
(1911) 04 CAL CK 0010
In the Calcutta High Court

Pajiruddin and Others

APPELLANT

Vs

The Secretary of State for India

RESPONDENT

Date of Decision : 25-04-1911

Acts Referred:

Court Fees Act, 1870 — Article 17

Citation : 17 Ind. Cas. 919

Hon'ble Judges : Holmwood, J;Chatterjee, J

Bench : Division Bench

Judgement

1. This is an appeal from the decision of the District Judge of Midnapur reversing that of the Officiating Subordinate Judge and directing that three weeks" time be given to the plaintiffs to file the deficit ad valorem Court-fees to be assessed on the valuations stated in the plaints. There was a further order that, if this was done, the suits will be remanded for farther determination after the subordinate tenants have been added as defendants and costs will abide the result.

2. We have heard the learned Vakils on either side and have carefully considered the matter, and we are of opinion that the order of the learned Judge on both points must be upheld. As a matter of fact, the plaintiffs have paid in the deficit Court-fees.

3. A certain difficulty arises on the wording of Section 104-H, for although Sub-clause (3) of that section expressly sets out the suits which may be instituted under that section from (a) to (g) and no others, and these causes of action are all of them purely declaratory, yet we find in the Sub-clause (4) that if the Court proceeds to make any declaration, it shall in some cases give one kind of consequential relief and in other cases give others, and that is quite contrary to the law which is laid down in Schedule II, Article 17, of the Court Fees Act. There it is clearly set out that the plaint or memorandum of appeal can only be stamped as declaratory suit with a fee of Rs. 10 when the relief is to obtain a declaratory decree where no con-sequential relief is prayed. It does not seem to us that it was necessary for the appellant to add to prayer (kha) in the plaint, but

as it is a consequential relief, it seems to us that it must be paid for ad valorem. In the Case No. 1469, no difficulty arises, inasmuch as there is a farther prayer for a relief which is wholly un contemplated by Section 104(H) and that is that one tenure should be split up into two separate jotes.

4. As regards the necessity of joining the present tenants, whom the learned Judge rather loosely refers to as under-tenants, it appears to us clear that any declaration which is made as regards the status of the appellants must be made in the presence of the present tenants. As long as the appellants remain, as they are now declared by the Record of Rights to be, tenure-holders, the tenants may have rights of occupancy, and to declare that the tenure-holders have occupancy rights would be to take away that status from the present tenants who would in that case become under-tenants. This again is a matter which seems to render the case more complicated than an ordinary simple declaratory suit u/s 104-H in respect of an individual tenant.

5. We, therefore, dismiss the appeal, and direct that the case be remanded for fresh determination after the present tenants have been added as defendants and that the costs as ordered by the lower Court abide the result.

6. We assess the hearing fee at three gold mohurs in each case in this Court.

7. This judgment governs Second Appeal No. 4170 of 1910.

8. The Rules are discharged without costs.