
(1960) 01 AHC CK 0007
In the Allahabad High Court
Case No : F.A.F.O. No. 265 of 1954

Smt. Bhagwan Dei

APPELLANT

Vs

Firm Het Ram Sureshchandra and Others

RESPONDENT

Date of Decision : 19-01-1960

Acts Referred:

Court Fees Act, 1870 — Article 17, 7

Citation : AIR 1960 All 688 : (1960) 30 AWR 522

Hon'ble Judges : S.S. Dhavan, J

Bench : Single Bench

Advocate : S.N. Verma, for the Appellant; T.N. Bajpai, for the Respondent

Final Decision : Allowed

Judgement

S.S. Dhavan, J.—This is a plaintiff's appeal u/s 6A of the U. P. Court-Fees Act against an order of the Additional Civil Judge, Jhansi directing her to pay an additional court fee of Rs. 408/12/- on her suit for a declaration that her house is not liable to attachment in a suit pending before another court. The plaintiff appellant Smt. Bhagwan Dei is the wife of Kidar Nath. A suit was filed (the plaintiff's name is immaterial) against the firm of which Hetram was one of the partners. He and all the other partners were impleaded as co-defendants. The plaintiff in that suit obtained attachment before judgment of a certain house alleging that it belonged to Kidar Nath. His wife, Smt. Bhagwan Dei, filed an objection that the house belonged to her and that her husband had nothing to do with it.

It appears that, due to the neglect of her pairokar in reaching the court in time, her objection was dismissed for default. She then filed the present suit in which she prayed for a declaration that she is the exclusive owner of house No. 1843 situate in Mohalla Alayai, Mauranipur (District Jhansi) and that it is not liable to attachment in Suit No. 10 of 1953, Hetram Suresh Chand v. Kidar Nath and others now pending before the Civil Judge, Hardoi. She paid a court fee of Rs. 18/12/- which is payable for a declaratory suit. The Inspector of Stamps objected

that the suit, though framed as declaratory, was in fact one to set aside an attachment and that, therefore, u/s 7 (viii) of the U. P. Court-Fees Act the amount of court fee payable must be computed ad valorem according to half of the amount for which the attachment was made or according to half the value of the property or interest attached, whichever is less.

The plaintiff contested the objection, but she was overruled. The learned Judge held that the house has been attached under Order 38 Rule 5 C.P.C. and that although the plaintiff's relief has been couched in the form of declaration, in substance it is one to set aside the attachment and is governed by Section 7 (VIII) of the Court-Fees Act." He directed the plaintiff to pay an additional court fee of Rs. 408/12/- within 14 days. Aggrieved by this order the plaintiff has come to this Court in appeal.

2. Notice was issued to the Chief Inspector of Stamps u/s 6-A (3) of the Court-Fees Act and he has appeared to oppose the appeal. Mr. T. N. Bajpai entered appearance on behalf of the defendants in the suit but the court declined to hear him in view of its decision in Civil Revision No. 225 of 1957 that the defendant in a suit or a respondent in an appeal has no right to join issue with the plaintiff on the question of sufficiency of court fee. The case was, however, very ably argued on behalf of the Chief Inspector of Stamps by Mr. Tej Narain Sapru and on behalf of the appellant by Mr. S. N. Verma, and the Court derived much assistance from the arguments of the two learned counsel.

3. Mr. Verma contended that the trial court has erred in computing the court fee on the basis of what it considered the "substance" of the relief and not the relief itself. He argued that the court should have limited its enquiry to the question whether the suit was for a declaratory relief regardless of its effects. Mr. Sapru, on the other hand, contended that the language of the prayer in the suit cannot be divorced from its effects in the event of its being granted, otherwise the gates will be opened wide for evasion of the Court-Fees Act on an extensive scale. Each learned counsel cited a large number of authorities in favour of his argument.

