
(1919) 07 PAT CK 0002
In the Patna High Court

Pandit Brij Krishna Das and Others

APPELLANT

Vs

Choudhury Murli Rai and Others

RESPONDENT

Date of Decision : 04-07-1919

Acts Referred:

SUITS VALUATION ACT, 1887 — Section 8

Citation : 56 Ind. Cas. 316

Hon'ble Judges : Mullick, J;Adami, J

Bench : Division Bench

Judgement

Mullick, J.—The history of the transactions which led to the present suit is as follows:

On the 24th of March 1909, Murli, Brij Mohan and others executed a mortgage deed in favour of Mohan Krishna Dar for Rs. 40,000. It was stipulated that sum of Rs. 15,000 out of this amount was to be deposited in Court to the credit of Abdul Ghani, who had a decree for that sum upon a simple mortgage executed by Murli and Brij Mohan. It was also stipulated that the balance of Rs. 25,000 was to be paid to Abdul Ghani out of Court in discharge of an usufructuary mortgage in respect of which a suit, viz., No. 112 of 190, was then pending in the Court of the Subordinate Judge of Arrah.

2. On the 26th March 1909 Mohan Krishna Dar deposited the sum of Re, 15,004 in Court in payment of the claim of Abdul Ghani, inclusive of interest, upon the decree above referred to. It was subsequently discovered that Abdul Ghani's claim upon the usufructuary mortgage was not Rs 25 000 but Rs. 71,000, and on the 16th September 1909 Mohan Krishna Dar served a notice upon the mortgagors asking them to pay into Court the difference between those two sums within one month. The mortgagors having failed to comply, Mohan Krishna on the 11th October 1909 brought the suit numbered 106 of 1909 to recover from the mortgagors the sum of Rs. 15,904. It is alleged that summonses in the suit were served on the 10th of November 1809, and the record shows that, on the 3rd December 190.9, an ex parte decree was obtained by the plaintiffs. In

execution of this money decree an attachment was effected on the 16th March 1910 of the mortgaged properties. On the 26th March 1910 notices were served under Order XXI, rule 66, of the Code of Civil Procedure. Sale proclamations were served on the 4th May 1910 and the sale was held on the 6th June following, Possession was delivered on the 20th August and mutation was made in the Collector's registers on the 1st of September. There were then certain proceedings for the appraisal of crops u/s 69 of the Bengal Tenancy; Act, which are only material for the purpose of showing that Murli had knowledge of the decree. Murli, however, denied such knowledge and, on the 31st of May 1915, he and his minor son instituted Suit No. 40 of 1915, in the Court of the Subordinate Judge of Arrah, to set aside the decree on the ground that it was obtained by fraud.

3. The present appeal is preferred by the heirs of Mohan Krishna Dar, the defendant in that suit, against the decree of the Subordinate Judge setting aside the ex pane decree of the 3rd December 1909 and the sale of the 6th June 1910, and allowing the plaintiffs to redeem their interest in the property on payment of their proportionate share of the sum scoured,

4. It is necessary to explain here how the redemption of a fractional part of the mortgaged properties came to be allowed. On the 2nd December 1912 Har Prosad and others, representing some of the mortgagors, brought Suit No. 168 of 1912 in the Court of the Subordinate Judge of Arrah to set aside the decree and the sale, so far as they affected their 4 annas share in the property; and, on the 10th December 1912 Suit No. 169 of 1912 was instituted by Inderdeo and others, representing a second baton of mortgagors in respect of their 5 annas 4 pies share. Those two suits were decreed, and it is alleged that the plaintiffs therein redeemed their 9-annas 4-pies share in the property on the 14th of January 1915 upon payment of Rs. 11,666-10 0 to the mortgagees. There is, next, an allegation in the plaint in the present suit that the defendants have become proprietors of 2 annas, 8 pies in the properties by purchase. The plaintiffs accordingly pray to redeem the residue, which is their 4 annas share, upon payment of their proportionate share of the sum secured.

5. The Subordinate Judge decreed the suit on the 30th March 1917, notwithstanding the fact that on the 27th March 1917 the High Court had set aside the judgment and the decrees in Suits Nos. 168 and 169 of 1912, holding that the decrees and the sales were valid and dismissing the suits. Though this fact was brought to the notice of the Subordinate Judge, and though it was contended before him that the decision of the High Court operated as res judicata, the learned Subordinate Judge was unable to give effect to the objection, and decreed the suit as already stated.

