
(1957) 03 GAU CK 0001
In the Gauhati High Court
Case No : Civil Revision No. 157 of 1956

Snehomoy Mitra and Another	Vs	APPELLANT
Ramprosad Himmatsingka and Others		RESPONDENT

Date of Decision : 04-03-1957

Acts Referred:

Court Fees Act, 1870 — Section 7

Citation : AIR 1960 Guw 65

Hon'ble Judges : Sarjoo Prasad, C.J.; Haliram Deka, J

Bench : Division Bench

Advocate : B.B. Goswami, for the Appellant; B. Sarma, for the Respondent

Final Decision : Dismissed

Judgement

Sarjoo Prasad, C.J.—In this application the Petitioners who are the Plaintiffs in the suit have prayed for setting aside an order dated 23-6-1956 passed by the learned Subordinate Judge, Gauhati, demanding additional court fees from them. The court has held that the suit to which this application relates, fell u/s 7(x) of the Court Fees Act; as such it being a suit for Specific performance of contract of sale, the court fee payable was according to the amount of the consideration for the contract.

The amount of consideration under the contract which has been eventually followed by a deed of sale, is Rs. 12,000/- and the Court has therefore demanded payment of court fees on that basis, The Petitioners challenge the order on the ground that the suit is merely a suit for declaration of title and consequential relief. According to the contention of the Petitioners the consequential relief which they claimed was a relief of perpetual injunction restraining the Defendants (opposite parties) from interfering with their rights. They valued this relief originally at Rs. 250/ - but later revised it at Rs. 2100/ - and offered to pay court fees on this amount.

2. It is well settled that the court fee is payable on the plaint according to the

relief which the Plaintiffs claim and the Plaintiffs are of course not bound to claim any relief which they do not require. But it is the duty of the court to examine the plaint carefully to see what in substance is the nature of the relief which the Plaintiffs require and to call upon them to pay court fees accordingly. The mere fact that the Plaintiffs may have cast their prayer in a mould so as to avoid payment of court fees which under the law they are bound to pay, will not be of any avail if on an examination of the entire plaint it appears that the nature of the relief claimed by them is substantially different from the form which they appear to give it.

In the present case the learned Subordinate Judge held that the suit as framed was a suit for specific performance of contract and even though at a subsequent stage during the pendency of the suit the prayer was amended, in as much as the Defendant No. 5 had already executed a sale deed in favour of the Plaintiff, yet substantially the nature of the suit was not altered because the Plaintiffs in order to succeed had to establish that their claim for specific performance of contract against the other Defendants (opposite parties) also, namely, Defendants Nos. 1 and 2, who had already obtained a sale deed in their favour from the Defendant No. 5.

The suit was based on an agreement dated 30-8-1948 under which it was stated that the Defendant No. 5 had agreed to transfer certain lands to the Plaintiffs. In the meantime it appears that the said Defendant No. 5 sold the lands on 23-11-1948 to Defendants Nos. 1 and 2. The Plaintiffs allege that the purchase of these Defendants was with notice of the contract of sale in their favour. This in substance was the nature of the suit as instituted by the Plaintiffs and was clearly a suit for specific performance of contract. The Plaintiffs on those facts prayed originally that a declaration be made that the Defendant No. 5 was bound to sell 5 B. 3 K. 9 2/3 L. of land as described in the Schedule A to the plaint to the Plaintiffs on the strength of the contract executed in favour of the latter within six months from the disposal of a certain partition suit which was then pending between the vendor and others.

They further prayed that the Defendants Nos. 1 and 2 being purchasers with notice of the Plaintiffs' prior agreement were bound by the said contract of sale and that they could not acquire any title in the lands sold to the detriment of the Plaintiffs' claim. Plaintiffs further prayed for an injunction as against the Defendants restraining them from taking advantage of their purchase. It is quite clear that the suit even on these reliefs was substantially a suit for specific performance of contract, since the Plaintiffs claimed that they were entitled to enforce their rights to the lands in suit, by virtue of the contract in their favour, not only against Defendant No. 5 but also against the other two Defendants -- Defendants Nos. 1 and 2 who were subsequent transferees of the property

It is true that during the pendency of the suit the Defendant No. 5 executed a deed of sale in favour of the Plaintiffs. The suit itself was filed on 18-7-1949 and the said sale deed was executed by the Defendant No. 5 on 5-4-1950. The

Plaintiffs then sought to amend the plaint and the amendment was allowed by the learned Subordinate Judge.

