
(1950) 10 AHC CK 0027
In the Allahabad High Court
Case No : Ex. Decree Appeal No. 41 of 1944

Ram Shankar

APPELLANT

Vs

United Provinces and Others

RESPONDENT

Date of Decision : 26-10-1950

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 33 Rule 10, Order 44 Rule 1

Citation : AIR 1952 All 173

Hon'ble Judges : Kidwai, J

Bench : Single Bench

Advocate : R.N. Shukla and N. Banerji, for the Appellant; N.U. Beg, (for No.1) and Masud Hasan, (for Nos. 3 to 7), for the Respondent

Final Decision : Dismissed

Judgement

Kidwai, J.—Ram Shanker appellant and Bishun Narian respondent 8 obtained a decree for Rs. 11,013-10-0 against Sharif Ahmad and others, respondents 2 to 7, from the Court of the Special Judge, II Grade of Hardoi. The debtors preferred an appeal which was heard and disposed of by an order dated 13-5-1939. The appeal was partly allowed and the liability was reduced to Rs. 4,972.9.0. The appellants were ordered to bear their own costs. The appeal had been preferred as a pauper appeal but the attention of the appellate Court does not seem to have been directed to Order 33, Rule 10, Civil P. C., and no order was passed as to who should be made liable to pay the court-fee. On 21-7-1943, the Court was moved by the Deputy Commissioner of Hardoi to make the calculation of court-fee and to pass an order under Order 33, Rule 10, Civil P. C. Thereupon the Court passed an order making the creditors who were respondents in that case liable to pay the court fee.

2. The Deputy Commissioner later applied for execution of this decree, and the property of the two respondents, in that appeal was attached. An objection was filed u/s 47 Civil P. C., stating that the amount of court-fee was not recoverable from the respondents since the costs had been ordered to be borne by the

appellants themselves. The matter pending before the Court is with regard to execution. The order itself has become final, since the respondents did not appeal from it nor did they file any application in revision. It must, therefore, be given effect to by the execution Court, unless it is held to be a nullity because the Court which passed it had no jurisdiction to do so. The learned Advocate for the appellant urged that this was not a case of a pauper suit but of an appeal and that, therefore, Order 33, Civil P. C., did not apply but only Order 44, Civil P. C., had to be considered in order to determine the authority of the Court to pass an order of the nature of order passed by it. He points out that Order 44 does not contain any thing about any direction for the payment of court-fees being made.

3. It is true that Order 44, Civil P. C., does not expressly contain any such provision but it is clearly provided that the right of any person to apply for leave to appeal as a pauper is

"subject, in all matters, including the presentation of such application, to the provisions relating to suits by paupers, in so far as those provisions are applicable."

One of the provisions relating to suits by paupers is the provision contained in Order 33, Rule 10 which directs the Court to calculate the amount of court-fee which would have been paid by the plaintiff, and also to direct which party shall pay that court fee. Obviously, therefore, the Court (had ?) jurisdiction to make an order of the nature which it has actually made and it did not act without jurisdiction. Its order, therefore, can not be treated as a nullity. The objection u/s 47 Civil P. C., was rightly dismissed and this appeal fails and is dismissed with costs.