

(1921) 03 PAT CK 0003
In the Patna High Court

Harbans Sahu and Others

APPELLANT

Vs

Musammat Lalmoni Kuer and Another

RESPONDENT

Date of Decision : 10-03-1921

Acts Referred:

Specific Relief Act, 1963 — Section 42

Citation : AIR 1922 Patna 61 : 62 Ind. Cas. 36

Hon'ble Judges : Jwala Prasad, J

Bench : Single Bench

Judgement

Jwala Prasad, J.—This is a Reference u/s 5 of the Court Fees Act.

2. The plaintiffs are the appellants, their suit in the Court below having been dismissed. The prayers in the plaint are:--(1) that it may be adjudicated that the defendant No. 1, in collusion and agreement with the defendant No. 2 her brother, is wasting the heritage of Sheogulam deceased and (2) that either the plaintiffs or any other fit person may be appointed Manager or Receiver so that the heritage of Sheogulam may be preserved.

3. The value of the suit originally given in the plaint was Rs. 41,500. The appeal was filed at first in the Court of the District Judge, valuing the appeal at Rs. 2,100. The appeal was returned by the order of the District Judge, dated the 9th August 1920, for presentation to this Court as the value of the property in suit was beyond the pecuniary jurisdiction of that Court (District Judge). If the value were allowed to be reduced in the first Court and the case were heard upon that valuation, then the appeal to this Court would be incompetent. But if the value in the first Court was Rs. 41,500, the plaintiffs have no right to reduce the value with a view to escape the payment of Court-fee.

4. The next question is whether the plaintiffs' suit is only for a declaration or is also for consequential relief.

5. The first relief referred to above is clearly a declaratory one. It comes u/s 42 of the Specific Relief Act, illustration (e) of which runs as follows:--"The widow of

a sonless Hindu alienates part of the property of which she is in possession as such. The person presumptively entitled to possess the property, if he survive her, may, in a suit against the alienee, obtain a declaration that the alienation was made without legal necessity and was, therefore, void beyond the widow's lifetime."

6. The question for determination is whether the second relief, in which the plaintiffs claimed for their own appointment or for the appointment of any other person as Manager or Receiver of the properties in the possession of the widow, so that the heritage of Sheogulam may be preserved, is a consequential relief flowing from the declaration sought for in the first relief. The real test is whether the second relief comes u/s 42 of the Specific Relief Act. By no manner of construction can it possibly come under that section. It asks the Court to disturb the possession of the widow and to take the property out of her hands and place it in the bands of the plaintiffs or any other person. The widow is entitled to possession of the property. She can only be disturbed if committing waste detrimental to the interest of the reversionary heirs. In order to deprive her of her legal right to possession, the plaintiffs sought in the first relief the declaration that she was committing waste of the property to their prejudice. The second relief, therefore, is in consequence of the declaration sought for in the first and is to my mind a consequential relief. The order of a Division Bench of this Court in Second Appeal No. 206 of 1917, dated the 5th November 1917, does not give the full facts of the case and it cannot, therefore, be ascertained whether that case is on all fours with the present one. The view taken by me is supported by the case of Lakhmi Das v. Musammat Daropati 19 Ind. Cas. 859 : 134 P.W.R. 1913 : 232 P.L.R. 1913 : 93 P.R. 1913, and I feel that it is supported primarily by the construction of Section 42 of the Specific Relief Act.

7. I would, therefore, answer the question raised by the Taxing Officer as above.