
(1971) 08 AHC CK 0020
In the Allahabad High Court
Case No : F.A.F.O. No. 112 of 1969

Mrs. Lynatte Caroline Maria Mansford and Another APPELLANT
Vs
Mr. Granville Jacobs RESPONDENT

Date of Decision : 16-08-1971

Acts Referred:

Citation : AIR 1972 All 129

Hon'ble Judges : K.B. Asthana, J

Bench : Single Bench

Advocate : K.N. Saxena, for the Appellant; Standing Counsel, for the Respondent

Final Decision : Dismissed

Judgement

K.B. Asthana, J.—This is an appeal u/s 6-A of the Court-fees Act against an order of the learned Civil Judge of Jhansi directing the plaintiff to pay ad valorem court-fees on the value of the property involved u/s 7(iv)(a) of the Court-fees Act holding that the suit was one to obtain a declaratory decree with consequential relief.

2. The plaintiffs in their plaint sought later alia the following two reliefs: (a) A decree may be passed for declaration to the effect that the plaintiff No. 1 is entitled to the extent of 2/9th as her share and plaintiff No. 2 is entitled to the extent of 1/3rd as her share and plaintiff No. 3 is entitled to her 1/3rd share in the property mentioned in Schedules A and B which being the joint property of the plaintiffs along with defendant No. 1 and he has no right and title both to receive interest, dividends or to negotiate or transfer the properties mentioned in Schedules A and B annexed to the plaint alone and without the consent and permission of the plaintiff to the extent of their shares, (b) A decree may be passed for permanent injunction restraining the defendant No. 1 both from receiving the interests, dividends or profits or from negotiating or transferring the properties mentioned in Schs. A and B annexed to the plaint alone to the extent of 7/9th share of the whole property without the consent and permission

of the plaintiff.

3. The Inspector of Stamps reported that relief (b) for permanent injunction was consequential to relief for declaration, hence court-fees payable was u/s 7(iv)(a) of the Court-fees Act, The consequential relief for injunction being incapable of valuation, hence the fee chargeable will be ad valorem on the value of the property involved. The learned Judge accepted the report of the Inspector and repelled the contention of the plaintiff that the two reliefs were independent of each other and the relief for permanent injunction was not dependent on the relief for declaration since relief for injunction could be obtained without asking for the relief of declaration.

4. The learned counsel for the plaintiffs appellants relying on a Division Bench decision of this Court in the case of Murli Dhar Vs. Bansidhar and Others, contended that the view taken by the learned Judge of the court below was erroneous. There is no doubt in my mind if the tests as laid down in the Full Bench decision of this Court in the case of Kalu Ram Vs. Babu Lal and Others, as defined in Sri Krishna Chandraji Vs. Shyam Behari Lal, , were to apply, the contention advanced would be tenable, but the recent Full Bench decision of this Court of seven Judges in the case of Chief Inspector of Stamps, U.P., Allahabad Vs. Mahanth Laxmi Narain and Others, by a majority, seems to have overthrown the validity of the tests culled out from Kalu Ram's case. It has been held by the majority that a relief for injunction, though provided for in Section 7(IV-B) of the Court-fees Act can yet be a consequential relief for the purposes of Section 7(iv)(a) of the Act and once the plaintiff seeks a declaration and an injunction, then if the relief for injunction flows from the relief of declaration, the court-fee payable would be in terms of Section 7(iv)(a) of the Act. The test that the relief for injunction could be claimed independently of the relief of declaration, no longer holds good. Once the right for which a declaration is sought forms the basis for claiming the injunction, then the plaintiff will have to pay court-fees in accordance with Section 7(iv)(a) of the Act. In the instant case it is obvious that the very declaration sought in relief (a) stands converted into the relief of injunction sought in relief (b). There does not appear to be any escape from the conclusion that the relief for injunction directly flows from the relief of declaration.

5. For the reasons given above, I do not find any force in this appeal and dismiss it. Since the decision has turned upon the recent Full Bench of this Court which was reported subsequent to the decision of the court below, I make the costs of this appeal easy.