
(1938) 11 AHC CK 0015
In the Allahabad High Court

Collector of Gorakhpur

APPELLANT

Vs

Budhu Kalwar and Another

RESPONDENT

Date of Decision : 30-11-1938

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 47

Citation : AIR 1939 All 327 : (1939) 9 AWR 84 : (1939) 9 AWR 82

Hon'ble Judges : Iqbal Ahmad, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Iqbal Ahmad, J.—In the view that have take it is unnecessary to decide the points that have been raised and ably argued by Mr. Khwaja, the learned junior Counsel on behalf of the Collector of Gorakhpur, the appellant in the present appeal the facts that led to this appeal are as follows : A suit for partition of certain properties alleged to be joint family properties was filed in the Court of the Munsif of Gorakhpur in forma pauperis by Budhu Kalwar, one of the respondents in the present appeal. The defendant to the suit was Khaksa Kalwar, the other respondent in the appeal. It was alleged in the plaint that Khaksa had forcibly dispossessed Budhu from the joint family properties that were specified at the foot of the plaint and accordingly the prayer contained in the plaint was that the plaintiff be put in possession of his half share in those properties after partitioning the same. The suit was valued at Rs. 4000. The application of Budhu to be allowed to sue in forma pauperis was granted by the Court. During the pendency of the suit the parties entered into a compromise on 4th July 1932. In accordance with the compromise Khaksa was to pay a sum of Rs. 40 and the costs of the suit to the plaintiff and was further made liable to pay to the Government the court-fee payable on the plaint. A decree in terms of the compromise was drawn up.

2. It appears that after the compromise the office reported that the court-fee payable on the plaint was a sum of Rs. 225 and then on 2nd August 1932

Khaksa, who was liable under the compromise to pay the court-fee, applied to the Court praying that the Court should either order that the court-fee payable was only Rs. 10 and not Rs. 225 or vacate the compromise and proceed with the trial of the suit. This application was granted by the Court on 11th February 1933 to this extent, that the Court set aside the compromise and restored the suit. In the course of its order the Court observed that the compromise was arrived at under a misconception as to the amount of the court-fee chargeable on the plaint.

3. After the restoration of the suit Budhu, the plaintiff, applied for amendment of the plaint. This application was filed on the very date on which the compromise was set aside by the Court, viz. on 11th February 1933. The prayer contained in the application for amendment was that the allegation in the plaint as to the dispossession of Budha from the joint family properties be struck off and so be the relief as regards the decree for possession. The application was granted by the Court. The order granting the amendment was also passed on 11th February 1933. The parties then on the same date filed a fresh compromise by virtue of which Khaksa was made liable to pay a sum of Rs. 120 in all to Budhu and further the liability to pay a sum of Rs. 15 on account of court-fee was cast on Khaksa. The terms of the compromise were embodied in the decree which was signed by the Presiding Officer of the Court on 1st March 1933. Thereafter on 20th March 1934 the Collector of Gorakhpur filed an application praying that

the defendant be directed to pay Rs. 225 on account of the court-fees and the decree of the Court be directed to be amended accordingly.

4. This application was rejected by the trial Court and the order of that Court was, on appeal by the Collector, affirmed by the District Judge. In the application it was alleged by the Collector that the application for amendment was a fraudulent application and was filed solely with the intention to avoid the liability for the payment of the court-fee that was properly chargeable on the plaint. The fact that the application for amendment was filed on the very day On which the first compromise was set aside and the amendment application was followed by another compromise that was substantially the same as the first compromise lends countenance to the suggestion contained in the application filed by the Collector that the application for amendment was prompted by a desire to cheat the Government of the court-fees. But in our judgment the application was misconceived and the order embodied in the decree as to the payment of a sum of Rs. 15 on account of court-fees cannot now, for the reasons to be presently stated, be disturbed.

5. By Rules 10 and 11 of Order 33, Civil P.C., the Court; deciding a suit filed in forma pauperis is directed to calculate the amount of court-foes chargeable on the plaint and to pass an order with respect to the payment of the same. Rule 12 gives the right to the Provincial Government to apply at any time to the Court to make an order for the payment of court-fees under Rule 10 or Rule 11. By Rule 13 it is provided that

all matters arising between the Provincial Government and any party to the suit under Rule 10, Rule 11 or Rule 12 shall be deemed to be questions arising between the parties to the suit within the meaning of Section 47.

6. Then it is enacted by Rule 14 that

where an order is made under Rule 10, Rule 11 or Rule 12, the Court shall forthwith cause a copy of the decree to be forwarded to the Collector.

7. It is clear that the provisions of Rules 10, 11 and 14 are mandatory and ordinarily orders under Rules 10 and 11 must be passed by the Court without any motion being made either by the parties to the suit or by the Provincial Government. But as a precautionary measure the Legislature has by Rule 12 given a right to the Provincial Government to apply to the Court at any time to pass an order for the payment of court-fees under Rule 10 or Rule 11. The orders passed under Rules 10, 11 and 12 are appealable in accordance with the provisions of Section 47, Civil P.C., and Rule 14 appears to have been enacted with a view to enable the Provincial Government to appeal against the order passed by the Court as to the calculation or the payment of court-fees in the event of being aggrieved by the same. In the present case there is nothing to show that the Court did not in compliance with the provisions of Rule 14 forward a copy of the decree to the Collector. In the case before us an order as to the payment of a certain amount on account of court-fee was embodied in the decree that was signed by the Presiding Judge on 1st March 1933, and the Provincial Government, if aggrieved by that order, had a right of appeal. The right of appeal was however not exercised by the Provincial Government within the time allowed by law and the decree of the trial Court became final and cannot now be assailed.

8. The application that has culminated in the present appeal was filed in the trial Court about a year after the date of the decree. If the application, containing as it did a prayer for amendment of the decree be treated as an application for amendment, the order passed by the trial Court rejecting the application was not an appealable order. It is to be noted in this connexion that the application cannot be regarded as an application under Order 33, Rule 12, Civil P.C., for the simple reason that that Rule is confined in its operation to cases in which the Court has not already suo motu passed an order either under Rule 10 or Rule 11. The order of the trial Court rejecting the application cannot therefore be assailed by the present appeal. The appeal is accordingly dismissed. But in the circumstances of the present case we direct that parties do bear their own costs in all the Courts.