

(1917) 12 CAL CK 0029
In the Calcutta High Court

Rup Chand Ghose

APPELLANT

Vs

Srimati Khirodamayi Dasi and Others

RESPONDENT

Date of Decision : 18-12-1917

Acts Referred:

Court Fees Act, 1870 — Section 7(iv)(c)

Citation : 75 Ind. Cas. 567

Hon'ble Judges : Walmsley, J;N.R. Chatterjea, J

Bench : Division Bench

Judgement

N.R. Chatterjea, J.—The only point for consideration in this appeal relates to the question of Court-fee payable on the plaint in the suit out of which this appeal arises.

2. The prayers in the plaint are as follows:--(ka) That the Court may be pleased to declare that the plaintiff's purchase of the paternal right inherited by defendant No. 2 in the properties described in Schedule (ka) and (kha) below is valid and binding on the defendants under the circumstances stated above.

(Kha) That the Court may be pleased to declare after a true construction of the Will of the deceased Puran Chandra Mahata, that the estate left by him was fully administered at the time the Probate was taken and that the executrixes to his estate were not competent to retain possession of his estate as executrixes and that the said Probate is now only an inoperative instrument.

(Ga) That the Court may be pleased to declare, that the defendants by their conduct and acts and deeds are estopped from claiming any sort of title against the plaintiff to the properties mentioned below which have been purchased by the plaintiff.

(Gha) That if in the judgment of the Court any portion of the said estate is yet un-administered, it may be ordered that the same may be administered by the Court, that arrangements may be made for keeping the plaintiff's purchased right therein unaffected, and that a Receiver may be appointed by the Court for

that purpose.

(Una) That a decree may be passed against the defendants for all the costs of the present suit.

(Cha) That the Court may be pleased to grant any other relief to the plaintiff, to which he may be found entitled in the judgment of the Court.

8. The first prayer is for declaration of plaintiff's right, but in the fourth prayer the plaintiff prays for administration of the estate (if in the judgment of the Court any portion of it is yet unadministered) and for the appointment of a Receiver. The suit is, therefore, one for a declaratory decree where consequential relief is prayed and the Court below is right in holding that it is such a suit. The learned Subordinate Judge, however, fixed the value of the properties purchased by the plaintiff at Rs. 30,000 and held that the plaintiff must pay ad valorem Court-fee on that sum, viz., Rs. 975 minus Rs. 30 already paid by him.

9. But the market value of the property cannot be taken to be the value of the relief sought as the plaintiff does not seek possession of the property. The plaintiff says that he is in possession, and there is nothing in the plaint to show that he is suing for possession. That being so, the case does not come u/s 7 Clause v. A suit for a declaratory decree where consequential relief is prayed falls u/s 7, Clause iv(c) of the Court-Fees Act. Clause iv provides that in suits to obtain a declaratory decree or order where consequential relief is prayed or in a suit for accounts the amount of fee shall be computed, "according to the amount at which the relief is valued in the plaint or Memorandum of Appeal" and that in all such suits the plaintiff shall state the amount at which he values the relief sought". The valuation of the relief sought in cases coming u/s 7, Clause iv therefore, rests with the plaintiff and not the Court. The plaintiff valued the claim in the present case as follows:--Rs. 1,500 for declaration Rs. 1,500 for construction, and Rs. 1,500 for administration. The learned Counsel for the appellant contended that if ad valorem Court-fee is to be paid at all, it should be paid only on the amount at which the relief sought for in the fourth prayer of the plaint (i.e., for administration) was valued as a suit for "account" u/s 7, Clause iv(f), and that the first three prayers are merely for declaration and, therefore, a Court-fee of ten rupees only is payable. It is unnecessary to consider whether the 2nd and 3rd prayers are merely for declaration as contended for the plaintiff, or involve consequential reliefs, though in form for mere declaration as contended by the learned Senior Government Pleader (who was asked to appear in this case) because a Court-fee of ten rupees is payable (under Schedule II, Clause 17) on a plaint in a suit to obtain a declaratory decree only where no consequential relief is prayed. In the present case consequential relief having been paid in the 4th prayer Schedule II, Clause 17, cannot apply, and ad valorem Court-fee is payable as laid down in Section 7, Clause IV. In the cases cited before us, the only relief which was valued was that relating to administration. In the present case the plaintiff himself, as stated above, valued the suit at Rs. 1,500 for administration, Rs. 1,500 for construction and Rs. 1,500 for

declaration, and paid Court-fee of Rs. 30 at Rs. 10 for "each claim". The fee, however, under Clause IV, must be computed according to the amount at which the relief sought is valued in the plaint. That being so, the plaintiff must pay ad valorem Court-fee on "each claim" of Rs. 1,500. The Court-fee payable is Rs. 300 out of which only Rs. 30 has been paid. The plaintiff must, therefore, pay the balance viz., Rs. 270 on the plaint. He must also pay a similar sum on the Memorandum of Appeal.

10. We accordingly direct that on the plaintiff paying the balance of the Court-fee, namely, Rs. 270 on the plaint and Rs. 270 on the Memorandum of Appeal on or before the 15th January 1918, the order of the Court below rejecting the plaint and the decree passed upon the said order, will be set aside and the case will be remanded to the Court below to be tried according to law.

11. We make no order as to costs of this appeal.

Walmsley, J.

12. I agree.