
(1921) 07 PAT CK 0036

In the Patna High Court

Shaikh Rafiq Ud-Din minor through his Mother and Another APPELLANT
Vs
Haji Shaikh Asgar Ali RESPONDENT

Date of Decision : 29-07-1921

Acts Referred:

Specific Relief Act, 1963 — Section 42, 43

Citation : AIR 1922 Patna 392 : 63 Ind. Cas. 38

Hon'ble Judges : Das, J;Adami, J

Bench : Division Bench

Judgement

Das, J.—A preliminary question arises in this appeal as to the sufficiency of the Court-fees paid by the plaintiffs-respondents on the plaint filed in the Court of first instance. The Stamp Reporter reports that there is a deficiency of Rs. 275.

2. It will appear on a reference to the plaint that the plaintiff sued for a declaration, first, that Rs. 2,370 as given in Schedule A was borrowed for the benefit of the joint business and that the defendants are, therefore, liable to pay the principal amounts besides interest to the extent of their share; secondly, for a declaration that the defendants are liable to pay Rs. 1,350 principal besides interest and costs as per account given in Schedule B, together with interest and costs as may be found on tabulation to be due by them according to the award of the Panches and thirdly, for a declaration that in case the plaintiff for any rest, on whatever be compelled to pay the share of the debts of the defendants he would be entitled to realise the same principal with interest and costs, from the defendants.

3. In my opinion the view taken by the Stamp Reporter is not correct. It may of course be that the suit does not lie u/s 42 of the Specific Relief Act, but it cannot be suggested, as was suggested in the case of Deokali Koer v. Kedar Nath 15 Ind. Cas. 427 : 39 C. 704 : 16 C.W.N. 838, that the suit is not a suit to obtain a declaratory decree where no consequential relief is prayed for. That case, which is referred to by the Stamp Reporter, is clearly distinguishable. The late Chief Justice of the Calcutta High Court came to the conclusion that there was in

substance a prayer for injunction, and a prayer for injunction is a consequential relief within the meaning of the Statute. So far as the other case, namely, Midnapur Zemindary Co. v. Secretary of State for India in Council 40 Ind. Cas. 96 : 21 C.W.N. 834 : 44 C. 352, is concerned, it will appear that the second declaration sought for by the plaintiff was based on the first declaration and in the peculiar circumstances of the case, the learned Judges took the view that the second declaration asked for by the plaintiff was in effect a consequential relief within the meaning of the Statute. In this Court Mr. Justice Row took another view in the case of Ternary Kora v. Bhupat Mander 50 Ind. Cas. 298 : 4 P.L.J. 302, I am of opinion that there is no deficiency due from the respondents.

4. Coming to the case, I am dearly of opinion that the suit does not lie. The whole question is, is it a suit u/s 43 of the Specific Relief Act? That section declares that, "Any person entitled to any legal character, or to any right as to any property, may institute a snit against any person denying, or interested to deny, his title to such character or right, end the Court may in its discretion make therein a declaration that he is so entitled, and the plaintiff need not in such suit ask for any further relief." The plaintiff in this suit has not asked for a declaration as to his legal character. Now clearly a legal character u/s 42 means the status of the plaintiff, that is to say, the states as to legitimacy, marriage, divorce, adoption, and the like. It is quite clear that in this suit the plaintiff is not asking for a declaration as to his status.

5. Is he, then, asking for a declaration of his right as to any property? Clearly he is not. The right to any property must mean the right to any existing property. In this case he h not asking for any declaration as to any existing property. His whole suit is a suit for declaration that he will be entitled to contribution from the defendants if and when the occasion arises. This, in my opinion, is not contemplated by Section 42 of the Specific Relief Act.

6. I would allow this appeal, set aside the judgments and decrees passed by the Courts below and dismiss the plaintiff's suit. In the circumstances of the case I would dismiss it without costs.

Adami, J,

7. I agree.