(1948) 11 AHC CK 0007

In the Allahabad High Court

Uma Shanker Singh and Others APPELLANT

Vs

Rama Shanker Jati RESPONDENT

Date of Decision : 26-11-1948

Acts Referred:

Court Fees Act, 1870 — Section 7(iv.a)

Citation : AIR 1949 All 347

Final Decision : Disposed Of

Judgement

1. This is a defendants'' appeal in a suit brought against them by a mahant for possession over certain properties which had been transferred by his predecessor- in-office on the ground that those transfers were void. The plaintiff paid a court-fee as in a suit for possession only. The office reports that a separate court-fee should also have been paid under Sub-section (iv.a) of Section 7, Court-fees Act. The sub-section runs as follows:

In 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 other property having such value....

2. There can be no question that the present suit does in fact involve the adjudging void of certain instruments within the meaning of this sub-section. The office has taken the view that a court-fee is required on the plaint under this subsection in addition to a court-fee payable under Sub-section (v) relating to suits for possession.

3. Mr. Shambhu Prasad contends that a separate court-fee is not payable and his argument is that the suit may be regarded as one for a declaration that certain transfers are void and for possession by way of consequential relief. But the suit has not in fact been so framed and is, as we have seen, one for possession only. It is, therefore, not necessary for us to go into the question whether in a suit so framed a single court-fee would be payable. In the case of AIR 1947 149 (Oudh) , it was held by the Avadh Chief Court that in such a suit as the present one two separate court-fees were payable. The learned Judge relied on a

previous case of the same Court, AIR 1944 118 (Oudh) , in which it was held that in a suit for the cancellation of a decree and the sale in execution thereof and for possession court-fee was chargeable on the claim for the cancellation of the decree and also on the claim for possession. No case has been cited before us in which a different view has been taken.

4. Mr. Shambhu Prasad next argues that court-fee under Sub-section (iv-a) should be charged under Clause (2) and not under Clause (1). Under Clause (1) "where the plaintiff or his predecessor in title was a party to the decree or instrument", court fee is to be paid according to the value of the subject-matter. In other cases, it is to be paid according to one-fifth of this value of the subject-matter. It is argued that the person who transferred the property was the predecessor-in-office only of the plaintiff and not his predecessor-in-title. We are of opinion that the term "predecessor-in-title" used in clause (i) of Sub-section (iv-A) cannot be given such a restricted interpretation and would include a predecessor-in-office in the case of trustee.

5. We accordingly hold that the office report is correct and that there is a deficiency of Rs. 813/12 in the amount of court-fee paid by the plaintiff-respondent in the Court below. The deficiency must be made good by the plaintiff-respondent within three months. If the deficiency is not made good within that period, information shall be sent to the Collector who shall recover the amount as if it were an arrear of land revenue. V

6. The Taxing Officer will deal with the amount of deficiency in the court-fee due from the appellants in this Court.