
(1896) 06 AHC CK 0009
In the Allahabad High Court

The Secretary of State for India in Council

APPELLANT

Vs

Ram Das

RESPONDENT

Date of Decision : 05-06-1896

Acts Referred:

Citation : (1896) ILR (All) 419

Hon'ble Judges : Knox, J;Aikman, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Knox, J.—This is a first appeal from an order passed by the Subordinate Judge of Agra. The circumstances which led up to the order appealed from are as follows:

Mahant Ram Das was permitted to sue in forma pauperis one Ram Anuj Das. He obtained a decree for the property claimed, and that decree further directed that "under Section 411 of the CPC the amount of court-fee due to the Government be the first charge upon the property the subject-matter of this suit, and be recoverable from the defendant in the same manner as the costs of this suit." Execution proceedings were instituted by the Secretary of State with a view to the recovery of the court-fees, and the Court in which they were instituted was asked to realize the amount decreed by attachment and sale of the judgment-debtor's property entered in the inventory annexed to the petition. The property entered in the inventory was property the subject-matter of the original suit. Orders were issued to an amin to attach the property mentioned above. That officer returned a report to the effect that the property in question was no longer in the possession of the judgment-debtor, but had passed into the possession of Ram Das. Ram Das filed an objection stating that the application for execution should not be granted in the manner prayed for, inasmuch as the decree distinctly specified that the costs asked for should be recovered from Ram Anuj Das, and the property applicant sought to attach was no longer the property of Ram Anuj Das. This objection was disallowed by an order, dated the 2nd of December 1893, and it is from this particular order that the present appeal has

been filed.

2. The Subordinate Judge holds that the property was liable and could be attached irrespective of the fact whether or not it was in the possession of the person ordered by the decree to pay the court-fees.

3. It is contended that the Secretary of State is not authorised to recover court-fees from any person other than the person ordered by the decree to pay the same, and that if the property be liable on the ground that the court-fees have been declared a first charge upon it, then the liability if it can be enforced at all, can only be enforced by a separate suit in the same way as any other charge.

4. It is unfortunate that the language used in the decree did not follow the language of Section 411. The word "also" has been omitted, and its omission has no doubt helped the contention advanced by the appellant. By Section 411 of the CPC the court-fees which would have been payable had not the plaintiff been allowed to sue as a pauper are to be calculated by the Court should the plaintiff succeed. When so calculated the amount is declared by operation of law to be a first charge on the subject-matter of the suit. But this is not all that the law provides. The amount is also one which shall be recoverable by the Government from any party ordered by the decree to pay the same in the same manner as costs of a suit are recoverable.

5. Mr. Justice West in delivering judgment in *Ganpat Putaya v. The Collector of Kanara* ILR 1 Bom. 7, upon the law as it stood in 1875, when Section 309 of Act No. VIII of 1859 was in force, said that the provision in that Section declaring that the fees shall be recoverable by Government from any party ordered by the decree to pay the same in the same manner as costs of suit are recoverable did not preclude the Crown from urging its prerogative and insisting upon its right to precedence. He gave the Crown the first claim on the proceeds of the pauper suit. It was upon this case probably that the words: "Such amount shall be a first charge on the subject-matter of the suit" were introduced into Section 411 of the present Code.

6. I am not prepared to accede to the contention that the first charge thus created can only be enforced by a separate suit brought by the Government. I do not think this was the intention of the Legislature. The intention appears to me to have been to give the Secretary of State a right to recover the court-fees in the same way as if they had been costs in the suit, either generally from the person or property of any one ordered by the decree to pay the same, or from the property the subject-matter of the suit. It may be urged that if this was the intention of the Government it could have been expressed in clearer terms. This is true: but as I believe this to have been the intention of the Legislature, I would give effect to it.

Aikman, J.

7. The question for decision in this appeal is one of considerable difficulty. The

wording of the latter portion of Section 411 of the CPC is not so clear as it might be, but I cannot think that the intention of the Legislature was to compel Government to bring a separate suit in a case like the present to recover the value of the court-fees which the plaintiff was relieved from paying on his plaint owing to his being a pauper. The result of such a suit would be a foregone conclusion, and it would only entail additional expense and trouble. I therefore concur in the order of my brother Knox. I may add that if the lower Court in its decree in the pauper suit had made the plaintiff as well as the defendant liable for the value of the court-fees, as I think ought to be done in such cases, the present difficulty would not have arisen.

8. We dismiss this appeal with costs.