
(1960) 12 MP CK 0044
In the Madhya Pradesh High Court
Case No : C. Rev. No. 392 of 1960

Sajjad Hussain

APPELLANT

Vs

Aminakhatunbi

RESPONDENT

Date of Decision : 23-12-1960

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 20 Rule 18
Court Fees Act, 1870 — Section 7

Citation : (1961) JLI 326

Hon'ble Judges : T.C. Shrivastava, J

Bench : Single Bench

Advocate : P.R. Padhye, for the Appellant; P.S. Khirwadkar and R.P. Verma, for the Respondent

Final Decision : Allowed

Judgement

T.C. Shrivastava, J.—This order governs the disposal of Civil Revision No. 392 of 1960 and Civil Revision No. 393 of 1960. These two petitions for revision are directed against the order of the 1st Civil Judge (Class I). Bilaspur, passed on 16-7-1960, directing the applicants to pay court-fees on their prayer for partitioning their separate shares in the joint family properties.

2. It would be convenient to refer to the parties in this order as they were arrayed in the trial Court. The suit was filed by non-applicant No. 1 for partition of family properties. She impleaded the applicants in Civil Revision No. 392 of 1960, who are her brothers, as defendants 1 and 2, and the applicants in Civil Revision No. 393 of 1960, who are her sisters as defendants 3 to 6. Non-applicants 6 to 11 were impleaded as defendants 7 to 12. They are transferees of portions of the family properties from defendant No. 1 and 2 after the preliminary decree was passed.

3. The suit was filed in 1946. A preliminary decree for partition was passed on 14-2-1948, but the matter went up in appeal and the proceedings were held up till 1958. In that year, proceedings for drawing up final decree were started when

defendants 1 and 2 as also defendants 3 to 6 made a prayer for separating their shares also. Defendants 3 to 6 paid a court-fee of Rs. 20/- for this prayer, but defendants 1 and 2 did not pay any court-fee. Defendants 7 to 12 objected that the other two sets of defendants were liable to pay court-fees and thereupon the Court ordered that these two sets of defendants should pay court-fees on one-half of the value of their shares in accordance with the Madhya Pradesh Court-fees (Amendment) Act, 1953, by which section 7 of the Court-fees Act was amended. It is this order which is challenged in the two revision petitions.

4. Prior to 1953, a fixed court-fee of Rs. 20/- was payable by the plaintiff in a suit for partition where he claimed to be in joint possession of the property. After the amendment of 1953, court-fee is leviable on half the value of his share if he claims to be in joint possession and on the full value of the share if he does not claim to be in joint possession. It will thus be seen that a fixed court-fee on partition suits has been replaced by ad valorem court-fee under the amendment made of the Court-fees Act in 1953. We shall consider the position as it existed prior to the amendment. In a suit for partition, it is necessary under Order 20, rule 18, Civil Procedure Code, that the Court should declare the shares held by the several parties to the suit. This implies that the shares of the defendants separately have also to be declared in such a suit. The Court-fees Act nowhere provides for payment of court-fees by the defendant and therefore the defendant is not liable to pay court-fees in respect of the separation of his share in the property. The question was considered in *Hemchandra Mahto and Others Vs. Prem Mahto*, . It was laid down :?

"As regards the payment of Court-fees by the present plaintiffs, who were defendants in the partition suit, in order to enable them to obtain possession of their shares I see nothing in the law which requires a defendant in a partition suit to pay Court-fees in order to have his share separately allotted to him; he was merely to ask for it in his written statement, and it is open to the Court to order the shares of the defendants in a partition suit to be separated as amongst themselves. The decree that is finally drawn up in the partition suit has to be stamped as an instrument of partition under the Stamp Act and except the stamp duty levied on the decree, no other duty as Court-fee is payable by the defendants."

This view was followed in *Venkatasubramma Vs. Ramanadhayya* A I. R. 1932 Mad. 722.

5. In AIR 1945 273 (Nagpur) , the question arose in a partition suit of joint family properties in the context of a stranger who was impleaded by the plaintiff; but the decision is helpful in deciding whether court-fee is payable by the defendant claiming his share to be separated in a partition suit. It was observed in that case :?

"Once it is held that it is a proper claim in the partition suit for a defendant to claim separation of his share of the joint family property whether it is in the

hands of the plaintiff or other coparceners or whether it is held by a stranger who is a party to the suit such claims ought not to bear court-fees. I see no reason to order these defendants to pay court-fees. I am clearly of the opinion that the claim against defendant 3 is triable in this very suit as a part of the partition claim and it is not necessary for the Court below to ask defendants 1 and 2 to file separate suits for this claim of theirs nor is it necessary for the court below to ask them to state their case and value their claim."

In view of the decision of this Court, I hold that no court-fee was payable by the defendants for having their shares separated.

6. The next point for consideration is whether the suit having been filed in 1946, that is, prior to the amendment, which was made in 1953, the amended provisions have application to the case. The question was considered in *Radhakishan Vs. Shridhar I. L. R. 1950 Nag. 532* by a Full Bench of this Court and it was decided that when an Act is altered during the pendency of an action the substantive rights of the parties remain unaffected and are decided according to the law as it existed when the action was begun, unless the new amendment is made retrospective either expressly or by necessary implication. In *Arjuna Vs. Amrita 1956 N. L. J. 382* the matter was considered in the context of the *Madhya Pradesh Court-fees (Amendment) Act, No. IX of 1953*, which came into force on 15-4-53, and it was held that in a case which was commenced prior to the amendment, the appellant was not liable to pay court-fees according to the amendment even though the appeal was filed subsequent to the amendment. The view taken in the latter case was accepted by the Supreme Court in *State of Bombay Vs. Supreme General Films Exchange Ltd.,* . It appears to me that the position would be the same when an amendment comes into force after the passing of a preliminary decree for partition and before the final decree is drawn up. It is the same *lis* which is continuing throughout and the rights of the parties must be governed by the Court-fees Act as it stood at the commencement of the suit, unless there is an express provision in the amendment to make it retrospective. Accordingly, the Court below was not justified in ordering the applicants to pay court-fees for separating their shares in the joint property.

7. In the result, both the petitions for revision are allowed. The order of the Court below, dated 16-7-1960, is set aside. The costs of the revisions shall be borne as incurred.