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**(1962) 12 P&H CK 0005**  
**In the Punjab And Haryana At Chandigarh**  
**Case No : Civil Revision No. 480-D of 1961**

Kirori Mal

APPELLANT

Vs

Collector, Delhi State, Delhi and others

RESPONDENT

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**Date of Decision :** 10-12-1962

**Acts Referred:**

Punjab Land Revenue Act, 1887 — Section 72

**Citation :** AIR 1964 P&H 26 : (1963) 65 PLR 711

**Hon'ble Judges :** Tek Chand, J

**Bench :** Single Bench

**Advocate :** H.K. Bhargawa and R.M. Gupta, for the Appellant; S.N. Shankar, for the Respondent

**Final Decision :** Allowed

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## Judgement

Tek Chand, J.—These are two Civil Revisions Nos. 480-D of 1961 and 481-D of 1961 from the order of the trial Court rejecting the plaint in the event it is not amended by a stated date. In Civil Revision No. 480-D of 1961 the Plaintiff-Petitioner is Shri Karori Mal and the Defendant-Respondents are Collector of Delhi, Special Assistant Collector and the Union of India. In Civil Revision No. 481 D of 1961 the Respondents are the same and the Plaintiff-Petitioner is Shri Karori Mal Charity Trust, Rai Garh, through one of the trustees. In both suits the prayer relates to declaration of title of the Plaintiffs with respect to the property which is the subject-matter of respective suits. In the suit instituted by Shri Karori Mal it is alleged that in his individual capacity he purchased House No. 3 on Prithvi Raj Road, New Delhi, for a valuable consideration by a registered sale deed dated 11th of April 1951 and is in possession of that property. In the prayer clause he has stated that- a decree be passed in favour of the Plaintiff against the Defendants declaring that Bungalow No. 3, Prithvi Raj Road, New Delhi, belongs to and is exclusively in possession of the Plaintiff. The circumstances which led to the institution of this suit have been mentioned in detail in the plaint. It is stated that this property is not a part of the assets of the Joint Hindu Family Firm of

Messrs. Shambhu Nath Karori Mal. It is alleged that the Defendants have illegally attached this property u/s 72 of the Punjab Land Revenue Act 1887 and it cannot be attached for any alleged dues of the Joint Hindu Family Firm of Shambhu Nath Karori Mal. A number of grounds are then given and one of them is that no amount of income tax was in arrears or due from the Plaintiff (Shri Karori Mal) and that this property cannot be attached for the alleged dues of Hindu-family undivided firm of Shambhu Nath Karori Mal. It is also mentioned that a notice as required by the law has not been given to the Plaintiff. It is also mentioned that steps are being taken by the Defendants for the sale of this property belonging to the Plaintiff and the property has already been attached. If the sale is allowed to proceed of the suit property belonging to the Plaintiff, he would suffer irreparable injury.

2. In the other suit filed by Shri Karori Mal Charity Trust, the prayer is for the passing of a decree in favour of the trust against the Defendants declaring that building No. 4448/III situate at Vishnu Bazar, Cloth Market, Delhi, belongs to and is exclusively owned by the Plaintiff. This property had been gifted to the trust by Shri Karori Mal, karta and manager of the Joint Hindu-family Firm Shambhu Nath Karori Mal of

Rai Garh and is thus exclusively owned by it. The Defendants have illegally attached this property and have notified it to be sold by public auction. On account of alleged recoveries to be made from Shri Karori Mal, attachment warrants have been issued which it is contended are illegal. Among the grounds showing illegality, it is mentioned that no amount of income tax or any arrears are due from the trust and this property cannot therefore be attached for the dues alleged to be owed by other persons, i.e. Seth Karori Mal or the Hindu undivided Firm of Shambu Nath Karori Mal. It is then alleged that the attachment is illegal because of notice not having been served upon the trust.

3. The Defendants have traversed the allegations in the written statements in both the cases and the following preliminary issue was framed:

Whether the suit is not competent in view of the proviso to Section 42 of the Specific Relief Act ?

The contentions of the Defendants have been upheld by the trial Court and it has expressed the view that a declaration simpliciter cannot be granted. The respective Plaintiffs in the two cases were ordered to amend by including a further relief in the prayer clause by way of consequential relief on payment of costs. They were required to file the amended plaints by 15th of September 1961, in default whereof the plaint would stand rejected with costs.

