

(1913) 01 CAL CK 0039
In the Calcutta High Court

Chandi Charan Laha and Others

APPELLANT

Vs

Manoranjan Chattopadhyaya and Others

RESPONDENT

Date of Decision : 06-01-1913

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 47 Rule 1
Court Fees Act, 1870 — Article 17, 7

Citation : 18 Ind. Cas. 275

Hon'ble Judges : Richardson, J; Cecil Brett, J

Bench : Division Bench

Judgement

1. These six appeals are against the order of the Subordinate Judge of Khulna, dated the 15th November 1910, granting applications to review orders previously passed by him on the 27th September last. Six complaints were filed by the present respondents on the 21st April 1909 before the Settlement Officer of Satkhira, District Khulna, praying for the following reliefs:

1. that decrees be passed declaring that the plaintiffs have a rent-free right under a taidad in the lands specified in each complaint and a right acquired by adverse possession and that they are not assessable with rent;
2. that decrees be passed for correction of the entries illegally and erroneously made in the khewat in respect of the aforesaid lands;
3. that the costs of the cases may be awarded to the plaintiffs, and
4. that the plaintiffs may get such other reliefs as they may be entitled to.

The principal suit was valued at Rs. 6,810 and the others at smaller sums.

2. These six suits were all transferred by the Settlement Officer to the Court of the Subordinate Judge, Khulna, for trial.

3. All of the complaints were engrossed with Court-fee stamps of Rs. 10 only as falling within the provisions of Clause (iii) of Article 17 of Schedule II of the Court

Fees Act, 1870, as being suits to obtain declaratory decrees where no consequential relief was prayed.

4. Objection was taken by the defendants that the plaints were insufficiently stamped, it being contended that as in each suit consequential relief was sought as well as a declaratory decree, they came within the provisions of Clause (c), Sub-section 4 of Section 7 of the Court Fees Act, and were liable to an institution fee in each according to the amount at which the relief sought was valued in the plaint. The objection was heard and allowed by the Subordinate Judge on the 27th September 1910. He held that an ad valorem fee must be paid in the case of each suit and directed the plaintiffs to supply the deficit fees within seven days from the date of the order.

5. Applications for review under Order XLVII, Rule 1 of the Civil Procedure Code, were put in by the plaintiffs (respondents) apparently within the seven days' grace given.

6. On the 15th November 1910, the Subordinate Judge granted the applications for review in all the cases and directed that his order of the 27th September 1910 should be discharged.

7. In dealing with the applications, the Subordinate Judge gave, as his reason for setting aside his order of the 27th September 1910, that it had been passed relying principally on the ruling of this Court in the case of Srinath Chandra Pramanick v. Secretary of State for India in Council 11 C.L.J. 158; 5 Ind. Cas. 141 but that it had been pointed out to him that this decision had been dissented from by a subsequent decision of this Court in the case of Satis Chandra Giri v. Gopal Chandra Roy 12 C.L.J. 638; 7 Ind. Cas. 627; 15 C.W.N. 110 and that one of the dissentient Judges was one of the Judges who had delivered the previous judgment. He was of opinion that the later decision had ruled that a suit u/s 106 of the Bengal Tenancy Act was a suit for a declaratory decree, that Rs. 10 was the Court-fee payable in all such suits. In reply to the objection raised that this was not a good reason for review under the provisions of Order XLVII, Rule 1 of the Civil Procedure Code, he remarked that, "apart from the Court's inherent powers to review its order when the ends of the justice demand it, it has not been shown to my satisfaction that I would be acting contrary to law in the way of reviewing the order that is complained of in the present instance."

8. Another objection was also raised that notices of the applications had not been served on all the defendants in the suits, as required by Order XLVII, Rule 4 of the Civil Procedure Code. The Judge, however, refused to allow it holding that as only those defendants who opposed the application had contended that the plaints were not sufficiently stamped and the other defendants had never appeared or pressed the objection, and as the applications for review were made in opposition to the contending defendants alone, it was sufficient that they were served with notices of the applications for review.

9. The present appeals are against the orders of the Subordinate Judge in all the

suits

10. The main grounds taken in support of the appeals are as follows:

(1) that the grounds on which the review in each case was granted do not come within the purview of Order XLVII, Rule 1 Clause (i) of the Code of Civil Procedure;

(2) that the present cases are distinguishable from the case of Satish Chandra Giri v. Gopal Chandra Roy 12 C.L.J. 638; 7 Ind. Cas. 627; 15 C.W.N. 110 on which the Subordinate Judge has relied, because these cases are being tried by a Regular Civil Court and not as in that case by a Revenue Officer;

(3) that in the present cases, consequential relief was sought; and

(4) that the applications for review should not have been granted without service of notices on all the parties to the suits as required by Order XLVII, Rule 4 of the Code of Civil Procedure.

11. For the respondents, on the other hand, a preliminary objection to the competency of the appeals is taken under Order XLVI(sic), Rule 7 Clause (i) in all the cases on the ground that the orders granting the reviews were not in contravention of the provisions of Rules 2 and 4 of the same Order.

12. In the present cases, it is admitted that notices were not served on some of the defendants in the suits. Sub-section 2 of Rule 4 provides that such notice shall be served as a necessary preliminary to the grant of the order for review, and there is in it no restriction that the notice need be served only on the opposing defendants, who had appeared when the order was passed which, it is sought to review. The Subordinate Judge was, therefore, in error in holding that the service of notices on the contesting defendants alone was sufficient and in rejecting the objection taken before him when the review was granted.

