(1935) 11 AHC CK 0033

In the Allahabad High Court

Parshottam Ram APPELLANT

Vs

Sheo Mangal Ram and Others RESPONDENT

Date of Decision : 08-11-1935

Acts Referred:
Stamp Act, 1899 — Section 44(1)

Citation : AIR 1936 All 151

Hon'ble Judges : Ganga Nath, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Ganga Nath, J.—This is a plaintiff''s application in revision against the decree of the learned Judge, Small Cause Court, dismissing his suit. The plaintiff brought a suit No. 123 of 1930 against the defendants Nos. 1 and 2 in which he had got an award filed which was made in the partition proceedings between the plaintiff and the father of defendants 1 and 2 and the father of defendant 3. The award was insufficiently stamped, and So the plaintiff had to pay Us. 15 for the deficiency in the stamp duty and Rs. 150 for penalty. This amount was not included in the costs of the suit. The plaintiff brought this suit for contribution of the deficiency in the stamp duty and the penalty paid by him in the former suit No. 173 of 1930. Defendants 1 and 2 contended that they were not liable for contribution. The learned Judge of the Small Cause Court has dismissed the suit. The question for determination is whether the plaintiff has any right of contribution. The only section under which a person who has to pay deficiency in stamp duty and penalty can recover it from another person liable for the same is Section 44, Stamp Act. Clause (1) of that section lays down:

When any duty or penalty has been paid u/s 35, Section 37, Section 40 or Section 41, by any person in respect of an instrument, and, by agreement or under the provisions of Section 29, or any other enactment in force at the time such instrument was executed, some other person was bound to bear the expense of providing the proper stamp for such instrument, the first-mentioned person shall be entitled to recover from such other person the amount of the duty or penalty so paid.

2. It will appear from it that it is the person, who is not liable for the payment of the stamp duty and has to pay the deficiency and the penalty, who has been given the right under it to recover it from the person who is bound to bear the expense of providing the proper stamp for the instrument. Clause (3) lays down:

Such amount may, if the Court thinks fit, be included in any order as to costs in any suit or proceeding to which such persons are parties and in which such instrument has been tendered in evidence. If the Court does not include the amount in such order, no further proceedings for the recovery of the amount shall be maintainable.

3. As already stated the deficiency in the stamp duty and the penalty paid by the plaintiff were not included in the costs of his former suit, so Clause (3) is a bar to the present proceedings for the recovery of the same amount against defendants 1 and 2 who were defendants in the former suit. This view is supported by the case reported in Ram Singh v. Man Singh 1927 25 LLJ 482. So far as defendant 3 is concerned, the plaintiff being himself one of the persons who were bound to provide the proper stamp duty has no right to recover it from defendant 3 or any other person under Clause (1). This view is also supported by the case reported in Raman Chetty v. Nagappa Chetty 1916 31 IC 285. There is no force in the application. It is, therefore, ordered that it be dismissed with costs.