4. This Court has held in several decisions that the Court-Fees Act is a tax on litigants and must, therefore, be strictly construed. It is true that the Court will not permit any mala fide evasion of a tax imposed by statute, but on the other hand, the court will restrict the incidence and burden of the tax strictly within the words of the statute. If the plaintiff can legitimately avoid a part of the court fee by confining his suit to a particular relief he is entitled to do so, provided the relief is one which can be granted according to law on the language of the plaint itself. In Lakshmi Narain Rai Vs. Dip Narain Rai a Division Bench of this Court held that, for the purpose of determining the court fee, the actual relief asked for should be looked into and the question whether the plaintiff did not ask for a consequential relief is irrelevant.

In that case the plaintiff asked for a declaration that he was the owner in possession of certain property. The plaint alleged that a particular compromise

decree affecting that property was obtained by fraud. But the actual relief was confined to a declaration that the plaintiff was the owner in possession of the property. The usual court fee of Rs. 10/- was paid. The trial court held, on the question of court fee, that, as the plaintiff had alleged that the compromise decree was void, illegal and ineffectual he was really asking for the cancellation of that decree and, this being a consequential relief, ad valorem court fee should be paid on the value of the property affected.

In appeal, the Division Bench reversed this decision and held that in computing court fee the actual relief asked for should be looked into, and it was not the concern of the court whether or not the suit was likely to fail because the plaintiff had not asked for a consequential relief. In *Smt. Sagajirao v. S. Smith* ILR 20 Bom 736 the Court rejected the argument that a suit for a declaration that a decree was null and void was really a prayer for the cancellation of a decree and should be treated as a consequential relief. This decision was approved and followed by a Division Bench of Calcutta High Court in *Zinnatunnessa Khatun v. Govinda Nath Mukherjee* ILR 30 Cal 788, holding that a suit for a declaration that a certain decree is ineffectual and inoperative against the plaintiff is a suit for a declaratory decree without consequential relief for purposes of court-fee. The Court observed that in computing the court-fee, the

"safest course in these cases is to "ascertain what the plaintiff actually asks for by his plaint," and not "speculate upon what may be the ulterior effect of his success". It may very well be that as the result of setting aside the decree in question, some ulterior benefit may directly or indirectly flow to the plaintiff. But what we have to look at is what he asks for by his plaint."

Some light is thrown on the present controversy by the observations of the Supreme Court in *Nemi Chand and Another Vs. The Edward Mills Co. Ltd. and Another*, in which one of the questions related to the amount of court fee payable by a plaintiff who, at the appeal stage, relinquished his consequential relief and confined himself to a prayer for a declaratory relief. The plaintiff in that case had filed a suit for a declaration that the appointment of a certain person as chairman and managing director was illegal and ultra vires and also for the appointment of a receiver to take charge of the management of the company concerned.

The plaintiff paid a court fee of Rs. 10/- on the declaratory relief and ad valorem fee on Rs. 51,000/- on the second relief. His suit was dismissed by the trial court. He filed an appeal and the memorandum of appeal expressly stated that the second relief of the suit was relinquished. The Judicial Commissioner, Ajmer directed him to pay court fee on the second relief, and on his failure to do so, dismissed the appeal. The Supreme Court reversed this decision and held that the Judicial Commissioner had no jurisdiction to demand additional fee on the ground that, if the second prayer was eliminated from the suit, it would be liable to be dismissed under the proviso to Section 42 of the Specific Relief Act.

During the hearing, the Attorney General of India advanced an argument which

is relevant to the present controversy. He contended that even, the first relief was not purely declaratory in nature and really included within it a consequential relief and, therefore, the Judicial Commissioner was right in demanding additional court fee on the value by the consequential relief. He argued that the prayer for a declaration that the chairman had "no right to act as chairman and managing director" amounted to a claim for a consequential relief. The Supreme Court rejected this argument and observed :

"The claim contained in the first relief of the plaint is to the effect that it be declared that defendant 2 has no right to act as chairman and director because of his appointment being illegal, invalid, and ultra vires. The declaration claimed is in negative form that defendant 2 has no right to act as chairman and managing director. No claim for a consequential relief can be read within this prayer.""

Thus by implication, the Supreme Court rejected the argument that, in computing the court fee the Court should consider the ultimate effect of a declaratory relief or the benefit which will accrue to the plaintiff.