13. However, even if in the present cases no appeals lay, we are of opinion that as the cases are before us, we should proceed to deal with them under our revisional powers u/s 115 of the CPC and under Clause 11 of Section 12 of the Court Fees Act.

14. Dealing now with the first point taken on behalf of the appellants, we are of opinion that the ground on which the Subordinate Judge has granted the review of his previous order is not one falling within the provisions of Order XLVII, Rule 1 of the Code of Civil Procedure.

15. The later decision of this Court on which he has relied was not before him when he passed his previous order and it was not open to him, after deciding the matter before him on the authority of one ruling of this Court, to review that order on the basis of another ruling of equal authority. If in his opinion there was a conflict of authority, his proper course was to leave it to the plaintiff to seek his proper remedy in this Court. The view taken by the Subordinate Judge of the inherent powers of his Court is not sound. In the present instance, he was bound

by the provisions of the law as laid down in Order XLVII, Rule 1 of the Code of Civil Procedure.

16. The second point taken on behalf of the appellant is also, in our opinion, sound. The present case is distinguishable from the case of *Satish Chandra Giri v. Gopal Chander Roy* 12 C.L.J. 638; 7 Ind. Cas. 627; 15 C.W.N. 110 and that case was also distinguishable from the previous case of *Sreenath Chandra Pramanick v. The Secretary of State for India in Council* 11 C.L.J. 158; 5 Ind. Cas. 141 with which the Subordinate Judge held it to be in conflict.

17. Section 106 of the Bengal Tenancy Act requires that all suits under that section shall be instituted before the Revenue Officer within three months from the date of the final publication of the Record of Rights under Sub-section 2 of Section 103A of that Act and Section 107 provides that a note of all disputes decided u/s 106 by a Revenue Officer shall be made in the Record of Rights finally published under sub Section 2 of Section 103 of the Bengal Tenancy Act, and such note shall be considered part of the record. The suit brought by *Sreenath Chandra Pramanick v. The Secretary of State* 11 C.L.J. 158; 5 Ind. Cas. 141 was instituted in the Court of a Munsif and there is nothing to show that it was instituted within three months of the final publication of the Record of Rights. There is no procedure provided in the Act by which the decision of the ordinary Civil Court in such a case can be certified to a Revenue Officer or directing that he should take action on it without an application being made to him by the successful party. In such circumstances, it is the duty of the Civil Court on the facts of the case before it to determine under the provisions of Section 7 of the Court Fees Act what is the proper institution fee to be paid on the plaint. No general rule, governing all the cases, can be laid down, but the question must be decided on the facts of each special case. This circumstance, we may observe, does not appear to have been presented for consideration before the Judges who decided the case of *Satish Chandra Giri v. Gopal Chandra Roy* 12 C.L.J. 638; 7 Ind. Cas. 627; 15 C.W.N. 110.

18. In the cases before us, though the plaints were presented before the Revenue Officer, that officer, proceeding under the proviso to Section 106 of the Bengal Tenancy Act, transferred them for trial to the Court of the Subordinate Judge. It is manifest that the Civil Court in trying the suits is not bound to confine itself to the reliefs which in such cases could alone be granted by the Revenue Officer. In these suits, not only was relief claimed by correction of the entries in the Record of Rights but also such other reliefs as the plaintiffs might be entitled to. It is evident that when such suits are tried by a Regular Civil Court, that Court is bound under the provisions of Section 7 of the Court Fees Act to determine the proper institution fee, and that this must be done with reference entirely to the reliefs claimed. No general rule can be laid down which would fetter the discretion of the Court in every individual case. We are unable to regard the decision in the case of *Satish Chandra Giri v. Gopal Chandra Roy* 12 C.L.J. 638; 7 Ind. Cas. 627; 15 C.W.N. 110 as an authority for anything further

than that in the case of a suit, brought before a Revenue Officer u/s 106 of the Bengal Tenancy Act and claiming those reliefs only provided by that section, the institution fee would be that provided in Clause (iii) Article 17 of the second Schedule of the Court Fees Act.

19. Nor do we think that the Notification of the Local Government under the provisions of Section 35 of the Court Fees Act, No. 1897F, dated the 28th March 1911, which was published at page 222, Part 1 of the Gazette of India 1911, to which our attention has been drawn, goes any further. In our opinion, it cannot be regarded as an authority binding a Civil Court in the exercise of its powers u/s 7 of the Court Fees Act any further than we have noticed. In fact that notification has no application to the present cases as it reduces the institution fees in cases in which ad valorem fees on the value of the suit are less than the fees prescribed by Clause (iii), Article 17, Schedule II of the Court Fees Act.

20. In the present cases, it appears to us that the Subordinate Judge had reasons in the first instance for holding that consequential relief was sought.

21. The result is that we set aside the orders of the Subordinate Judge granting the applications for review in all the cases. We restore his former order and direct that he do call on the plaintiff to put in the deficit fees within a limited time and, if that be done, do proceed to try the suits

22. We fix the hearing fee for all six appeals at six gold mohurs.

23. The two Rules are discharged as infructuous without costs.

24. Let the record be sent to the lower Court without delay.