
(1993) 03 AHC CK 0054
In the Allahabad High Court
Case No : F.A.F.O. No. 669 of 1987

Bhaiya Hardeo Singh and Another	Vs	APPELLANT
Dr. Shambhu Nath Singh and Others		RESPONDENT

Date of Decision : 31-03-1993

Acts Referred:

Court Fees Act, 1870 — Section 6A, 7

Citation : (1993) 3 AWC 1289

Hon'ble Judges : G.P. Mathur, J

Bench : Single Bench

Advocate : G.P. Bhargava and S.N. Srivastava, for the Appellant; R.N. Singh and S.N. Singh, for the Respondent

Final Decision : Dismissed

Judgement

G. P Mathur, J.—This appeal has been preferred u/s 6-A of the Court Fees Act against the Judgment and order dated 10-8-1987 of District Judge Ballia by which the Appellants have been directed to value the appeal regarding accounting in respect of income from house property at Rs. 30,000/- instead of Rs. 1,000/- and with respect to property of Thakur Ji at Rs. 96,000/- instead of Rs. 1,000/- and to make good the deficiency in the memorandum of appeal filed by them.

2. Dr. Shambhu Nath Singh and two others, Plaintiff-Respondents Nos. 1 to 3, filed suit No. 109 of 1974 in the court of Civil Judge Ballia against Bhaiya Hardeo Singh and Bhaiya Awadesh Singh, Defendants No. 1 and 3, who are the Appellants in the present appeal, are also against some other Defendants. The reliefs claimed in the suit are as follows:

(i) A decree for partition of 1/3rd share of the Plaintiffs in property mentioned in Schedule I, III, and IV and v. the plaintiff and for possession;

(ii) a decree for declaration that the Plaintiffs and the Defendants are beneficiaries of 1/3rd share each in the property given in Schedule II and also for

declaration that the Plaintiff no 1 and Defendant No. 2 are entitled to act as Joint-Sarvarakar and are entitled to jointly manage the temple and the property mentioned in schedule II of the plaint; and

(iii) Defendant no 1 be ordered to render accounts of the property mentioned In schedule II from 16-6-73, the day on which he refused to render accounts and onward & Defendant no 1 be ordered to reader accounts of the property mentioned in Schedule IV from 16-6-1973 the date in which he refused to render accounts an-1 onwards or for such period which the court thinks fit and proper till he continues to be in exclusive possession and management of the property mentioned in schedule II end IV of the plaint the additional court fee being payable in the execution department if found necessary and Defendant no 1 be ordered to render accounts of the property mentioned in Schedule IV from 16-6-1973, the date on which he refused to render accounts and onwards or for. such period which the court thinks fit and proper.

3. The learned Civil Judge Balia by his judgment and decree dated 30-9-1985 decreed the suit and granted several reliefs, she principal being that the Plaintiffs had 1/3rd share in the property described in Schedule I and III of the plaint and the Plaintiff No. 1 aid Defendant No. 2 were declared as Joint-Sarvarakars of the Thakur Ji and further the Plaintiffs were held entitled to an amount of Rs. 96.000/- from Defendant no 1 with regard to the income from Thakur Ji in respect of property described in Schedule-II for the period June 1973 to May, 1985 The Plaintiffs were also declared to be the owners of 1/3rd share in the house described in Schedule-IV and to an amount of Rs. 30,000/- from Defendant No. 1 as income of the house property from June, 1973 to September, 1985 on payment of requisite court fee in execution proceedings.

4. Feeling aggrieved by the judgment and decree of the learned Civil Judge the Defendants Nos. 1 and 3 filed an appeal before the learned District Judge, Ballia and valued the same at Rs. 11,163.17 P. The appeal was valued with regard to the decree for accounting at Rs. 1,000/- each in respect of Income from house property and from properly of Thakur Ji. The Plaintiff-Respondents objected to the valuation given by the Defendants claimed that as with regard to accounting a decree for Rs. 30,000/- had been passed with respect to house property and Rs. 96,000/- with respect to property of Thakur Ji, the valuation of the appeal should be put at the same amount and the Appellants should pay court fee according to law. This objection has been upheld by the learned District Judge and the Appellants have been directed to amend the memo of appeal and pay deficiency in court fee under the impugned order.

5. I have heard Sri S. N. Srivastava on behalf of the Appellants and S/Sri R. N. Singh and S. N. Singh on behalf of the Respondents and have also examined the record.

