
(1961) 12 AHC CK 0004
In the Allahabad High Court
Case No : First Appeal No. Nil of 1960

Om Prakash and Another

APPELLANT

Vs

Moti Lal and Others

RESPONDENT

Date of Decision : 19-12-1961

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 60, Order 21 Rule 61, Order 21 Rule 62
Specific Relief Act, 1877 — Section 42

Citation : AIR 1962 All 310 : (1962) 32 AWR 152

Hon'ble Judges : V. Bhargava, J;Mithan Lal, J;Jagdish Sahai, J

Bench : Full Bench

Advocate : N.P. Asthana, for the Appellant; H.N. Seth, for the Respondent

Judgement

Jagdish Sahai, J.—A decree in suit No. 181 of 1951, of the Court of 1st Additional Civil Judge, Kanpur, was obtained against the father of the plaintiff-appellants by the respondents and in the execution of the same some houses were attached. The plaintiff-appellants filed the suit giving rise to this appeal and prayed for the following relief's on the allegation that the father of the plaintiff-appellants was a man of deficient mind and inasmuch as no guardian ad-item had been appointed to protect his interests in the suit, the decree passed in suit No. 181 of 1951 was a nullity:-

"The plaintiffs, therefore, prayed for the following reliefs:

A. It be declared that the decree in suit No. 181 of 1951 of the Court of 1st Civil Judge, Kanpur, Motilal and Ors. v. Madan Behari Lal is not enforceable against house No. 22/2, Filkhana, Kanpur, 55/59, Kahoo Kothi, Kanpur, and premises No. 84/57, Jarib ki chauki, G. T. Road, Kanpur known as Indian Distillery and especially against the plaintiffs' rights and interest therein and is void against the plaintiffs.

B. Costs of the suit be allowed to the plaintiffs.

C. Any other relief the Court thinks fit and proper to grant in the circumstances be granted to the plaintiffs.""

2. The suit was valued at Bs. 83,424/8/9 and a court-fee of Rs. 1,293/- was paid which was calculated on the one fifth value of the property. An objection was taken in the trial Court that the court-fee paid was insufficient but that question was not finally decided as the Court rejected the plaint on the ground that it disclosed no cause of action. Against the decree of the trial Court rejecting the plaint and dismissing the suit the present appeal was filed. In this Court.

The relief claimed in the appeal is that the case be remanded for trial on merits according to law. In this Court a court-fee of Rs. 1,682/8/- was paid. The Stamp Reporter made a report that there was a deficiency in court-fee of Rs. 2,062/8/- in this Court and the same amount-in the Court below. The Stamp Reporter claimed that a sum of Rs. 4,125/- was due from the plaintiff appellants in connection with the court-fee payable in this Court as also in the Court below. The matter came up before a Division Bench of this Court where on behalf of the State of U.P., reliance was placed upon the U. P. Amendment to Section 7(viii) of the Court-fess Act with the result that the Bench referred the following question for answer to a Full Bench:-

"Whether, in view of the U. P. Amendment to Section 7(viii) of the Court Fees Act and the enlargement of the scope of the said sub-section, a suit of the present nature involving a relief that the decree is not enforceable against the attached property without any orders of the Court under Order XXI, Rules 60, 61 and 62 is covered by the provisions of the said sub-section?"

3. Section 7(viii) of the Court Fees Act, as amended by the U. P. Amendment Act XIX of 1938, reads as follows:-

"In suits to set aside or to restore an attachment including suits to set aside an order passed under Order XXI, Rules 60, 61 or 62, C. P. C., according to half of the amount for which attachment was made, or according to half of the value of the property or interest attached, whichever is less.

Explanation--The value of the property or interest for the purposes of this sub-section shall be the market value which in the case of immovable property or interest in such property shall be deemed to be the value as computed in accordance with Sub-sections (v), (v-A) or (v-B), as the case may be."

Prior to the amendment the section read as follows:-

"In suits to set aside an attachment of land or of an interest in land or revenue--according to the amount for which the land or interest was attached:

Provided that, where such amount exceeds the value of the land or interest, the amount of fee shall be computed as if the suit were for the possession, of such land or interest."

4. It is the admitted case of the parties that no objection was filed by the Plaintiff-

appellants or any one else under Order XXI Rule 58, C. P. C., in the execution taken out by the respondents in connection with the decree in suit No. 181 of 1951. Consequently no order under Order XXI Rules 60, 61 or 62, C. P. C., has been passed in this case,

5. The following two submissions have been made on behalf of the State before us:-

(1) In the relief claimed in the suit it is easy to read a concealed prayer for a consequential relief also i. e., for setting aside the attachment of the properties which are the subject-matter of the suit.

