

Mange Ram, etc. v. Jyoti Parshad, etc. (Koshal, J.)

the reasons for the decision will also be recorded. While making the future distributions, the allotments made to the 29 manufacturers on October 13, 1969, and January 5, 1970, will be taken into consideration and necessary adjustments will be made so that the manufacturers, who have been left out or have been allotted less quota than their entitlement, will be compensated in the future distributions at the expense of those manufacturers who have already been allotted the quota in excess of their entitlement. In effect, the scheme of distribution, when framed, shall be deemed to have come into force before October 13, 1969, and all distributions of raw wool shall be deemed to have been made under that scheme and adjustments made accordingly. During the course of arguments, I put this suggestion to the counsel for the parties and they have generally agreed with the same.

(7) The result is that the allotment of imported raw wool made to various manufacturers on October 13, 1969, and January 5, 1970, is not interfered with and respondents 1 and 2 are directed to carry out the above directions before making any future distribution of the quota of raw wool allotted to the State of Haryana. The writ petition is accordingly disposed of with no order as to costs.

N. K. S.

REVISIONAL CIVIL

Before A. D. Koshal, J.

MANGE RAM AND OTHERS,—Petitioners.

versus

JYOTI PARSHAD AND OTHERS,—Respondents.

Civil Revision No. 1054 of 1969.

April 20, 1969.

Court Fees Act (VII of 1870)—Section 7(iv)(c)—Relief in the plaint—When can be deemed to be 'consequential'—Manager of a joint Hindu family selling family property in his individual capacity and accepting position of a tenant under the vendee—Vendee obtaining order of eviction against the Manager—Other members of the family bringing a suit for injunction against eviction, ignoring the sale—Such suit whether maintainable.

Held, that one of the essential pre-requisites for a relief to be regarded as consequential within the meaning of Section (iv) (c) of Section 7 of the Court Fees Act is that it cannot be granted if the declaratory relief, to which it is incidental, is refused. In other words, the relief must be such that the plaintiff must legally ask for the declaration before he can claim it. The relief must follow directly from the declaration and cannot be claimed independently of the declaration as a 'substantial' relief.

Held, that before an alienation made by a Manager of joint Hindu family can bind other members of the family it must be by him *as such* and unless it is so, it is void *qua* the other members of the family. Where the manager of a Joint Hindu family sells family property, accepts the portion of a tenant under the vendee and the vendee obtains eviction order against him, the other members of the family are neither actually nor constructively parties to the sale or the eviction order. In so far as they are concerned, the sale is void and they are at liberty to ignore it completely. They are entitled to seek injunction against eviction, there being no necessity for them to have the sale or eviction order set aside. Hence a simple suit for injunction by such members of the joint Hindu family is maintainable.

Petition under Section 115 Civil Procedure Code for revision of the order of Shri Gurnam Singh, District Judge, Rohtak, dated the 4th November, 1969, affirming that of Shri T. P. Garg, Sub Judge, II Class, Rohtak, dated the 3rd July, 1969 returning the plaint to the plaintiffs under Section 7 Rule 10 Civil Procedure Code along with the documents filed by them for presentation to the court of competent jurisdiction.

P. S. JAIN AND V. M. JAIN, ADVOCATES, for the petitioner.

H. L. SARIN AND H. S. AWASTHY, ADVOCATES, for the respondents.

JUDGMENT

This petition for revision of the order dated November 4, 1969, of Shri Gurnam Singh, District Judge, Rohtak, has arisen in the following circumstances. Kundan Lal, defendant No. 5, who is the father of plaintiffs Nos. 1 to 5 and the husband of plaintiff No. 6, sold the house in dispute to defendants Nos. 1 to 4 under a sale deed dated March 28, 1958, and immediately thereafter accepted the position of a tenant under his vendees, who, in course of time, obtained an order of eviction from the house against him from a Controller under the East Punjab Urban Rent Restriction Act, 1949, on the 10th of April, 1969. The plaintiffs then brought the suit, which has resulted in this

petition, stating that the house belonged to the joint Hindu family consisting of themselves and defendant No. 5, that the sale above-mentioned was without consideration and unsupported by legal necessity and that the order of eviction obtained by defendants Nos. 1 to 4 was vitiated by fraud. The plaintiffs claimed two reliefs, namely,—