6 The Judgment of the trial court shows that with regard to relief for accounting a decree for Rs. 96.000/- has been passed in favour of the Plaintiffs in respect of

income from property of Thakur Ji and a decree for Rs. 30,000/- in respect of income from house property The trial court has further directed that the Plaintiffs will have to pay requisite court fee on aforesaid amount in execution. Apart from this relief, the Plaintiff's suit has also been decreed for partition of their 1/3rd share with regard to property described in Schedules I and III. It may be noticed here that the decree for accounting had been, passed in respect of property of temple which is described in schedule II and house property which is described in schedule IV of the plaint. The Plaintiff had not claimed any relief of partition with regard to the property described in Schedule II. It is therefore, clear that except for property Schedule IV. and for partition had been filed with regard to properties which are other than those regarding which a claim for accounting had been made It cannot therefore be said that the relief for accounting is a consequential relief which is based upon the main relief of partition Therefore, the Appellants are required to pay court fee separately for challenging the decree regarding partition and for accounting passed against them.

7. In Ragho Prasad and Others Vs. B. Pratap Narain Agrawal and Others, , a full bench of seven Judges has held that court fees on the memo of appeal against the final decree in a suit for accounts is to be paid u/s 7(iv)(b) and the Appellant has to value the relief which he seeks in the appeal at the amount by which he seeks variation of the final decree, in the appeal filed by the Appellants, they have prayed for setting aside the decree for Rs. 30,000/- in respect of income from house property and Rs. 96,000/- in respect of income from Temple which has been passed against them by the trial court Since the Appellants seek variation of the aforesaid decree of accounting which is a quantified amount they must value the appeal on the aforesaid amount and pay court fee on the said amount in accordance with Section 7(iv)(b) of the Court Fees Act.

8 Even If it is assumed that the relief for accounting is a consequential relief and is implicit in the claim for partition even then if the Appellants seek variation of the decree for accounting passed by the trial Court, they must pay court fee on the said amount. A similar contention was raised in Dhanji Ramji v. Kalhwi(sic) Ji Ram Ji AIR 1956 Nag. 175 wherein it was held that even if a Plaintiff ask for unnecessary reliefs so long as he ask for them, he should pay court fees upon them. It was also a suit for partition and accounting and as the Plaintiff had prayed for relief of accounting he was directed to pay court fees on the said relief as well. In Patiabhirama v. Subba Raman AIR 1952 TC 509 it was held by a full bench that in a suit for partition and accounting the relief by way of rendition of account or for recovery of Plaintiff's share and the profits as the case may be, constituted distinct relief for which separate court fee had to be levied.

9. It may be mentioned here that earlier, on 4-12-86 the learned District Judge Ballia had passed an order holding that he had no jurisdiction to hear the appeal and the same lay before the High Court for its valuation. This order was challenged by the Appellants by filing First Appeal From Order no 162 of 1981 and the judgment of this Court is reported in 1987 ALL 1212 Para 7 of the

reports show that it was the admitted case of the Appellant that the property described in Schedule-II of the plaint was not the Joint family property at the time of the institution of the suit. It was held that simply because the property belonging to the deity belonged to the Hindu Undivided Family in the past, it cannot be said that that partook the character of Hindu Undivided Family property. It was further held that the property shown in schedule II ceased to be the joint family property right on the date when it was endowed to the deity and therefore that had no nexus with the joint family property, partition of which was sought in the suit. It was on these findings that it was held that when the relief of accounting in respect of the income from the property of Schedule II is not at all necessary to be claimed in the suit for partition, it could not be held that the relief of accounting with regard to the income of the property of Schedule II was incidental or ancillary to the relief of partition and the two reliefs are quite separate having no connection with each other. Therefore, it is clear that the Appellants will have to pay separate court fee on the relief of accounting with regard to the income from property of Schedule II a decree for which has been passed and which is challenged in the appeal filed by them.

10. S. N. Srivastava has placed reliance upon *Tyotibati Chaudhrai v. Lackmeshwar Prasad* AIR 1930 Pat. 1, in support of his submission that the Appellants are not required to pay separate court fee on the decree for accounting which has been passed against them and which is challenged in appeal. In my opinion, this case has no application to the facts of the present case. There the accounts were claimed with regard to joint family property and the case proceeded on the principle that in absence of fraud or other improper conduct, the Karta is accountable only for the existing state of the property. As shown above, in the present case the Plaintiffs have claimed accounting with respect to that property which is not joint family property.

11. For the reasons mentioned above, there is no merit in the present appeal and the same is accordingly dismissed. The matter has become very old as the suit was filed in 1974 and the appeal before the court below is also pending since 1984, the learned District Judge shall try to dispose of the appeal as expeditiously as possible after the deficiency in court fee has been made good.