
(1997) 07 MP CK 0051
In the Madhya Pradesh High Court
Case No : C.R. No. 395 of 1997

Nainsukh Kishandas and Others

APPELLANT

Vs

Smt. Manish Choudhari and Others

RESPONDENT

Date of Decision : 22-07-1997

Acts Referred:

Court Fees Act, 1870 — Article 17, 7
Specific Relief Act, 1963 — Section 42

Citation : (1998) 1 MPJR 40 : (1998) 2 MPLJ 79

Hon'ble Judges : R.S. Garg, J

Bench : Single Bench

Advocate : N.K. Shukla, for the Appellant; S.K. Mukherjee, for the Respondent

Final Decision : Allowed

Judgement

R.S. Garg, J.

The copy of the plaint filed as Annexure A-1 with the revision memo seeks certain reliefs, that the land in dispute be declared to be of ownership of the plaintiffs, the defendants be restrained from interfering with plaintiffs possession, and it be further declared in favour of the plaintiffs that the sale deed executed in favour of defendant No. 1 by defendant No. 2 on 5-11-1996 does not convey any title in his favour. The plaintiffs have valued the suit at Rs. 300/- for declaration Rs. 300/- for another declaration and Rs. 300/- for injunction. They accordingly paid court fees of Rs. 90/-. The suit was filed in the court of Civil Judge Class-II. The defendants after putting in their appearance, moved an application under Order 7 Rule 11 CPC requesting the Court to reject the plaint on the ground that neither the suit was properly valued nor proper Court fees was paid. The learned trial Court by the order impugned observed that as the plaintiffs are seeking a declaration that the document in dispute does not convey any title in favour of the defendant No. 1 they have to value the claim as the value of the sale deed and must pay the Court Fees ad-valorem on the value of the document. Being dissatisfied by the said order directing the plaintiffs to pay

the Court Fees, the plaintiffs have preferred this revision petition.

Shri Shukla, learned counsel for the applicants submits that as the plaintiffs are not party to the sale deed and as the injunction is not a consequential relief of the said declaration, the Court could not direct payment of the Court Fees u/s 7(iv)(c) of the Court Fees Act. According to him, de-hors declaration if he could obtain an injunction, then the valuation as put forth by him under Article 17(iii), Schedule II would be well justified.

On the other hand, Shri Mukherjee, learned counsel for the non-applicants contended that though the defendants have not filed their written statement, but the plaintiffs must prove that they are in possession, the plaintiffs who are claiming through Girdharilal who has executed the sale deed must pay ad-valorem Court Fees and as the relief of injunction is the consequential relief, the plaintiffs are duty bound to value the suit to the value of document.

Section 7(iv)(c) of the Court Fees Act applies to a case where the plaintiff is seeking a declaratory decree or order and where the consequential relief is prayed for. The Courts have been repeatedly saying that a consequential relief would be only such relief which clearly follows the declaration or flows from the declaration. A consequential relief would be a relief which in absence of a declaration in favour of the party seeking it, cannot be granted. If the plaintiff is a party to the deed or earlier decree or any other proceeding wants to avoid it, then without seeking a declaration that such proceedings or documents were void, he cannot seek an injunction against the other party that the other party be restrained from taking benefit from the sale deed or executing the decree. In such a case unless the declaration is granted, no injunction would be issued. An injunction in such cases would be a consequential relief of the declaration. Without a declaration, the Court shall not grant such an injunction. A person who faces dispossession or the eviction in execution of a decree cannot simply file a suit for injunction that he be not dispossessed, because no Court would grant such a decree, but if he seeks a declaration that the earlier decree was obtained by a fraud or was illegal or was contrary to law, then in such a case the Court can grant such a declaration and while granting such a declaration, the Court can further grant an injunction in favour of such a plaintiff.

Section 7(iv)(c) would not be applicable to a case where de-hors declaration, an injunction can be granted. If the plaintiff files a suit for grant of an injunction against the defendant who claims to be the owner of the property, the Court would certainly grant an injunction in his favour that he cannot be dispossessed except in accordance with law. The law is clear on the subject, when it says that no person can take law in his own hands and dispossess the person who is in settled possession. In the instant case, the foundation of the plaintiffs case is that they have acquired Bhumiswami rights by adverse possession. By no stretch of imagination, it can be said that a man who is claiming adverse to the interest of the earlier owner is claiming through the earlier owner. The moment a party pleads adverse possession, he clearly speaks that his interest was adverse to the

interest of the true owner or the defendant. A person does not claim adverse possession on the strength of permission. The moment he claims through the true owner, he cannot claim adverse possession.

In the instant case, it cannot be disputed that the plaintiffs who allege to be in possession would always be entitled to file a suit for injunction simpliciter for protection of his possession. If the Court is competent enough to grant an injunction to them without a declaration in their favour, then injunction cannot be termed to be a consequential relief which flows from or follows the relief of declaration.