6. In the present appeal, a preliminary objection is taken by the plaintiffs that the appeal does not lie to this Court as the subject matter is below Rs. 5,000, and that the Court which had jurisdiction to entertain the appeal was the Court of the District Judge of Arrah.

7. In order to deal with this point, it is necessary to examine the reliefs claimed in the plaint. The first prayer is that it may be held that the money decree of the 3rd December 1909 was obtained fraudulently; the second is that it may be held that the sale of the 6th June on the basis of the fraudulent decree was illegal, inoperative and null and void and the third is that the plaintiffs may be allowed to redeem, after setting off their claim for damages in regard to Moozi Ismailpur which is said, subsequent" to the auction-purchase, to have been sold for arrears of Government revenue through the negligence of the auction-purchaser.

8. Now, it is quite clear that the suit comes u/s 7, clause 4, of the Court; Fees Act and, complying with the provisions of that section, the plaintiffs seem, in paragraph 9 of the plaint, to have valued their relief for Court fee purposes at Rs. 3,976, which sum represents their 1/4th share in the sum of Rs. 15,904 for which the decree of the 3rd December was made. For the purpose of jurisdiction, however," the plaintiffs appear to have valued the suit at Rs. 15,904 only. Now, for the purpose of Court-fees the valuation put by the plaintiff on a suit u/s 7, clause 4(c), is not to be an arbitrary valuation. It is to accord with the value of the subject-matter and in case of dispute is to be determined by the Court. In the case before us an issue as to the valuation and Court-fee paid was raised, but it was decided by the learned Subordinate Judge in a most perfunctory manner, it being merely stated that there was no evidence to show that the valuation was insufficient. It was the duty of the learned Subordinate Judge to see that the Government revenue was adequately protected. That duty now falls upon us, and the parties having failed to adduce any evidence on the point, we are compelled to make the valuation upon the pleadings.

9. In this Court the principle has been accepted that where a plaintiff asks for a declaration and consequential relief, he is to pay ad valorem fees in proportion to the loss from which he asks to be relieved. Here if there had been no sale and the decree had merely stood, his loss would have been Rs. 15,904. It has been contended that his loss would have been only a quarter of this sum, but the decree, being a joint decree, it would seem that he is jointly and severally liable for the whole. But the sale having taken place, the plaintiff's loss is now not the amount of the decree but his interest in the property sold. That interest, in the event of a partition, will be 1/4th and, therefore, the plaintiff's loss is 1/4th of Rs. 2,20,000, which is alleged in paragraph 5 of the plaint to be the value of the entire properties, that is to say, Rs. 55,000.

10. As regards the prayer for redemption, it might be viewed either as a relief based upon a separate cause of action and as a distinct subject within the meaning of Section 17 of the Court Fees" Act or as a consequential relief. Adopting, the latter view, we think the plaintiffs must pay ad valorem fees on Rs. 55,000" only, that is to say, Rs. 1,200,

11. The lower Court appears to have treated the case as one of redemption pure and simple, and it has been contended by the learned Vakil for the plaintiff respondent before us that the first two prayers are only ancillary to the prayer

for redemption. In my opinion, this cannot be so, for, till the sale is reversed, the plaintiffs cannot redeem. It would not have been sufficient for them to bring a suit for redemption without making any mention of the decree and the sale, leaving it to the defendants to set up the decree as a bar to the suit. They could not, in a suit so framed, have been permitted to adduce evidence of fraud and get a declaration that the decree and the sale were inoperative. It might have been otherwise if the decree had been without jurisdiction, or if they had been defendants; but here it was of vital importance to them to set aside the decree and the sale by means of a declaratory decree. The result is that a sum of Rs. 975 is still due from the plaintiffs on account of deficit Court-fee.

12. For the purpose of jurisdiction, the case comes u/s 8 of the Suits Valuation Act, and must be valued at Rs. 55,000. The appeal, therefore, lies to (his Court.

13. In regard to the Court-fee payable on the memorandum of appeal, it must be calculated upon the subject-matter of the appeal. The defendants-appellants seek to recover the plaintiffs' share and to defeat their right of redemption in all the Mouzas, except Ismailpur, the value of which, according to the Subordinate Judge, is Rs. 3,500. The subject matter of the appeal, therefore, is Rs. 55,000 less 1/4th of Rs. 3,500, i. e., Rs. 54,125. The Court fee payable, therefore, is Rs. 1,200 and there is a deficit of Rs. 975.