(2) The suit and the appeal are liable to be dismissed on the ground that no declaration as contemplated for can be granted in view of the provisions of Section 42 of the Specific Relief Act.

6. I will take the submissions seriatim. Having carefully perused the plaint and especially the relief claimed therein it appears to me that it is not possible to read a claim for a consequential relief therein. It has been contended that the effect of the use of the words "is not enforceable against....." amounts to a veiled prayer for the setting aside of the attachment. The argument is, that to say that a particular decree is not enforceable against a certain property amounts to saying that the said property is not liable to attachment in that decree. It is true that the same thing can be said in a negative or a positive form and that the effect of the use of the words "is not enforceable against" is that the houses in suit are not liable to be attached in execution of the decree in suit No. 181 of 1951, but that is not the same thing as praying for the setting aside of the attachment. The prayer as it is, is only for a declaration. It would have been a prayer for a consequential relief if it had been prayed that the attachment be set aside. In my judgment it is impossible to read in the prayer a concealed prayer for setting aside an attachment.

In this connection it was next contended that the inclusion of the words to set aside an order passed under Order XXI, Rules 60, 61 Or 62 of the C. P. C." in Section 7(viii) of the Court-fees Act clearly indicates that even in a suit which may be analogous to a suit for setting aside or restoring an attachment or to set aside an order passed under Rules 60, 61 or 62 of Order XXII C. P. C. the court-fee payable would be according to half of the amount for which attachment was made or according to the value of the property or interest in it whichever is less.

I am unable to read Section 7(viii) of the Act as amended in this manner. The present suit cannot be said to be either to set aside an attachment or to restore One nor can it be said to be a suit for setting aside an order passed under Rules 60, 61 or 62 of Order XXI, C. P. C. The Court-fees Act is a fiscal statute. It is trite that it has got to be strictly construed against the State and in favour of the subject. The principle is so well established that no authority is needed in support of it.

The effect of the words underlined (here is single quotation marks--Ed.) is to provide in clear language that a suit to set aside an Order passed under Order XXI, Rules 60, 61 or 62, C. P. C., would be deemed to be a suit to set aside or restore an attachment as the case may be. Beyond this to my mind there is no other effect of the amendment made by U. P. Act XIX of 1938.

7. A similar question arose before their Lordships of the Supreme Court in Nemi Chand and Another Vs. The Edward Mills Co. Ltd. and Another, . In that case the relief claimed in the suit was as follows:-

"1. That it be declared that the appointment of defendant 2 is illegal, invalid and ultra vires and that he has no right to act as chairman, managing director etc., of the defendant 1;

2. That a receiver be appointed to take charge of the management of the company, until a properly qualified chairman, managing director etc., is duly appointed as required by the memorandum and articles of the company."

Their Lordships held that no claim for a consequential relief could be read within that prayer.

8. The second submission to my mind is equally untenable. There is good authority for the proposition that whether or not a particular suit whether in the trial Court or in appeal fell within the mischief of, Section 42 of the Specific Relief Act could be decided only at the hearing of the suit or the appeal and while deciding the question, of court-fee a Court has no jurisdiction to canvass the question whether the suit or the appeal would fail because of the provision of Section 42 of the Specific Relief Act Nemi Chand and Another Vs. The Edward Mills Co. Ltd. and Another, . A Full Bench of this Court In Bishan Sarup Vs. Musa Mal and Others , held that if on a perusal of the plaint the Court considers that it was one for which further relief should have been asked for, then it would refuse to give a declaration but it cannot compel a plaintiff to superadd a prayer for a consequential relief when he has not asked for such a relief.

In that case the plaintiff had claimed a declaration that a certain registered deed was void and did not affect his interest The Court held that he had deliberately avoided claiming consequential relief such as cancellation of the deed but none the less he need not pay ad valorem court-fee on the subject-matter and a declaratory court-fee was sufficient. These decisions are binding upon me. The single Judge decision in Smt. Bhagwan Dei Vs. Firm Het Ram Sureshchandra and Others, also goes against the submission of the State.

It is, however, not necessary for me to rely upon that case because I am not, as at present advised, prepared to go to the entire length to which the learned single Judge has gone. I may, however, state that I fully agree with such of his conclusions as find support from the decision of their Lordships of the Supreme Court in Nemi Chand and Another Vs. The Edward Mills Co. Ltd. and Another, .

9. For the reasons mentioned above, I answer the question referred to the Full

Bench in the negative.

10. V. BHARGAVA, J. I agree with my brother Jagdish Sahai and have nothing to add.

11. MITIIAN LAL, J. : I agree,