

(1922) 02 PAT CK 0020

In the Patna High Court

Iswari Prasad Singh and Another

APPELLANT

Vs

Musammat Sahodra Kumari and Another

RESPONDENT

Date of Decision : 08-02-1922

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 15, 50
Specific Relief Act, 1963 — Section 42

Citation : AIR 1922 Patna 42 : 70 Ind. Cas. 486

Hon'ble Judges : Dawson Miller, C.J.; John Bucknill, J

Bench : Division Bench

Judgement

Dawson Miller, C.J.—This is an appeal from a decision of the Subordinate Judge of Jamtara, a place situate in the Sonthal Parganas, and the only question which arises for decision in this appeal is, whether a Court having jurisdiction in the Sonthal Parganas has power to grant a decree giving declaratory relief where no consequential relief is prayed for or could be obtained. The suit was instituted as long ago as the year 1907, the plaintiff claiming to be the reversioner of the estate of one Harri Narayan after the termination of the life-interest of his widow. It appears that, many years after the death of her husband, the widow who is the first defendant in the suit adopted a son Mukhdeo Singh who is the second defendant in the suit. The plaintiff as reversioner shortly afterwards instituted the present suit claiming a declaration that the adoption, was invalid and not binding. The case was the subject of a compromise but later on the defendant Mukhdeo Singh brought a suit seeking to have the compromise set aside on the ground that it could not bind him, he being a interests at the time the compromise was entered into, that compromise having been entered into by his guardian ad litem who had clearly, not taken proper care to protect his interests at the time. The compromise was set aside by the High Court at Calcutta on appeal and the case was ordered to proceed. It came before the learned Subordinate Judge who dismissed the suit. From that decision the appellant has appealed.

2. By the terms of the Specific Relief Act of 1877 the provisions of that Statute are applied to the whole of India except Scheduled Districts as are defined in Act

XIV of 1874. The Sonthal Parganas are comprised within the Scheduled Districts and, therefore, the Specific Relief Act does not apply to Courts having jurisdiction to try cases arising within the Sonthal Parganas. The jurisdiction to grant declaratory decrees was first given to the Courts in India by the Act of 1877 except in so far as that power had been given by the Civil Procedure Code, the Code in force at that time being that of 1859. By Section 42 of the Specific Relief Act it is provided that, any person entitled to any legal character, or to any right as to any property, may institute a suit against any person denying, or interested to deny, his title to such character or right, and the Court may in its discretion make therein & declaration that he is so entitled, and the plaintiff need not in such suit ask for any further relief. Then, there is a proviso with which we are not concerned, and one of the cases set out in the illustrations to the section is the case of a Hindu widow in possession of property who adopts a son to her deceased husband and it states that person presumptively entitled to the property on her death without a son may in a suit against the adopted son obtain a declaration that the adoption was invalid. It is quite clear, therefore, that a suit of this nature was one of the very class which was provided for specifically by Section 42 of the Specific Relief Act. u/s 15 of the CPC of 1859 it was provided, "that no suit shall be open to objection on the ground that a merely declaratory decree or order is sought thereby, and it shall be lawful for the Civil Courts to make binding declarations of right without granting consequential relief." That section is very broad in its terms and it follows the similar Statute relating to the same matter in Eng- and, viz., 15 & 16, Vic. C. 86, Section 50, but the powers there given have by a long course of decisions both in England and in this country been limited to-cases where, in addition to the declaration sought for, some present consequential relief might also be obtained either in that or in some other Court.

3. This question has been the subject of consideration on more than one occasion by the Judicial Committee of the Privy Council. In the case of *Sadut Ali Khan v. Khajeh Abdool Gunnee* 19 W.R. 171 : 11 B.L.R. 2031 : I.A. 165 : 3 S. P.C.J. 229 (P.C.) it was laid down that where a declaratory decree is sought without consequential relief in the same suit the Court must see that the declaration of right might be the foundation of relief somewhere. That means that there must, at the time when the suit is brought, be some relief which the plaintiff can obtain in addition to his declaration either in the same or in some other Court, but it must be a present relief, and if there should be any doubt as to that proposition it is only necessary to refer to a later decision of their lordships in the case of *Strimathoo Moothoo Viila Ragoonadah Rane* *Kolandapuree Natchiar v. Dorasinga Tever* 23 W.R. 314 : 15 B.L.R. 83 : 2 I.A. 169 : 8 Sar. P.C.J. 456 (P.C.). The same question came up for decision and it was there held that the mere quieting of doubtful titles is not sufficient reason for a declaratory decree and it appeared to their lordships to have been very reasonably ruled in India that the Court would not try questions of title as to future interests where neither claimant has a right to present possession,

especially questions of title which may never arise.

4. The same matter was considered by this Court in the case of Satya Narayan Chakravarty v. Dwarka Nath Sadhu⁴⁰ Ind. Cas. 174 : 2 P.L.J. 379 : 1 P.L.W. 738 and precisely the same point was raised in that case as is argued before us to day. That was a question as to whether, notwithstanding that the provisions of the Specific Relief Act are not applicable to the Sonthal Parganas, nevertheless, a Court having jurisdiction to try cases arising there could grant declaratory relief. That was an even stronger case than the present case. In that case consequential relief might have been asked for, although in fact it was not, and it was there held, which is not now disputed, that the Specific Relief Act did not apply to the Sonthal Parganas and it was further held that, having once arrived at that conclusion, there was nothing in the law, apart from the Specific Relief Act, which would entitle the Court to grant the declaratory decree claimed, and it was pointed out, as I have already endeavoured to do, that before 1877 the powers of the Courts in such cases were governed by the provisions of the CPC subject to a condition precedent that there were circumstances which might justify the grant of consequential relief. That case has been followed in more recent cases in this Court and I can see no reason whatever to differ from the conclusion arrived at there. The result is, that this appeal must be dismissed and the respondents are entitled to their costs.

Bucknill, J.

5. I agree.