
(1956) 08 AHC CK 0020
In the Allahabad High Court
Case No : First Appeal No. 94 of 1946

Chunni Lal and Others

APPELLANT

Vs

L. Gurdial Prasad and Others

RESPONDENT

Date of Decision : 14-08-1956

Acts Referred:

Citation : AIR 1957 All 63 : (1956) 26 AWR 687

Hon'ble Judges : Beg, J;Agarwala, J

Bench : Division Bench

Advocate : S.B.L. Gour, for the Appellant; J. Swarup, Satish Chandra, Radha Krishna and A.P. Gupta, Advs., for the Respondent

Final Decision : Disposed Of

Judgement

Agarwala, J.—This matter arises out of the report of the Chief Inspector of Stamps about the deficiency of court-fee paid on their written statements by defendants--respondents 5 and 6 and by defendant 7 in the Court below.

2. The facts briefly stated are as follows : The plaintiff-respondents filed a suit for partition of certain properties. There were seven defendants to the suit. Defendants 1 to 3 are the present appellants. Defendants 5 and 6 filed one written statement and defendant 7 filed another written statement. Defendants 5 and 6 and defendant 7 claimed that their shares in the property may be partitioned and given to them. They did not pay any court-fee on this relief. These defendants supported the plaintiffs' claim otherwise.

Defendants 1 to 3 opposed the plaintiffs' claim. The Court ultimately decreed the suit for partition and passed a preliminary decree declaring the shares of the parties. Against this decree the present appeal has been filed by defendants 1 to 3. To this appeal the plaintiff is a respondent and defendants 5 and 6 and defendant 7 are also respondents. The relief claimed in this appeal is that the suit for partition be dismissed.

3. After the present appeal was filed in this Court, proceedings for the

preparation of the final decree were taken up in the Court below. The Court below directed that the shares of defendants 5 and 6 and of defendant 7 be partitioned and separate possession be given to them on condition that they paid court-fee on the value of their shares. Each set of these defendants paid a sum of Rs. 365/- as court-fee on the value of their shares. The value of their shares has never been in dispute.

The amount of Rs. 365/- which was paid by each of them was held by the Court below to be sufficient and a final decree was prepared in which defendants 5 and 6 and defendant 7 were allotted separate shares. This decree, we are told, was put into execution and these defendants have already obtained possession over their shares. No appeal has been filed against this decree.

4. While the Chief Inspector of Stamps was examining the matter of court-fee in the appeal in this Court, he found that no court-fee had been paid by defendants 5, 6 and 7 on their written statements, and reported that they were liable to pay court-fee. This was, before the Court below took up proceedings for the preparation of the final decree and asked these defendants to pay court-fee on their written statements.

By an unfortunate mistake the, report of the Chief Inspector or Stamps was shown not to defendants 5 and 6 and 7 but to the counsel of defendants 1 to 3, the appellants in this appeal. The court-fee not having been paid; the appeal was dismissed for default, but was later restored and then it was discovered that the court-fee was payable not by defendants 1 to 3 who were appellants, but by defendants 5, 6 and 7 who were respondents.

When this matter was brought to the notice of the learned counsel for the attendants-respondents 5, 6 and 7, he stated that in the Court below this matter had been finally determined and his clients had paid the court-fee which was required of them and that a final decree had been prepared and possession delivered.

5. The office then reported that although each set of defendants had paid Rs. 365/- as court-fee which was declared by the Court below to be sufficient, they ought to have in fact paid Rs. 465/4/-instead of Rs. 365/- and that they ought to pay the difference now.

6. Learned counsel for the defendants-respondents states that he does not intend to use the written statements in this appeal at all because the share of his clients has already been separated and possession delivered to them and the matter has terminated so far as they are concerned.

7. The question is whether in the circumstances the defendants-respondents can be ordered to pay the difference in this Court.

8. There are only two sections in the Court-fees Act which can have any bearing on this question--Sections 12 and 28.

9. Section 12, Court-fees Act lays down that- "Every question relating to valuation for the purpose of determining the amount of any fee chargeable under this Chapter on a plaint or memorandum of appeal shall be decided by the Court in which such plaint or memorandum, as the case may be, is filed, and such decision shall be final as between the parties to the suit.

But whenever, any such suit comes before a Court of appeal, reference or revision, if such Court considers that the said question has been wrongly decided to the detriment of the revenue, it shall require the party by whom such fee has been paid to pay within such time as may be fixed by it, so much additional fee as would have been payable had the question been rightly decided. If such additional fee is not paid within the time fixed and the defaulter is the appellant, the appeal shall be dismissed, but if the defaulter is the respondent, the Court shall inform the Collector who shall recover the deficiency as if it were an arrear of land revenue ."

10. Obviously Section 12 applies to a case in which the question relates to "valuation" for the purpose of determining the amount of court-fee. In the present case, there was no question at any stage as to the correctness of the valuation. The only question that has been raised is whether on the valuation put upon the relief claimed in the written statement, the correct amount of court-fee has been paid.

The dispute arises because there is a difference of opinion between the office of the lower Court and the office of this Court in the calculation of the amount of court-fee. In our opinion, Section 12, Court fees Act has no application to the facts of the present case.

11. Section 28, Court-fees Act declares that : "No document which ought to bear stamps under this Act shall be of any validity unless and until it is properly stamped. But, if any such document is through mistake or inadvertence received, filed or used in any Court or office without being properly stamped, the presiding Judge or the head of the office, as the case may be, or in the case of a High Court, any Judge of such Court, may, if he thinks fit, order that such document be stamped as he may direct; and, on such document being stamped accordingly the same and every proceeding relative thereto shall be as valid as if it had been properly stamped in the first instance." Under this section, the Court in which an insufficiently stamped document has been received, filed or used by mistake or inadvertence has the power to grant time to make good the deficiency. The written statements of defendants 5 and 6 and 7 were received and filed in the lower Court not in this Court But as a document received or filed in the Court below may be "used" in an appellate Court, the appellate Court has power under this section to direct that deficiency may be made good provided the document is used in such Court. As no appeal has been preferred against the final decree, defendants 5, 6 and 7 do not wish to use their written statements so far as the present appeal is concerned. The second para of Section 28, therefore, cannot apply to the facts of the present case.

12. There is another aspect of the matter. Section 28 does not empower the Court to realise the amount of deficiency. It only empowers the Court to order that the deficiency may be made good and on such deficiency being made good, the document becomes valid; otherwise, according to the section, the document is invalid. It is only u/s 12 that this Court has power to direct the Collector to recover the deficiency in the amount of court-fee from a respondent. That power has not been conferred on this Court u/s 28. As already stated, the case does not fall within the purview of Section 12.

13. We do not, therefore, think that we can make any order requiring defendants 5, 6 and 7 who are respondents to make good the deficiency in court-fee as long as they do not use their written statements in this Court. The appeal shall be proceeded with in the ordinary course.