

(1911) 12 CAL CK 0025
In the Calcutta High Court

Erfan Mandal

APPELLANT

Vs

Samiruddin Mandal and Others

RESPONDENT

Date of Decision : 19-12-1911

Acts Referred:

Specific Relief Act, 1877 — Section 42

Citation : 15 Ind. Cas. 552

Hon'ble Judges : Mookerjee, J;Carnduff, J

Bench : Division Bench

Judgement

1. The substantial question of law raised in this appeal is whether the suit is barred by reason of the proviso to Section 42 of the Specific Relief Act, which lays down that no Court shall make any declaration in a declaratory suit where the plaintiff, being able to seek further relief than a mere declaration of title, omits to do so. The plaintiffs commenced this suit for declaration that the first defendant had not been properly appointed mutwalli of the properties in suit. Their case was that in 1888 a deed of wakfnamah had been executed by the owners of the property and that pursuant thereto in 1906 a deed was executed by which the first defendant was appointed mutwalli. The plaintiff set out facts which, if true, go to show that the defendant has taken possession of the property and has dealt with it on the footing that he has been properly appointed its mutwalli. The plaintiffs put their case in the alternative. In the first place, they ask for a declaration that the wakfnamah of 1888 is collusive and inoperative, and that, consequently, the first defendant has not acquired any valid title as mutwalli. In the second place, they ask for a declaration that if the wakfnamah be treated as valid, the defendant has not been legally appointed mutwalli because the entire body of persons competent to appoint a mutwalli did not join in making his appointment. The defendant resisted the claim on the ground amongst others that the suit was improperly constituted and was bound by reason of the proviso to Section 42 of the Specific Relief Act. This objection has been overruled and a decree has been made by the District Judge in favour of the plaintiffs.

2. In support of the appeal, it has been argued that there is no answer to the objection in respect of the competency of the suit as framed and that the decision of this Court in the case of *Fakir Chand Audhikari v. Anunda Chunder Bhattacharji* 14 C. 586, upon which the learned District Judge placed reliance in support of his view, is clearly distinguishable. In our opinion, the appeal must succeed.

3. The proviso to Section 42 of the Specific Relief Act makes it clear that no Court shall make a declaration in a declaratory suit where the plaintiff, being able to seek further relief than a mere declaration of title, omits to do so. No doubt, as pointed out by this Court in the case of *Fakir Chand Audhikari v. Anunda Chunder Bhattacharjee* 14 C. 586, the further relief referred to in this proviso is further relief in relation to the legal character or right as to any property which the plaintiff is entitled to and whose title to such character or right the defendant denies or is interested in denying, and it must be relief appropriate to and consequent on the right or title asserted. *Kannan v. Krishnan* 13 M. 324. The learned Judges went on to hold that a claim for arrears of rent was not further relief within the meaning of the proviso. It is not necessary for us to consider whether this was intended to be a broad statement of an unqualified proposition of law, because it is clear from the facts of that particular case that the plaintiff could not have joined with the prayer for a declaration, a claim for recovery of arrears of rent. In the case before us, it is indisputable that the plaintiffs are competent to ask for a further relief. If the first alternative case set up by them is established to be true, the plaintiffs are entitled to recover possession as owners. If the second alternative case is established to be true, the plaintiffs are entitled to seek for the removal of the defendant and for the appointment of a trustee duly appointed by persons competent in that behalf. It is plain, therefore, that, in either view of the case, it was competent to the plaintiffs to ask for farther relief. As was pointed out by Mr. Justice Muthusami Ayyar and Mr. Justice Wilkinson in the case of *Kombi v. Aundi* 13 M. 75, the object of this provision is to avoid a multiplicity of suits and to prevent a person getting a declaration of right in one suit and immediately after, the remedy already available, in another. In other words, the Legislature intends that if the plaintiff, at the date of his suit, is entitled to claim as against the defendant to the cause some relief other than and consequential upon a bare declaration of right, he must not vex the defendant twice, but he is bound to have the matter settled once for all in one suit. The object of the plaintiffs here is to get a declaration of their title upon payment of a Court-fee of Rs 10 and in the event of their success, to institute a suit against the defendant for his removal. In our opinion, the proviso to Section 42 is a bar to the maintenance of a suit of this description, for this is not one of the class of cases where it is needless or impracticable for the plaintiff to seek any relief other than declaration as in *Shyamanund v. Raj Narain* 4 C.L.J. 568; *Lokenath v. Keshab Ram* 13 C. 147. Here the plaintiffs are able and bound to ask for consequential relief, as in *Chokalinga Peshana v. Achiyar* 1 M. 40; *Ganpatgir Guru Bholaagzr v. Ganpatgir* 3 B. 230.

4. The result is that this appeal is allowed, the decree of the District Judge set aside and the suit dismissed with costs in all the Courts.