
(1944) 11 AHC CK 0020
In the Allahabad High Court
Case No : First Civil Appeal No. 112 of 1943

Parbati Devi	Vs	APPELLANT
Uttar Pradesh Government		RESPONDENT

Date of Decision : 30-11-1944

Acts Referred:

Court Fees Act, 1870 — Section 7(viii)
Criminal Procedure Code, 1898 (CrPC) — Section 87, 88

Citation : (1944) 11 AHC CK 0020

Hon'ble Judges : Madeley, J;Bennett, J

Bench : Division Bench

Advocate : M.P. Srivastava, for the Appellant; R.B. and H.K. Ghosh for Crown, for the Respondent

Final Decision : Disposed Of

Judgement

Bennett and Madeley, JJ.—This is a court-fee report. The facts, which led up to the suit which is under appeal, are that B. Mahadeo Prasad Vishnu was employed as an Assistant Accountant in the U.P. Arts and Crafts Emporium, Lucknow. Between the 7th November 1939 and 24th February 1942, he is said to have embezzled Rs. 72,600 and then, when the embezzlement was discovered, to have absconded. Proceedings were taken under Sections 87 and 88, Code of Criminal Procedure by the City Magistrate, Lucknow, and the properties in suit are those which were attached by the City Magistrate as belonging to Mahadeo Prasad Vishnu. The wife of Mahadeo Prasad Vishnu, who is the present Appellant, filed a suit against the U P. Government through the City Magistrate, Lucknow for a declaration that she is the owner in possession of the property and that it is not liable to attachment and sale. The trial Court held that she is not the owner and impliedly held that she has not been in possession. Against this decision she has come in appeal and the office report is that she must pay ad valorem court-fee, since the suit is analogous to a suit provided for in Section 7(VIII) of the Court Fees Act.

"In suits to set aside or to restore an attachment including suits to set aside an order passed under Order XXI Rules 66, 61 or 62 of the Code of Civil Procedure:

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."

2. It is argued on behalf of the Government that this property is at the disposal of, and therefore virtually in the possession of, the Government because no objection has been made u/s 88(6A) of the Code of Criminal Procedure, and because Mahadeo Prasad Vishnu did not appear within the time specified in the proclamation made u/s 87(1), Code of Criminal Procedure, and Mahadeo Prasad Vishnu is therefore an outlaw. The restoration of the property, which virtually vests in the Government, would be only a matter of grace. The learned Government Advocate has cited several rulings on this point, but we do not consider it necessary to examine them, because in our opinion they can have no application to the present case. It is true that the Appellant filed no objection u/s 88(6-A), but it has been held by the trial Court that it was not necessary for her to submit the case to this summary inquiry before filing a regular suit. By Section 88(6-D) the result of the inquiry before the Magistrate into the rights of the claimant is made subject to the result of a regular suit, if any, and it is contended before us that the Appellant could not file this suit without making the objection u/s 88(6-A). It follows that the property is not at the absolute disposal of the Government until that suit is decided and further, since the decree is now under appeal until the appeal is decided.

3. The property is now under attachment by the City Magistrate as a Magistrate, and is therefore in "custodia legis" and no suit for possession lies. Moreover the Appellant did not sue for possession but for a declaration that she is owner in possession of the properties. The only consequential relief she can be said to have sought is the setting aside of the attachment.

4. We consider that the office is right in saying that the suit is analogous to one u/s 7(VIII). The result of the suit, if successful, is to set aside the attachment and the result of the appeal, if successful, will be the same. The suit and appeal therefore come u/s 7(VIII) of the Court Fees Act which includes but is not confined to attachments under Order 21. We do not think, however, that any additional court-fee is payable. The second clause of Section 7(VIII) is,

"according to half of the amount for which attachment was made, or according to half of the value of the property or interest, whichever is less"

5. We think that the word "whichever" must be held to apply to "the amount for which the attachment is made" as well as to the "value of the property or interest", and since the attachment was not made for any amount, the court-fee paid by the Appellant is sufficient. We hold accordingly.