- (a) a declaration that plaintiffs Nos. 1 to 5 were in possession of the house in dispute as its owners, that plaintiff No. 6 was entitled to reside in the house during her life-time and that the order of eviction obtained by defendants Nos. 1 to 4 against defendant No. 5, was not binding on the plaintiffs, and
- (b) a permanent injunction restraining the defendants from interfering with or obstructing the possession of the plaintiffs over the house in dispute.

Para 6 of the plaint stated:—

“The value of the suit for purposes of court-fee and jurisdiction is Rs. 130 and in respect of the relief of declaration a court-fee of Rs. 19.50 is paid while on the relief of injunction the court-fee paid is Rs. 13, a total of Rs. 32.50.”

Defendants Nos. 1 to 4 contested the suit.

They pleaded that the sale had taken place for consideration and necessity, that they were in possession of the house in dispute through their tenant, defendant No. 5, against whom they had properly obtained the order of eviction in question and that the suit was collusive. Another objection taken was that the plaintiffs were bound to pay court-fee *ad valorem* at the market value of the house in dispute, which was claimed by the defendants to be the self-acquired property of defendant No. 5 and not the property of any joint Hindu family such as had been set up by the plaintiffs.

Shri T. P. Garg, Subordinate Judge IInd Class, Rohtak, who was seized of the case framed the following preliminary issue:—

“Whether the suit is properly valued for the purposes of court-fees and jurisdiction? OPP.”

On this issue the case of the plaintiffs was that the two reliefs claimed by them were both substantive reliefs which were independent of each other and had been properly claimed, while the stand

taken on behalf of the contesting defendants was that the suit was one for a declaration with consequential relief falling within the ambit of section 7(iv) (c) of the Court Fees Act.

In deciding the issue in favour of the contesting defendants, the learned Subordinate Judge relied upon *Prithvi Raj v. D. C. Ralli* (1), *Khan Singh v. Gurdev Singh and others* (2), and *Mt. Zeb-ul-Nisa v. Din Muhammad*, (3), and held that the value of the suit both for purposes of court-fee and jurisdiction was Rs. 27,200, the amount for which the sale in favour of the contesting defendants had ostensibly taken place. Accordingly he returned the plaint to the plaintiffs for presentation to the proper Court after making good the deficiency in court-fee.

By the impugned order, the learned District Judge dismissed the plaintiffs' appeal on the basis of *Prithvi Raj v. D. C. Ralli*, (1) and *Khan Singh v. Gurdev Singh and others* (2), cited above.

2. In order to appreciate the controversy on the determination of which depends the fate of this petition, the relevant provisions of the Court-fees Act may be quoted:

"Section 7. The amount of fee payable under this Act in the suits next hereinafter mentioned shall be computed as follows:—

* * * * *

(iv) In suits—

* * * * *

(c) to obtain a declaratory decree or order, where consequential relief is prayed,

(d) to obtain an injunction, according to the amount at which the relief sought is valued in the plaint or memorandum of appeal.

* * * * *

(1) A.I.R. 1945 Lah. 13.

(2) 1966, P.L.R. 986.

(3) I.L.R. 22(1941) Lah. 451 (F.B.)=A.I.R. 1941 Lah. 97 (F.B.)

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In all such suits the plaintiff shall state the amount at which he values the relief sought:

Provided that the minimum court-fee in each case shall be thirteen rupees.

Provided further that in suits coming under sub-clause (c) 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 this section.