14. The order, therefore, that we shall pass is that deficit Court fee to the extent of Rs. 975 must be paid by the appellants before the appeal can be entertained. They will have time till the 23rd June for complying with this order. On default, the memorandum of appeal will be rejected. If, and when, the requisite Court-fee upon the memorandum of appeal is paid, the plaintiffs will be called upon, u/s 12 of the Court Fees Act, to pay the deficit of Rs. 975 upon their plaint on or before the 30th June. In the event of their failing to do so, their suit will be dismissed without costs and the appeal of the defendants will be decreed with costs throughout.

15. Upon both parties complying with the orders in the matter of the deficit fees recoverable from them, the appeal will be set down for hearing on the 7th July.

Adami, J.

16. I agree.

ORDER

17. This case has been put up for hearing to-day because of an order made by us on the 9th June 1919, calling upon the appellants to deposit Rs. 975 as deficit due upon their memorandum of appeal.

18. We held that the suit was not one for redemption, that it fell u/s 7, Clause (4) (c) of the Court Fees Act, and that Court-fees should be paid upon the value of the relief claimed, which, in this case, was a sum of Rs. 54,125, The Appellants have complied with that order and, therefore, so far as they are

concerned, the appeal can proceed, But on the last date of hearing we found that the plaintiffs had not in the trial Court paid the full Court fee, that a further sum of Rs. 975 was due upon their plaint and we directed them, u/s 12 of the Court Fees Act, to make good that deficit on or before the 30th June, This they have failed to do. Mr. Ganesh Dutt Singh, on behalf of the plaintiffs, says that he has communicated with his client but has received no reply and consequently is not in a position to say whether or not the plaintiffs intend to comply with our order. Bat he has addressed an argument to us upon Section 12 of the Act, the purport of which is that, under this section, we have no power either to call upon the plaintiffs to pay the money, nor, in the event of the plaintiffs' failure to comply with cur order, to dismiss the suit by applying the provisions of Section 10. The learned Vakil relies upon certain observations made by a learned Judge of the Allahabad High Court in the "case of Narain Singh v. Chaturbhuji Singh 20 A. 862 : A.W.N. (1898) 72 : 9 Ind. Dec. 592,, and contends that Section 12 of the Act only applies to a case in which the plaintiff is the appellant. With great respect, if that is the meaning of the judgment, I venture to differ, and, so far as this Court is concerned, it seems to me that the matter is concluded by the decision in the case of Rajdeo Narain Singh v. Ramdil Singh, in Second Appeal No. 104 of 1919, in which a Division Bench held, that upon the plaintiff-respondent's failure to pay the deficit Court-fee, it was competent to the Appeal Court to call upon him to pay the deficit and, in the event of his being unable to pay, to enforce the order by the dismissal of his suit. I can find nothing in Section 12 which would debar the Court from enforcing its order in this manner. The section clearly contemplates that Section 10 is applicable, unless the circumstances of the case do not permit. It is contended that all that the Appeal Court can do is to hold the decree, which has been obtained by the defaulting party, in abeyance and to direct that it shall not be executed until such time as the order in respect of the deficit is complied with. It would seem that the Court can, if it so pleases, adopt this remedy in exercise of its inherent powers, but there is nothing in the law which says that this is the only remedy which it is open to the Court to apply. I cannot, therefore, accede to the argument", that the respondent is entitled to be heard in the appeal, that it is only if he loses that we can impose any penalty upon him, and that, in any event, the utmost that the Court can do is to stay the execution of his decree.

19. The learned Vakil also endeavoured to argue on the authority of *Sundar Mal Marwari v. J. C. Murray* 16 Ind. Cas. 963 : 16 C.L.T. 675 that Section 12 does not at all apply to the case before us. In my opinion that case is of no assistance to him.

20. Finally it has been contended that even if we decide that the plaintiffs are liable to be called upon to pay the deficit, before they can be heard in the appeal, the proper order that we should make is not that the suit should be dismissed, but that the plaint should be rejected under Order VII, rule 11 of the Civil Procedure Code, In my opinion rule 11 of Order VII and Section 10 of the Court Fees Act apply to different stages of a suit. The procedure of rule 11 of the

former Act is not applicable to a case in which an Appeal Court acts u/s 12 of the latter Act. In such a case the rejection of the plaint is an inappropriate remedy and the law enjoins a dismissal without option, though it may be that the result of the dismissal from the point of view of res judicata is the same as that of a rejection.

21. In these circumstances, the order made by us seems to be perfectly correct and the appeal has been rightly decreed with costs throughout.