5. On behalf of the Chief Inspector of Stamps, Mr. Sapru relied on a decision of the Madras High Court and of the Oudh Chief Court. In *Gangathara Aiyer v. Veta Chetty* 14 MLJ 144 the former court held that a suit which was "virtually a suit to set aside the attachment" was within Section 7 (VIII) of the Court-fees Act, though in terms it was a suit to set aside the sale on the ground that the attachment was not binding. But there was no discussion of the questions which have been agitated in the present case and the entire argument of the Court is confined to six lines. The language of the relief is not quoted in this judgment.

With respect, I find it difficult to comprehend the legal meaning of the phrase virtually a suit for setting aside an attachment. Either a suit is for setting aside an attachment or it is not. If it is, the Court will pass a decree setting aside or quashing the attachment and the impugned order will be destroyed by the Court before the parties leave the court room, so to speak. If it is not, the order will not be set aside though the court which passed it may not give effect to it out of difference to a sister court's finding. But in that event the order will be withdrawn by the Court which passed it and not the court which passed the declaratory decree.

I am, therefore, loath to add a few category of suits -- those which are "virtually" for something other than what they really are. In the Oudh suit the Chief Court held that a prayer for a declaration that the plaintiff was the owner in possession of the property and that it was not liable to attachment and sale was a suit "analogous to a suit referred to in Section 7(VIII) Court Fees Act (to set aside an attachment.)" With deep respect, I am somewhat at a loss to understand the import of the phrase a suit analogous "to a suit for setting aside an order of attachment".

Analogy means identity or similarity of proportion. For example, where there is

no precedent in point on the same subject, counsel have recourse to cases in a different subject matter but governed by the same general principle. An argument from analogy is not based on the similarity of two things but from the similarity of their relations. I do not think that it is legitimate for the court to invoke the principle of analogy to compel the litigant to pay court fee on a relief which he never asked for.

6. Mr. Sapru relied on a number of decisions of this Court. These are Kamla Devi Vs. Sunni Central Board of Waqfs, U.P., Lucknow and another ; Mt. Jileba Vs. Mt. Parmesra, and Onkar Mal and Others Vs. Ram Sarup and Others, . However, learned counsel conceded, very properly in my opinion, that the first two cases arose u/s 7 (iv-A) of the U. P. Court-Fees Act which governs "suits for or involving cancellation of or adjudging void or voidable" a decree for money or other property having a market value or an instrument securing money or property having such value. The word "involving" which, makes all the difference, is absent from Section 7(VIII) which relates to "suits to set aside or to restore an attachment".

If this suit was for a declaration that a decree for money or an instrument securing money is illegal, it might be argued that such a decree involves ultimately the cancellation of that decree and requires payment of court fee ad valorem u/s 7 (iv-A). But a decree for a bare declaration that an attachment is illegal cannot be said to be a decree "involving" its cancellation in the absence of that word. The Court will not import the word "involving" into Clause (viii) if the legislature has thought fit to omit it. The omission of the phrase "involving cancellation" in Clause (viii) is significant, and a suit for a bare declaration that an attachment is illegal is not equivalent, for purposes of court fee, to a suit for setting it aside. A litigant who merely asks for a declaration that the attachment is illegal cannot be asked to pay ad valorem court fee on the ground that the result; may ""involve" the setting aside of the impugned attachment.

7. Mr. Sapru argued vehemently that the Court ought to scrutinise the real nature of it prayer to ensure that there is no evasion of court fee. He relied on certain observations of a Full Bench of this Court in Onkar Mal and Others Vs. Ram Sarup and Others, referred to above. It was observed in that case that the general principle, that the real nature of the suit should be ascertained from the plaint is ignored where it appears, on the construction of the plaint, that the real relief sought is something different than what is asked for in the disguised form. The Court must then intervene and ignore the ostensible form and language adopted in the plaint.