* * * * *

SCHEDULE II FIXED FEES

Number	Proper fee
17. <i>Plaint or memorandum of appeal in each of the following suits:—</i>	
* * * * *	
(iii) to obtain a declaratory decree where no consequential relief is prayed."	Rs. 19.50 nP. (Punjab)

It is undisputed that before the suit can fall within the ambit of section 7(iv)(c), the relief of injunction must be a consequential relief in relation to the relief of declaration, and that if this is not the case, the suit is correctly valued for purposes of court-fee. So, what we have chiefly to consider is whether the relief of injunction is a consequential relief. In this connection, reference may be made with advantage to *Mt. Zeb-ul-Nisa and others v. Chaudhri Din Mohammad and others* (3), which lays down, on the authority of *Kalu Ram v. Babu Lal* (4):

"* * * * *

the expression 'consequential relief' means some relief, which would follow directly from the declaration given, the valuation of which is not capable of being definitely

(4) A.I.R. 1932 Lah. 485 (F.B.).

ascertained and which is not specifically provided for anywhere in the Act and cannot be claimed independently of the declaration as a 'substantial relief.' It follows therefore that if the relief claimed in any case is found in reality to be tantamount to a substantial relief and not a mere 'consequential relief' in the above sense the plaintiff must pay court-fee on the substantial relief."

According to the Full Bench, four conditions must be fulfilled before a relief can be deemed to be a 'consequential relief' within the meaning of section 7(iv)(c) of the Court-fees Act, and those conditions are:—

- (i) That relief must follow directly from the declaration,
- (ii) its valuation is not capable of being definitely ascertained,
- (iii) it is not specifically provided for anywhere in the Act, and
- (iv) it cannot be claimed independently of the declaration as a 'substantial relief.'

The proposition that all these four conditions must be fulfilled before a relief could be deemed to be a 'consequential relief' within the meaning of section 7(iv)(c) of the Court-fees Act, was doubted by Pandit J., who delivered the judgment of the majority in *Parbhu and others v. Girdhari and others* (5), but he too was firmly of the opinion that conditions (i) and (iv) above must be fulfilled for a relief to be called a 'consequential relief.' Pandit, J., relied on the following observations of Harnam Singh, J., in *Smt. Anguri Devi v. Gurnam Singh* (6).

"Section 7(iv)(c) contemplates a suit in which the declaratory relief is the basic relief and the consequential relief is asked for as incidental to the declaratory relief. Indeed, in order to bring a suit within section 7(iv)(c), the two reliefs are to be so connected together that if the Court in the exercise of its discretion refused to pass a declaratory decree, the claim for consequential relief also fails," and concluded:

(5) I.L.R. (1964)2 Pb. 886 (F.B.)

(6) A.I.R. 1951 Simla 238.

In my view, 'consequential relief' is incidental to the main declaratory relief and the same cannot be granted, if the latter is refused."

One of the essential pre-requisites for a relief to be regarded as "consequential", therefore, is that it cannot be granted if the declaratory relief, to which it is incidental, is refused. In other words, the relief must be such that the plaintiff must legally ask for the declaration before he can claim it. It is in this background that the answer to the question whether the relief of injunction claimed in the present case is a consequential relief has to be answered, so that it must be ascertained first as to whether it is incumbent on the plaintiffs to ask for the declaration claimed by them before they can be held entitled to the relief of injunction.

3. Mr. Sarin, learned counsel for the contesting defendants, vehemently urges that the plaintiffs cannot be granted the injunction prayed for unless they have the sale made by defendants No. 5 in favour of the contesting defendants as also the order of eviction obtained by them against him set aside, but I am clearly of the opinion that the contention is not well-founded in view of the fact that the plaintiffs were neither actually nor constructively parties to the sale or the eviction order. The position would have been very different if defendant No. 5 purported to act while parting with the ownership of the property or defending the eviction proceedings as the *karta* of the joint Hindu family set up by the plaintiffs, which, however, is nobody's case. What defendant No. 5 did was that he dealt with the house in dispute as if it was his property as an individual; and if that be so, it cannot be said that he purported to act, in the two transactions sought to be impeached, on behalf of the other members of the said family, who could not, therefore, be held to be bound by the sale or the eviction order to any extent and under any circumstances. In so far as they are concerned, the sale is void and they are at liberty to ignore it completely without asking for the declaration which they have claimed. They are entitled to seek the injunction prayed for, there being no necessity for them to have the sale or the eviction order set aside. This was precisely the view taken by a Division Bench of this Court in *Rajinder Parshad and others v. Shamsheer Singh and others* (7). Kaushal, J..

