

(1916) 05 AHC CK 0049
In the Allahabad High Court

Ganga Dahal Rai and Another

APPELLANT

Vs

Musammat Gaura

RESPONDENT

Date of Decision : 12-05-1916

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 33 Rule 10, Order 33 Rule 11

Citation : AIR 1916 All 327 : 35 Ind. Cas. 46

Hon'ble Judges : Piggott, J;Lindsay, J

Bench : Division Bench

Final Decision : Allowed

Judgement

1. The plaintiff in the suit out of which this appeal arises was a Hindu widow seeking to enforce her right of maintenance against the surviving members of the joint family to which her late husband had belonged. She claimed maintenance at the rate of Rs. 40 per mensem, and she added a further claim in respect of gold ornaments valued at Rs. 300, said to be her property in the hands of the defendants. She was met by a denial of the relationship on which her claim was based. In the opinion of the learned Subordinate Judge she succeeded in proving that relationship. She failed to support her claim in respect of the gold ornaments by any reliable evidence, and with regard to the amount of the maintenance, claimed by her the Court below held that her claim was altogether excessive in view of the evidence as to the means possessed by the defendants. In the result the learned Subordinate Judge gave the plaintiff a decree for maintenance at the rate of Rs. 5 per mensem and dismissed the rest of her claim. The appeal before us is by the defendants.

2. The first two paragraphs of the memorandum of appeal challenge the findings of fact on which the decree in favour of the plaintiff is based. It has been frankly conceded before us in argument that, in view of the evidence led in the Court below and accepted as true by the learned Subordinate Judge, these pleas cannot be pressed. A third plea in the memorandum of appeal before us assails the order of the Court below on the question of costs and this deserves

consideration. It is apparent from the facts already stated that, on a mere paper estimate of the value of the claim as brought and the amount of the claim decreed, the plaintiff has succeeded only to a comparatively small extent. Nevertheless she has succeeded in proving her case against the defendants on the principal issue of fact involved. The learned Subordinate Judge was, therefore, of opinion that this was a case in which costs could not be apportioned strictly in accordance with the result of the litigation. He has, however, carried this principle very far in favour of the plaintiff by laying the entire costs of the suit on the defendants. It is to be noticed further that this is not a case which merely raises the question of the discretion of a Court in the matter of apportionment of costs. The fact is that the plaintiff sued as a pauper under the provisions of Order XXXIII of the Code of Civil Procedure, and the costs of the Court-fee stamp which would have been payable on the plaint require to be apportioned under the provisions of Rules 10 and 11 of the aforesaid Order. The learned Subordinate Judge has directed the defendants to bear the costs actually incurred by the plaintiff in the litigation, and he has added a direction, purporting to be made under, Order XXXIII, Rule 11, of the Code of Civil Procedure, to the effect that a sum of Rs. 264-8-0, being the amount, of the Court-fee which would have been payable on the plaint, shall be realised, by the Collector of the district from the defendants, it is this portion of the order is principally challenged in the present appeal. Under Rule 10 of Order XXXIII of the CPC the Legislature deals with the case of a pauper plaintiff who succeeds in the suit and under Rule 11 with the case of a pauper plaintiff who fails in the suit. There is no separate provision for a case like the present, in which a pauper plaintiff has partly succeeded and partly failed. Presumably the Court is intended to deal with such a case by combining the provisions of the two rules. In a case somewhat similar to the present case, *Chandrareka v. Secretary of State for India* 14 M. 163 the learned Judges of the Madras High Court held under the analogous provisions of the former CPC (Act XIV of 1882) that it was illegal to lay upon the defendant, in such a suit a larger proportion of the Court-fees, leviable from the plaintiff than would have been payable by the said plaintiff if the claim had been limited originally to that, portion which was successful. On this principle the correct order in the present case would be that, a sum of Rs. 45 on account of the Court-fee stamp will be realisable from the defendants in the manner directed by the Court below, and that the balance of Rs. 219 8:0 is recoverable from the plaintiff under the provisions of Order XXXIII, Rule 10. The question of the discretion of the Court in dealing with a matter of this sort, i.e., with a case in which a pauper plaintiff has partially succeeded and partially failed, is perhaps one which deserves to be dealt with by a special rule. But certainly, on the provisions of Order XXXIII, Rules 10 and 11 of the CPC as, they stand, it is difficult to arrive at, any conclusion other than that laid down by, the Madras High Court, without some, apparent straining of the language of the rules.

3. With regard to the equities of the case there is this much to be said: in an ordinary litigation the defendant has some protection against any extravagant

exaggeration of his claim on the part of a plaintiff who knows that he has a good case for some relief, in the fact that the plaintiff is bound to pay out of his own pocket in the first instance the whole of the Court-fee leviable on the plaint as drafted. It is otherwise in the case of a suit brought by a pauper plaintiff, and it would not be equitable to permit such a plaintiff to penalise the defendant by exaggerating his claim. The present case illustrates this principle to a certain extent, and it would be still, more obvious if the plaintiff had claimed maintenance at the rate of say Bs. 400 instead of Rs. 40 per mensem. The injustice in such a case of laying the entire burden of the Court-fee on the defendant would be apparent. We think, therefore, that the proper way to deal with the present case is to follow the principle laid down by the Madras High Court in the case already quoted. We accordingly modify the order of the Court below on the question of Court-fees. We direct that a sum of Rs. 45 be recoverable from the defendants as directed by the Court below, and with regard to the balance of Rs. 219-8-0 we can only deal with the same in the manner laid down by Order AXAIII, Rule 10, of the Code of Civil Procedure, that is to say, we must make a formal order that this sum is recoverable by the Government from the plaintiff and is the first charge on the subject-matter of the suit, that is to say, on the annuity which has been decreed in favour of the plaintiff. We must leave it to the proper authorities to consider whether the interests of Government require that it should stand on its extreme rights in a matter of this sort. After all no actual loss has been suffered by Government by reason of the plaintiff's overestimate of her claim, and it will, no doubt, receive due consideration in the proper quarter whether it is equitable to insist upon realising this sum out of the small pittance decreed in favour of the plaintiff.

4. We accordingly allow this appeal to the extent stated and otherwise dismiss it. We leave the parties to bear their own costs in this Court.