In my view, this observation does not apply to the facts of the present case. The plaintiffs in that case sued for a declaration that they were entitled to possession of the property in dispute. They alleged that they were in possession and therefore, did not sue for it. Both the courts below; held that the plaintiffs were not in possession nor were they entitled to it and dismissed the suit. The Full Bench held that, in such circumstances, if the Court has a reason to think, on the

material placed before it, that the plaintiff has made false or incorrect allegations with a view to avoid payment of court fee, it has the power to intervene court fee at any stage of the proceedings" in the case. It is in this context that the Full Bench observed,

"Where it appears, on the construction of the plaint, that the real relief sought is something different than what is asked for in the disguised form, the Court must then intervene and ignore the ostensible form and language adopted in the plaint."

In the present case, it is not alleged by the State that the plaintiff has made any false allegation in the plaint or there has been any attempt to disguise the relief prayed for. The Chief inspector of Stamps does not contend that the plaintiff is not entitled to a declaratory relief on the allegations made in the plaint. His grievance is that the relief will have ultimate effects to the benefit of the plaintiff. In other words, the State's complaint is no more than that the litigant thinks that the declaratory relief, which is cheaper from the point of view of court fee, will suffice for her purposes. I do not see how the State can object to this attitude.

In ordinary life a citizen is entitled to observe the maximum economy in the conduct of his affairs and to get the best return for his money. If he goes to the market and the dealer offers the choice of two articles he is under no obligation to buy the costlier one if he feels that the cheaper, will do for him. I do not see why the citizen should be compelled to adopt a different outlook and act extravagantly when he goes to the law courts and is faced with the choice of two reliefs. I see no reason why he should not prefer the cheaper one if he feels that it will suffice for his purpose.

The State cannot demand a higher tariff from him because he thinks the cheaper relief will do just as well as the costlier, any more than the dealer can push up the price of the cheaper article because the customer decides that it will be as good as the more expensive one. If I may extend the analogy, if the State wants the litigant to pay a higher tariff it should do what a dealer would do in similar circumstances; that is to say, exclude the cheaper variety of articles from its stock and cater only for customers who will purchase expensive articles. Stated in legal terminology, the State should abolish the cheaper reliefs altogether by legislation. But as long as the relief is available, the State cannot demand a higher tariff merely because the effect of the relief will be satisfactory to the litigant. In any case, the court will be no party to this attitude, for it implies that the primary purpose of litigation is not to do justice between citizen and citizen but to provide revenue for the State.

8. In my view, as long as a relief is provided by law, the citizen is entitled to it on payment of the court fee prescribed for that relief, and it is no concern of the court, in computing the amount of court fee, to extend the scope of the enquiry beyond the four walls of the court and consider what the ultimate effect of that

relief will be. If on the facts stated in the plaint the citizen is entitled to a declaratory relief then the suit is for a declaratory relief and not "virtually" for something else.

9. Mr. Sapru contended strongly that the court must ensure that there is no evasion of court fee by unscrupulous litigants. The word "evasion" is a slippery phrase and can mean a number of things. As observed by Lord Cranworth in *Edwards v. Hall* (1855) 25 LJ. 82

"I never understood what is meant by an evasion of an Act of Parliament; either you are within the Act or not within the Act. If you are not within it, you have a right to avoid it; to keep out of the prohibition, if you are within it the course is clear,"

As observed by Maxwell quoting Lord Tomlin in *Inland Revenue Commissioners v. Westminster* 1936 AC 1(19) (The Interpretation of Statutes 9th edition p. 117) "Every man is entitled if he can, to order his affairs so that the tax attaching under the appropriate Acts, is less than it otherwise would be." I do not think that a litigant can be accused of having evaded the Court-Fees Act if he asks for a relief to which he is entitled by law on the facts stated in the plaint. The grievance of the State, as I have stated above, is no more than this that he preferred a cheaper relief when a more expensive one was available. The proper remedy for the State is to abolish the cheaper relief altogether and not to make the litigant pay for something which he never asked for. For these reasons I hold that there is no deficiency in court fee paid by the plaintiff.

10. The appeal is allowed and the order of the trial court set aside. The appellant shall have her costs from the State.