(7) 1967 P.L.R. 445.

who delivered the judgment of the Division Bench, reviewed the authorities on the point at length and held that before an alienation made by the Manager of a joint Hindu Family could bind the other members of the family it must be by him *as such* and that unless it was so it was not voidable but void *qua* them. With regard to *Prithvi Raj v. D. C. Ralli* (1), (supra). Kaushal, J., observed:—

“There can be no doubt that this case also proceeds on the assumption that the alienation was made on behalf of the joint family. The facts reveal that the decree on the basis of a mortgage which was being challenged by the son had been passed against the father and the grandfather of the plaintiff.”

Prithvi Raj v. D. C. Ralli (1), (supra) is, therefore, of no assistance to the case of the contesting defendants as it has no application to the facts of the present case in which defendant No. 5 never purported to act as *karta* of any joint Hindu family headed by him in the matter of the sale and the eviction proceedings. For the same reason, *Harikishan Lal v. Barkat Ali and others* (8), on which Mr. Sarin relies, is also of no assistance to the contesting defendants. In that case it was held that a suit by a son for a declaration that the sale of joint Hindu family property effected by his father had not been made for family necessity and was not binding on him, and for joint possession of the property sold along with his father fell under section 7(iv)(c) of the Court Fees Act “inasmuch as an alienation by the father of a Hindu joint family is not void but is only voidable at the instance of his sons. * * * *” With regard to that case, in *Rajinder Parshad and others v. Shamsher Singh* (7), (supra), Kaushal, J., observed:—

“It is not clear from the body of the judgment as to whether the alienation was made by the father in his capacity of a father and it will have to be assumed that this was so. The entire discussion proceeds on that basis. The proposition is unexceptionable, if it is found that the alienation is in the capacity of a father of the joint family. The position will however be totally different if the father alienates the property in his individual capacity and in assertion of his full ownership rights in the property.”

(8) A.I.R. 1942 Lah. 209.

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4. Following *Rajinder Parshad and others v. Shamsher Singh* (7), (supra), I hold that the plaintiffs were at liberty to ignore the sale and the order of eviction which they claimed not to be binding on them and that they could straightaway seek the remedy of injunction on the allegations made in the plaint, so that the essential pre-requisite for the relief of injunction to be regarded as a relief consequential upon the relief of declaration is absent in the present case, and while the relief of declaration claimed by the plaintiffs falls under article 17(iii) of Schedule II of the Court-fees Act, the relief of injunction is covered by section 7(iv)(d) thereof.

I may state here that *Khan Singh v. Gurdev Singh and others* (2), (supra), is wholly inapplicable to the facts of the present case inasmuch as therein the suit was admittedly one asking for a declaratory decree coupled with a consequential relief.

5. It is common ground between the parties that if the suit does not fall under section 7(iv)(c) of the Court-fees Act, it must be taken to have been properly valued for the purposes of court-fee and jurisdiction. In the result, therefore, the petition succeeds and is accepted. The judgments of the two Courts below are set aside, and the trial Court is directed to proceed with the suit after the plaint is represented to it. There will be no order as to costs.

K.S.K.

REVISIONAL CIVIL

Before A. D. Koshal, J.

M/S. NATIONAL RICE AND DAL MILLS, RAJPURA,—Petitioner.

versus

THE FOOD CORPORATION OF INDIA,—Respondent.

C. R. No. 204-A of 1970.

April 22, 1970.

Code of Civil Procedure (Act V of 1908)—Order 7 Rules 14 and 18—Order 13 Rules 1 and 2—Documentary evidence of the plaintiff—When to be produced in a suit—Document not being the basis of the suit nor constituting supporting evidence of the plaintiff—Whether can be produced at no fixed point of time.