
(1967) 07 DEL CK 0003

In the Delhi High Court

Case No : Civil Revision Appeal No. 217D of 1966

Sham Dass Chawla

APPELLANT

Vs

Delhi Development Authority

RESPONDENT

Date of Decision : 27-07-1967

Acts Referred:

Citation : (1967) 3 DLT 593

Hon'ble Judges : I.D. Dua, C.J.;T.V.R. Tatachari, J

Bench : Division Bench

Advocate : R.S. Tundon and R.K. Mathm, for the Appellant;

Judgement

I.D. Dua, C.J. and T.V.R. Tatachari, J.

(1) Sham Dass, petitioner in the present proceedings, instituted in August, 1965 a suit for permanent injunction restraining the defendant Delhi Development Authority from determining the lease of the plaintiff in respect of Plot No. 41, Ara Kashan Basti, Desh Bandhu Gupta Road, Pahar Ganj, New Delhi. The prayer clause was couched in the following words:-

"IT is, Therefore, prayed that a decree for Permanent Injunction restraining the defendants from claiming any penalty or damages for non-erection of the building or mi-use of the plot bearing "No. 4!, Basti Ara Kashan, Desh Bandhu Gupta Road, Pahar Ganj, New Delhi and cancelling the lease of the plaintiff in respect of the aforesaid plot be passed in favor of the plaintiff against the defendant. Any other relief which this Hon"ble Court may deem fit and proper may also be awarded to the plaintiff as against the defendant with costs of the suit." It appears that the defendant raised nn objection to the amount of court fee paid on the plaint and it was argued that the case should be deemed to fall within section 7(iv)(e) of the Court: Fees" Act. This provision of law provides for suits to obtain a declaratory decree or order where consequential relief is prayed. In the local amendment made by the State of Punjab, which is also applicable to Delhi, it is provided that in suits coming under sub-clause (e), in "cases where

the relief sought is with reference to any property, such valuation shall not be less than the value of the property calculated in the manner provided for by clause (v) of section 7. Holding that the plaint in the present case fell within the provision of section 7(iv)(e), the trial Court called upon the plaintiff to pay court-fee on amount of Rs. 14,060.00.

(2) The plaintiff preferred a revision to the Punjab High Court against this order. A learned Single Judge of that Court, considering the question of construction of section 7(iv)(e) to be a matter of importance, referred this matter to a larger Bench for authoritative pronouncement. The question which was considered to be of importance is the meaning of the word "property" employed in the proviso to section 7(iv)(e) of the Court Fees" Act.

(3) Before us, however, the learned counsel for the plaintiff-petitioner has submitted that the present case is covered by section 7(iv)(d) and that section 7(iv)(e) can by no means be attracted on the plain language used in the plaint. In our opinion this submission must be upheld. It is undoubtedly true that while construing a plaint, it is the substance which has to be seen and if the real essence and substance of the relief claimed is a declaration with consequential relief,- then merely because such declaration is in terms omitted there from, the plaintiff cannot avoid payment of court-fee legitimately payable u/s 7(iv)(e). But where relief claimed in a plaint read as a whole is merely a permanent injunction, then it is not open to a Court to force on the plaintiff a claim for a declaration by process of construction of the plaint, thereby introducing therein a deeming or fictional relief by way of declaration. Whether or not a claim for injunction is likely to proceed in the absence of a claim to relief by way of declaration, is no concern of the Court at the stage of determining court-fee to be paid on a plaint and we express no opinion on this point at this stage. The question of the amount of court-fee to be paid must be determined on the averments made in the plaint, assuming them all to be true. In a Bench decision of the Calcutta High Court in Binode Behari Mukherjee v. K. C. Biswas & Co., A had instituted a suit for a permanent injunction restraining B from building any permanent structure on the disputed land and also for a mandatory injunction directing him to remove the permanent structure which had already been built on the suit land. In the plaint A had alleged that C and D were korfa tenants in respect of the suit land, the plaintiff thus being occupancy raiyat and that B was either an unrecognised transferee of the under-raiyat interest from C and D or was a sub-tenant holding under C and D. In either view of the case, B had no legal right to build permanent structures on the land. On these pleas, the Court held that the suit was governed by the provisions of section 7(iv)(d). That case appears to us to afford a fairly close analogy and we think that the learned trial Court was wholly wrong in calling upon the plaintiff to pay court-fee in accordance with section 7(iv)(e) of the Court Fees" Act. In construing a fiscal statute like the Court Fees" Act, in case "of ambiguity or doubt, in our opinion, construction must be placed in favor of the subject and not in favor of the Revenue because liability for a fee must be clearly provided by plain language of the Act. Applying this test as well,

in our view, on the facts and circumstances of the present case, the plaint must be held for the purposes of court-fee to be confined only to the relief of injunction. The Court Fees" Act, it may also be pointed out, though notorious for its bad drafting and without a Preamble to give guidance to the legislative intendment, was not passed to arm a litigant with a weapon of technicality against his opponent, but to secure revenue for the benefit of the State, and for this purpose, its language is to be given its plain meaning uninfluenced by any consideration of its supposed spirit or the intention of the law. In view of the foregoing discussion, it must be held that the plaintiff paid the proper court-fee.

(4) The revision is thus allowed and the order of the trial Court set aside and the case remitted back to it for further proceedings in accordance with law in the light of the observations made above. There would be no order as to costs in the present proceedings.

(5) Parties are directed through their counsel to appear in the trial Court on 4th September, 1967 when another short date would be given to the parties for further proceedings. Revision allowed.