4. Now sole question which has been canvassed by the learned Counsel for the parties rests on the application of the proviso to Section 42 to the facts alleged in the plaint. Section 42 of the Specific Relief Act 1887 is, in so far as it is material, reproduced below:

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 a declaration that he is so entitled and the Plaintiff need not in such suit ask for any further relief:

Provided that no Court shall make any such declaration where the Plaintiff, being able to seek further relief than a mere declaration of title omits to do so.

Explanation.-A trustee of property is a person interested to deny title adverse to the title of some one who is not in existence, and for whom, if in existence, he would be a trustee.

5. The contention of the learned Counsel for the Plaintiff-Petitioners is that this is not a case where it is necessary for the Plaintiff to seek "further relief". It may be a case for seeking "other relief" but that would not deprive the Plaintiff from seeking declaration simpliciter of its exclusive ownership. My attention has been drawn to a large number of authorities which have been relied upon by the Petitioner, viz. Joy Naran Sen Ukil v. Shrikantha Roy AIR 1922 Cal. 8 , Umarannessa Nnessa Bibi Vs. Jamirannessa Bibi and Another, Ramkamal Banik Saha Vs. Syam Sundar Banik Saha, Upendra Nath Bez Vs. Jitendra Nath Parui and Others, , Pitha Kala Matha v. Surendra Nath AIR 1935 Cal 192, Baldeo Prasad and Another Vs. Akhouri Hirambo Narain Singh, , Munnu Chamar v. Hari Narain AIR 1947 All. 352 ,Shambai v. Goverdhan AIR 1925 Sind. 196. The learned Counsel for the Respondents has drawn my attention to S. Bhagat Singh Vs. Satnam Transport Co. Ltd. and Others, Sheo Lotan v. Bhirgun Rai AIR 1917 Pat. 633 and Vithoba Bhanji and Others Vs. Vithal Sakroo and Others,

6. In the Bombay case a Division Bench of that Court held that in order to decide whether the Plaintiffs' suit was one which was exclusively a suit for a bare declaration that the alienation is not binding upon them, or whether in essence, it is a suit for any further and better relief, it is necessary to scan the allegations in the plaint. The Court must go behind the mere form and verbiage of the plaint and ascertain what indeed is the true relief which the Plaintiff is asking for. Vithoba Bhanji and Others Vs. Vithal Sakroo and Others, is not helpful as it rested on peculiar facts. In that case it was found that the Plaintiff could claim joint possession in respect of what was described as a hereditary trust and for that reason a suit for a mere declaratory decree was unsustainable in view of the proviso to Section 42 of the Specific relief Act. In Bhagat Singh v. Satnam Transport Co. AIR 1917 Pat. 633, which is a decision of a Division Bench, it was held that on the facts of that case the proviso to Section 42 fully applied as the Plaintiff was able to seek further relief than a mere declaration of title which would have been of no consequence to him. In that case the Plaintiff had parted with the ownership of certain shares.

7. I may now briefly deal with the rulings cited on behalf of the Petitioner. In Joy Narayn Sen Ukil v. Shrikania Roy AIR 1922 Cal. 8, Sir Ashutosh Mookerjee J. held

