree in the former suit apparently contains no mandatory words and is not, as they say in this country, fit for execution. There is nothing in the former decree that can be executed; there simply remains a declaration of the Court as to the right of the parties. In this suit, all that the plaintiff asks is that the declaration in the former suit be declared not to be binding on her. She does not want any mandatory order as a consequence of that declaration, because the former decree contains in itself no mandatory words. Moreover, although the cases are

difficult to reconcile, this case is clearly covered by the decision of this Court in *Zinnatunnessa Khatun v. Govindra Nath Mankerjee* 30 C. 788. It may be that some later decisions are not easy to reconcile with that decision, but that decision has never been overruled. That decision, being a decision of this Court and the earliest on the point, is binding on us; and, as it is not distinguishable from the present case, we must follow it rather than the later authorities, if they do in fact cover this case, which we are not "satisfied that they do, because, in the sub-sequent cases, consequential relief was sought for. In this case, no consequential relief was sought and we must follow the decision in *Zinnatunnessa Khatun v. Govindra Nath Mukerji* 30 C. 788.

2. In the result, the present Rule must be made absolute. The order complained against is accordingly set aside and the Subordinate Judge is directed to admit the plaint on a Court-fee of Rs. 10. The defendant must pay to the plaintiff her costs in this Rule. We assess the hearing-fee at two gold mohurs.