The expression "consequential relief means some relief which would follow strictly from the declaration given, the valuation of which is not capable of being definitely ascertained and which is not specifically provided for anywhere in the Act and cannot be claimed independently of declaration as a substantial relief. In the instant case, the relief of injunction can be claimed independently as a substantial relief. It cannot be doubted that the question of the payment of the Court Fees is to be decided on the basis of the allegations made in the plaint. In the instant case, the plaintiffs have come with the case that they or their ancestors were in possession of the property in their own rights, and therefore, if any sale deed has been executed by Girdharilal in favour of defendant No. 1, it shall not affect the rights, acquired by the plaintiffs nor would convey any rights in favour of the defendant No. 1 contrary to the rights which have already accrued in favour of the plaintiffs.

Taking the case from another angle, the same decision would be arrived at. Assuming the present defendant No. 1 files a suit, the present plaintiffs as defendants in the subsequent suit can always raise the defence that he was in possession of the property in his own rights and by adverse possession has acquired Bhumiswami rights, therefore, the sale deed executed by the true owner in favour of a third party would not affect his rights. In such a case also the Court would look into the title and whether the seller had any alienable title or not. In the instant case, the plaintiffs say that the defendant Girdhari had no transferable title as the plaintiffs themselves have perfected title by adverse possession.

When the plaintiffs allege possession and challenge the alienation made by third party or challenge a document to which they themselves are not a party, then a simple declaration is sufficient. When the plaintiff comes with the case that he is in possession, he is not required to claim anything further. The courts of law exercising the equity jurisdiction would always protect the possession of that person who is in settled possession. The law does not permit the true owner to dispossess the trespasser who is in settled possession.

Placing reliance on *Bishwanath Agarwalla Vs. Smt. Nathi Bai Sharma and Others*, and *Chief Inspector of Stamps v. Laxmi Narain* AIR 1970 All. 489, *Shri Mukherjee* contended that in the present case the injunction would be a consequential relief.

The two authorities do not go to the extent of what Shri Mukherjee has argued. The authorities simply say that if the plaintiff is a party to the document, decree or proceedings, then he has to pay the ad-valorem Court Fees on the relief claimed because unless such a declaration is granted, injunction would not be granted in favour of the person. If a person wants to avoid the document to which he himself is a party, then he has to pay the ad-valorem Court fees, but in a case where he is not a party to the document and does not also claim from the person who is a party to the sale deed, by no stretch of imagination it can be said that he has to pay the ad-valorem Court Fees.

Whether the Court Fees is required to be paid u/s 7(iv)(c) or Article 17(iii) Schedule II, the Court has to consider whether the person was a party actual or constructive to the deed or the decree. If the Court comes to the conclusion that he was not, a declaration would be sufficient. The Court may also take into consideration that whether the suit is u/s 42 of Specific Relief Act and if it comes to the conclusion that it is so, then the Court Fees is to be paid under Article 17(iii) and not u/s 7(iv)(c). If the Court comes to the conclusion that it is necessary for the plaintiffs to have a decree or document set aside or declared as void, in such a case he has to pay the ad-valorem Court fees, but if the Court comes to the conclusion that without avoiding those documents or without even a declaration, an effective decree can be granted in favour of the plaintiff restraining the other party for giving effect to the deed or decree, then in such a case Section 7(iv)(c) would not be applicable, and the Court Fees paid under Article 17(iii) shall be sufficient. The Court may also consider whether the plaintiff is seeking the relief that the document is nullity or void-ab-initio. If he proves to the satisfaction of the Court, even prima facie in the plaint allegations that the document does not bind him or he was not a party then in such a case Section 7(iv)(c) would not be applicable.

If these principles are applied to the present case, it cannot be held that the plaintiffs are seeking a relief which directly flows from the declaration. The Court on consideration of the plaint allegations can straight way come to the conclusion that the injunction is the main relief and the first declaration that the plaintiffs have acquired Bhumiswami rights on the strength of the adverse possession would again be a declaratory decree. If because of the abundant caution or to be on the safe side, the plaintiff seeks a relief that the document executed by the second party in favour of the third party does not bind his interest or does not affect him adversely, then such a declaration is not the main relief. The relief of first declaration that he has acquired the Bhumiswami rights or the injunction restraining the defendant from interfering with his possession would not flow from the declaration that the defendants do not acquire any title.

Considering the totality of the circumstances and also appreciating the legal position, I am of the opinion that the Court below was absolutely unjustified in observing that the plaintiffs were required to value the claim as the value of the document. It is held that looking to the plaint allegations, valuation made is right

and justified. The Court Fees paid is also proper. The objection raised by the defendants is rejected and the order passed by the Courts below is set aside, instead it is held that the suit has been properly valued and proper Court Fees has been paid.

The revision is allowed with costs. The plaintiffs shall get costs of the revision which are quantified at Rs. 500/-.