that where a Plaintiff is in joint possession of immovable property he is entitled to maintain a suit for declaratory relief with a view to remove a cloud on his title created by the act of the Defendant disputing his share ; in a suit so framed declaration of title is all that Plaintiff needs and he is consequently not called upon to ask for consequential relief by way of partition. The proviso to Section 42 forbids a suit for a pure declaration without farther relief, but it does not compel a Plaintiff to sue for all the reliefs which could possibly be granted or debar him from obtaining a relief which he wants unless at the same time he asks for a relief which he does not want. This decision was followed in Umarannessa Nnessa Bibi Vs. Jamirannessa Bibi and Another, . In that case the broad proposition was laid down that whether it is incumbent upon the Plaintiff to ask for consequential relief must depend upon the circumstances of each case ; and there may be cases in which a declaration may be sufficient for Plaintiff's protection and in such an event the Plaintiff cannot be compelled to seek a consequential relief. Now in Ramkamal Banik Saha Vs. Syam Sundar Banik Saha, an indication was given as to what is meant by "further relief". It was observed the "the expression used by the Legislature is not "other relief" but "further relief". A suit for a declaratory degree should not be dismissed on the ground that it is barred by the proviso to Section 42 of the Specific Relief Act, unless it is quite clear that the Plaintiff should seek further relief which he has failed to claim, although such relief flows directly and necessarily from the declaration sought for. The proviso to Section 42 forbids a suit for a pure declaration without further relief, but it does not compel a Plaintiff to sue for all the reliefs which could possibly be granted or debar him from obtaining a relief which he wants, unless at the same time he asks for a relief, which he does not want". In Pitha Kali Matha v. Surendra Nath AIR 1935 Cal 192, a Bench observed that where the Plaintiff, does not stand in need of any consequential relief, a suit for a mere declaration is not incompetent. In Upendra Nath Bez v. Jitendra Nath Parui, the learned Single Judge of that Court observed that where by reason of the Appellant's auction purchase at a court sale a cloud has been cast on the Plaintiff's title, it is open to the Plaintiff to bring a suit merely for declaration that his title to property has not been affected by the sale. Such a case is outside the mischief of Section 42 of the Specific Relief Act. Reliance was also placed on the earlier decision of Calcutta High Court. Baldeo Prasad v. Harambo Narain AIR 1935 Cal 192, rests on this broad fact and lays down the proposition that mere declaratory suit is no bar if no consequential relief could have been asked by the Plaintiff at the time of the filing of the suit. In Munnu Chamar v. Hari Narain AIR 1947 All. 352, the Bench expressed the view that the object of the proviso is to prevent a multiplicity of suits by preventing a person from getting a mere declaration of right in one suit and then seeking other remedy, without which the declaration would be useless and which could have been obtained in the same suit. Emphasis was also laid on the fact that the Legislature used the expression not "other relief" but "further relief". It was then stated that the further relief must be a relief flowing directly and necessarily from the declaration sought and a relief appropriate to, and necessarily consequent on, the right or title asserted.

Observations made in an earlier decision of that Court in *Ganga Ghulam v. Tapeshari Prasad* AIR 26 All. 606

, were cited to the effect that "all that the Plaintiff wanted, and all that the law compelled him to ask for, was to have the cloud on his title, which was caused by his property being proclaimed for sale, removed, and to achieve that it was not necessary to ask for any further relief." In *Shambai v. Goverdhan* AIR 1925 Sind. 196, the proposition was endorsed that u/s 42 of the Specific Relief Act a Plaintiff is not compelled to sue for all the reliefs which could possibly be granted nor is he debarred from obtaining a relief which he wants simply because at the same time he does not ask for a relief which he does not want.

8. Applying the principles of these decisions what emerges is that the Plaintiff in each of these two cases is satisfied if he is declared the exclusive owner of the respective properties. Once the cloud is removed from the Plaintiff's title the interest of the Plaintiffs amply safe-guarded and the Respondents would not knowingly sell the exclusive property of the Plaintiff while recovering taxes due from a different Assessee, i. e. Hindu undivided family firm Messrs. Shambu Nath Karori Mal. The Plaintiff has no doubt mentioned a lot of matters in the plaint, but they are in the nature of historical interest showing the reasons which have necessitated the bringing of the present suit. Once a declaration of title is given it is a declaration in rem and good against the world, and the Defendants would check it if they are minded to do so. Any further dealing with respect to such property is at their own risk. The exclusive title of the Plaintiff having been declared, any action then taken by the Defendant in disregard of such a title would be at the risk of the Defendant or transferee leaving completely inviolate the rights and the interests of the Plaintiff. It may further be mentioned that in both the cases the respective Plaintiffs are in exclusive possession and therefore the only assistance that they need of the Court is a declaration of their exclusive ownership. Any other relief which may now be added to the Plaintiff will not be in the nature of "Further relief" as it was not flown or consequent upon the declaration and rather it will be additional to or independent of the relief sought. The distinction between the expression "other relief" and "further relief" is not without significance. I am not satisfied on the facts of these two cases that the Plaintiffs are seeking "further relief."

9. For the reasons stated above I cannot persuade myself to agree with the reasoning of the trial Court. Both these petitions consequently succeed and are allowed. The costs will abide the event. The parties are directed to appear in the trial Court on 26th of December 1962 for further proceedings.