
(1939) 09 PAT CK 0020
In the Patna High Court

Bulakram and Another

APPELLANT

Vs

Ganga Bishun Chaudhuri

RESPONDENT

Date of Decision : 12-09-1939

Acts Referred:

Specific Relief Act, 1877 — Section 39, 42

Citation : AIR 1940 Patna 133

Hon'ble Judges : Harries, J; Fazl Ali, J

Bench : Full Bench

Judgement

Harries, J.—This is a Letters Patent Appeal from a judgment of Varma J. in a second appeal. The plaintiff-respondent brought a suit in the Court of the Munsif for a declaration that a certain mortgage, purporting to have been executed by him, was a forged document and of no legal effect. He also prayed for an injunction restraining the defendant from ever enforcing their supposed rights under such documents. The learned Munsif came to the conclusion that the mortgage was a genuine one and dismissed the suit; but on appeal, the lower Appellate Court held that the document was a forgery and granted the plaintiff the declaration sought for and the injunction. The defendants preferred a second appeal to this Court, but that appeal was dismissed with costs by Varma J., hence this Letters Patent Appeal. It has been strenuously argued on behalf of the defendants-appellants by Mr. Mehdi Imam that the decision of the learned single Judge cannot be sustained.

2. It is argued that the learned single Judge treated this suit as one u/s 42, Specific Relief Act. It is said that it was not a suit falling within that Section and consequently it should have been dismissed. Stress has been laid upon the form of reliefs sought by the plaintiff, and it is necessary to set them out in extenso. The reliefs were:

(1) On determining the above fact it may be held by the Court that the fraudulent mortgage bond dated 10th July 1935 has never been executed by the plaintiff and the aforesaid fraudulent deed forged, fraudulent, illegal and without

exchange of equivalence and which is and cannot be binding upon the plaintiff and on his property.

(2) After determining the Relief No. 1, the defendants may be prohibited for ever by issuing an order or injunction to enforce the said fraudulent mortgage bond.

(3) The costs of this suit with interest till the date of realization may be awarded to the plaintiff against the person and property of the defendants.

(4) Any other reliefs, besides the above to which, in the opinion of the Court, the plaintiff be deemed entitled, may be awarded to the plaintiff.

3. As pointed out by Varma J. the translation of the reliefs is not very happily worded but there is no difficulty in understanding the nature of the reliefs sought. The first relief is clearly for a declaration that a certain mortgage bond was a forged document creating no rights whatever in the property alleged to have been mortgaged. In short, it is a prayer for a declaration that the mortgage was null and void and not binding upon the plaintiff or his property. It has been contended by counsel for the appellants that such a declaration cannot be sought u/s 42, Specific Relief Act. That Section provides that 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 or 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...

The argument for the appellants is that what the plaintiff was asking for in this suit was not a declaration that he was entitled to a legal character to any right in property but rather a declaration that a certain instrument was null and void.

4. On behalf of the plaintiff-respondent, it is said that what the plaintiff is really asking for is a declaration that he is the owner of the property alleged to have been mortgaged free of all encumbrance. In both the Courts below and before the learned single Judge, the case seems to have been argued as a case u/s 42, Specific Relief Act. It is unnecessary to consider whether or not this declaration can properly be brought within Section 42, Specific Relief Act, because clearly it can be a claim for a declaration falling within Section 39, Specific Relief Act. This latter Section deals with suits for declaration that documents are void or voidable. Section 39 is in these terms:

Any person against whom a written instrument is void or voidable, who has reasonable apprehension that such instrument, if left outstanding, may cause him serious injury, may sue to have it adjudged void or voidable; and the Court may, in its discretion so adjudge it and order it to be delivered up and cancelled....

5. The declaration prayed for in this suit is, as I have said, in effect a declaration that the mortgage bond is forged and fraudulent and void. It is therefore a declaration falling within the ambit of Section 39, Specific Relief Act. It has been argued however that the suit cannot be regarded as a suit seeking a declaration

u/s 39 of the Act because consequential relief for an injunction was sought and no consequential relief by way of a cancellation of the document is prayed for. A plaintiff may bring a suit for a declaration that a document is void without seeking its cancellation, and if he does so, it is "open to the Court though there is no prayer for it to order the document to be delivered up and cancelled. The wording of the Section suggests that the Court may order cancellation, though there is no specific prayer for it.

6. This has been expressly held in a Division Bench case, AIR 1929 Mad 3961 and in a Full Bench 1. Kattiya Pillai v. Ramaswamia Pillai AIR (1929) Mad 896 case of five Judges, Kalu Ram Vs. Babu Lal and Others, . At p. 820 of this latter case, the learned Judge observed:

The Illustrations to the Section make it obvious that the relief is available even to persons other than parties to an instrument, and in respect of both void and voidable instruments. It is equally clear that a plaintiff need only ask for the instrument to be adjudged void or voidable and need not in express terms ask for it to be delivered up and cancelled. Even though no relief for cancellation is asked for, a Court may grant cancellation also. But this does not prevent a plaintiff from also asking in express terms a relief for its being delivered up and cancelled, if he feels that having it merely adjudged void or voidable would not be adequate for his purpose.

In the present case there is in substance a prayer that this document be declared void. The consequential relief asked for, namely an injunction, is not a very appropriate and satisfactory relief, and in my view it is unnecessary to grant the plaintiff an injunction. Even if the plaintiff had only applied for a mere declaration, it would still have been open to the Court to order this document to be delivered up and cancelled.

7. The suit can be treated as a suit for a declaration simpliciter u/s 39 and the Court can in its discretion order the document to be delivered up and cancelled. The findings of the lower Appellate Court are clear, that this document is a forgery and is therefore void. It is still in the hands of the defendants and the plaintiff must have a fear that it may be used against him. In those circumstances, it appears to me that this is a case where the plaintiff should not only have his declaration but the defendants should also be ordered to deliver up the document for cancellation. The document was required by law to be registered, and accordingly notice must be sent to the Registrar of the cancellation of the document.

8. The result therefore is that this appeal substantially fails. It is true that the learned single Judge upheld both the declaration and the injunction, and I am of opinion that the remedy by way of injunction is inappropriate. However, in the exercise of the discretion of the Court, I am of opinion that an order calling upon the defendants to deliver up this document for cancellation and that it should be cancelled upon delivery, should be substituted for the injunction. The form of

declaration will remain and the order as to cancellation substituted for the injunction. With that variation this appeal is dismissed.

9. It was argued by Mr. Mehdi Imam that as the decree was being varied to some extent the appellants should not be made to pay the costs. There is no merit whatsoever in the appeal and as it has been held that the defendants are holding a forged document, I see no reason whatsoever for depriving the respondent who has substantially succeeded of his costs in this Court. The respondent will therefore have the costs of this appeal.

Fazl Ali, J.

10. I agree.