

(1938) 04 PAT CK 0015
In the Patna High Court

Ram Chandra Ganga Bux Firm

APPELLANT

Vs

Sunderlall Singh and Others

RESPONDENT

Date of Decision : 13-04-1938

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 15
Specific Relief Act, 1877 — Section 42

Citation : AIR 1938 Patna 558

Hon'ble Judges : Wort, Acting C.J.;Varma, J

Bench : Full Bench

Judgement

Wort, Ag. C.J.

1. The only question in this appeal is whether the plaintiff was entitled to a declaration without claiming consequential relief.

2. In the first instance he claimed a declaration and possession, but the trial Court having demanded a higher court fee than he had paid, he amended his plaint by striking out that portion by which he claimed possession. The trial Court then, having gone into the merits of the case, gave a decree to the plaintiff. In appeal that decree was confirmed by the District Judge coming to the conclusion that the plaintiff was entitled to maintain his suit without claiming possession.

3. In second appeal before this Court the only question that arises is the one which I have stated and no other point has been argued. The defendant relies upon the decision of the Privy Council in *Kathama Natchiar v. Dorasinga Tevar* (1875) 2 I.A. 169 where their Lordships of the Judicial Committee pointed out that the power of the Courts in India to make declaratory decree was admitted to rest upon Section 15 of the then Civil P.C. (Act 8 of 1859), and proceeded to state that

the application of that Section ... must be governed by the same principles as those upon which the Court of Chancery proceeds under 15 and 16, Vict., Clause 86, Section 50;

that there is no absolute right to a declaratory decree and that

a declaratory decree cannot be made unless there be a right to consequential relief capable of being had in the same Court.

4. The real question is whether Order 21, Rule 102, contemplates an action in which the relief claimed is for a declaration of right and possession and whether such a suit is governed by the Proviso to Section 42, Specific Relief Act, which provides:

No Court shall make any such declaration where the plaintiff, being able to seek further relief than a mere declaration of title, omits to do so.

5. The matter appears to be governed by the decision of this Court in Bhagwan Lal v. Rajendra Prasad Sahi AIR 1923 Pat. 564. In that case the suit was under Order 21, Rule 63, and the Chief Justice and Foster J. decided that the Proviso to Section 42, Specific Relief Act, was not applicable. The Pull Bench decision of the Madras High Court in Kristnam Sooraya v. Fathma Bee (1906) 29 Mad 151 is also to the same effect.

6. That being so, at the end of his argument Mr. Hasan Jan on behalf of the respondents filed a petition to allow him to amend his plaint by adding the claim for possession. So far as this action and this appeal is concerned, of course it is unnecessary: but it is thought that there may be a difficulty with regard to the hearing of any suit following upon the decision of this appeal claiming possession.

7. The question which we have to determine in these circumstances is whether at this stage he should be allowed again to amend his plaint. It is a case in my judgment in which he should not be allowed to amend. He first of all filed his plaint claiming possession; then being put to his election, he abandoned his claim for possession and now seeks to reverse the decision with regard to that matter. It is a case in which, in my judgment, leave to amend should not be given, and, as I have already pointed out, in the strict circumstances of this appeal it is unnecessary.

8. The appeal is dismissed with costs.

Varma J.

I agree.