The opposite parties moved against the order but failed. By virtue of the amendment in question the Plaintiffs sought to cast the reliefs in this form: that a declaration be made in favour of the Plaintiffs' title under the deed of conveyance dated 5-4-1950 executed by the Defendant No. 5 in respect of the disputed lands; and that the Defendants Nos. 1 and 2 were bound by the sale and any title acquired by them by, the sale deed in their favour could not affect the interest of the Plaintiffs. Mr. Goswami on behalf of the Petitioners has very vehemently argued that this amendment merely meant that they wanted a declaration of their right and if that declaration was granted as against the Defendants Nos. 1 and 2 also they would acquire a good title to the property by virtue of their purchase.

The suit according to his contention thus fell u/s 7(iv)(c) of the Court Fees Act and the only consequential relief which the Plaintiffs prayed for was a relief as to injunction which they had valued at Rs. 2,100/-. He accordingly argued that the court fee should be payable on that amount and the Court had no jurisdiction to demand payment of court fees on the amount of consideration mentioned in the deed of agreement. The short answer to this argument of Mr. Goswami is that so long as the sale deed executed in favour of Defendants Nos. 1 and 2 stands and is not avoided, the Plaintiffs cannot succeed in the suit.

It is quite obvious that the Plaintiffs cannot succeed unless they are able to show that by virtue of their purchase they have acquired a better title to the property, than that of the Defendants Nos. 1 and 2. The Defendants Nos. 1 and 2 had already a sale deed in their favour. If this sale deed conveyed a good title to these Defendants, as prima facie it did, then the subsequent sale deed in favour of the Plaintiffs would be of no value whatsoever as the vendor had no title to convey. The Plaintiffs therefore in order to succeed in the action had to prove that the agreement executed by the Defendant No. 5 in their favour could be enforced specifically not only as against the vendor Defendant No. 5 but also as against these transferees -- the Defendants Nos. 1 and 2.

In other words the Plaintiffs had to prove that they were entitled to specific performance of the contract in question against these Defendants as well and thus the suit could not be treated as merely a suit for declaration and consequential relief. The learned Subordinate Judge in the circumstances was justified in holding that the nature of the suit had not been altered by the amendment in question. It was on this account that when the matter came up to this Court, the Court refused to interfere with the amendment which had been allowed by the trial court. It held that the amendment had not in any way altered the essential character of the suit. Ram Labhaya J. dealing with the matter (vide *Ramprosad Himatsingka v. Snehomoy Mitra* ILR (1951) GAU 305 : AIR 1952 GAU 10) observed:

Whatever relief was claimed was against Defendants 1, 2 and 5. Defendant 5, according to the Plaintiffs, was under a legal obligation to specifically perform the agreement of sale. As Defendants 1 and 2 had obtained a sale deed in their favour the relief was claimed against them too. It was pleaded that they were as much bound by the agreement of sale as Defendant 5. During the pendency of the suit, a conveyance was executed by Defendant 5 in favour of the Plaintiffs. The agreement of sale was thus specifically performed by Defendant 5. But this did not dispose of the controversy as to the rights of the Plaintiff's under the agreement of sale qua Defendants 1 and 2. They could still say that the conveyance in Plaintiffs' favour had no effect on their title. The decision of the dispute between the Plaintiffs and Defendants 1 and 2 depended on the validity and binding character of the agreement of sale and the circumstances surrounding the sale deed in favour of Defendants 1 and 2.

This was a decision inter partes given by this Court. In our opinion on the pleadings in this case it could not but be held that the suit in substance continued to be an action for specific performance of contract even as against Defendants Nos. 1 and 2 and the learned Subordinate Judge therefore took a correct view of the matter in holding that the suit fell u/s 7(x) of the Court Fees Act. It is unnecessary for me to examine any of the cases on which reliance has been placed on behalf of the Petitioners. These cases have no application to the facts before us. The order of the learned Subordinate Judge is therefore affirmed and the application must be dismissed with costs: hearing fee Rs. 51/ -.

Deka, J.

3. I agree.