Tara Prasanna Chaugdar Vs. Narisingha Moorari Pal and ors.

LegalCrystal Citation : legalcrystal.com/871297

Court : Kolkata

Decided On : Jul-04-1923

Reported in : AIR1924Cal731

Appellant : Tara Prasanna Chaugdar

Respondent : Narisingha Moorari Pal and ors.

Judgement :

1. This is an appeal by the plaintiff in a suit for the reversal of a sale held under the putni Regulation of 1819. The appeal raises an important question of law, namely, whether a suit instituted under Section 14 of Regulation VIII of 1819, for the reversal of a putni sale is a suit to obtain a declaratory decree where no consequential relief is prayed within the meaning of Article 17 of Schedule II of the Court Fees Act of 1870.

2. The putni in suit was brought to sale under the provisions of the Regulation on the 15th May, 1919, when the third defendant became the purchaser. He defaulted in the payment of rent, with the result that the putni was brought to sale again on the 15th May, 1920, when the first two defendants, the sons of the third defendant became the purchaser. The fourth defendant is the original putnidar, and the remaining four defendants are the Zamindars. The plaintiff, who is the darputnidar, instituted this suit on the 16th June, 1920, for the reversal of the second sale held on the 15th May, 1920. The sale is impeached on a variety of grounds and the plaint contains the following statement of the reliefs sought.

3. First, a declaration that the auction, sale held under Regulation VIII of 1819 on the 15th May, 1920, of the putni regarding the Mahal Kankora in suit is fit to beset aside, and that the said auction sale is void, inoperative and invalid and is not binding and effectual and a decree accordingly and confirmation of the plaintiffs possession thereof in darputni right, and

4. Secondly, a temporary injunction as against defendants Nos. 1 & 2 restraining them from obtaining or holding possession of the Mehal in suit until the disposal of the suit.

5. The defendants contended that this was not a suit for declaratory decree and could not be instituted on a plaint which bore a. Court-fee of Rs. 10 only under Article 17 of Schedule II of the Court Fees Act. Thereupon an issue was raised to the following effect namely, whether proper Court-fees had been paid on the plaint. The Subordinate Judge came to the conclusion that, proper Court Fees had not been paid and.! he directed that Rs. 740 be recovered from the plaintiff as deficit Court Fees. The plaintiff failed to comply with this order, and the plaint was consequently rejected with costs.

6. On the present appeal, the plaintiff has urged, first, that the suit was of the nature contemplated by Article 17 of Schedule II of the Court Fees Act and secondly, that in any view the Court fee demanded from him in the trial Court was in excess of what was properly leviable. In our opinion the first contention must be overruled but the second must prevail.

7. As regards the first point, it is plain from the provisions of Rs. 14 and 15 of Regulation VIII of 1819 that a suit for the reversal of a putni sale is not a suit for a declaratory relief within the meaning of Article 17 of Schedule II of the Court Fees Act. Clause (1) of Section 14 provides that it shall be competent to any party, desirous of contesting the right of the zamindar to make the sale, whether on the ground of there having been no balance due, or on any other ground, to sue the zamindar, for the reversal of the same, and upon establishing a sufficient plea, to obtain a decree with full costs and damages. The purchaser shall be made a party in such suit, and upon passing decree for reversal of the sale, the Court shall be careful to indemnify him against all loss, at the charge of the zamindar or person at whose suit the sale may have been made. It is manifest that the suit thus instituted is not solely for a declaration that the sale is a nullity. It is, on the other hand, a suit for the reversal or cancellation of the sale, on the assumption that if the validity of the sale were not challenged, the sale would remain operative between the parties; Ramsona Chowdhurani v. Naba Kumar Sinha (1911) 16 C.W.N. 805. The suit further contemplates that the decree of the Court shall indemnify the purchaser against all loss at the charge of the zamindar or the person at whose instance the sale may have been made.

8. The plaint in the case before us leaves no room for doubt that the plaintiff treated the sale as one which required to be reversed or cancelled and the prayer clause embodies a prayer for confirmation of possession as also for an injunction. The reason for these prayers becomes plain when we examine the provision of Section 15 of the Putni Regulation. The first clause of Section 15 provides that so soon as the entire amount of the purchase money shall have been paid in by the purchaser, at any sale made under the Regulation, such purchaser shall receive from the officers conducting the sale, a certificate of such payment. The second clause then provides that when the new purchaser shall proceed to take possession of the lands of his purchase, if the late incumbent, himself, or the holders of the tenures or assignments derived from the late incumbent, and intermediate between him and the actual cultivators, shall attempt to offer opposition, or to interfere, with the collections of the new purchaser from the lands composing his purchase the latter shall be at liberty to apply immediately to the Civil Court, for the aid of the public officers in obtaining possession of his rights. There is next a provision for the issue of a proclamation declaring that the new incumbent having, by purchase at a sale for arrears of rent due to the zamindar, acquired the entire rights and privileges attaching to the tenure of the late talukdar in the state in which it was originally derived by him from the zamindar, he alone will be recognised as entitled to make the zamindari collections in the mofussil and no payments made to any other individual will on any account be credited to the raiyats or others in any suit, for rent, or on any other occasion whatever, when the same may be pleaded. These provisions make it plain that when the purchaser takes full measures to obtain delivery of possession, the putnidar and the persons who have derived title from him are effectively dispossessed, for the tenants are enjoined not to pay rent either to the defaulter or to others who claim derivative title from him We must take it that it was in view of these provisions that the plaintiff asked for confirmation of possession and an injunction to restrain the

purchaser from obtaining delivery of possession.

9. It has not been disputed that prayers for injunction and for confirmation of possession are prayers for consequential relief; see the cases of Umatul Batul v. Nauji (1907) 6 C.L.J. 427, Jhumall Karti v. Debulal Singh (1915) 22 C.L.J. 415 and Dinanath Das v. Ramanath Das (1916) 23 C.L.J. 561. The view we take is also supported by the decisions in Drapu Chowdhury v. Ishan Chandra Das 9 C.L.R. 231 and Mahomed Takibuddin Buddi v. The Collector of 24 Perganahs (1901) 6 C.W.N. 157 which were instances of suits to set aside sales for arrears of revenue; they are in no sense suits for mere declaration without consequential relief.

10. The present case in our opinion illustrates the danger emphasised by Sir Lawrence Jenkins, C.J. in Deohali Koer v. Kedarnath (1912) 39 Cal. 704 where he observed that attempts are frequently made to frame suits for possession or suits for declaration with consequential reliefs in such a way as to make them bear the appearance of suits for purely declaratory reliefs. We are of opinion that the Subordinate Judge has correctly held that the present suit was not a suit for declaration.

11. As regards the second point, we are of opinion that the Subordinate Judge fell into an error when he determined the amount of Court-fees leviable by reference to the provisions of the Bengal Court Fees (Amendment) Act, 1922 (Act IV of 1922), which came into operation on the 1st April, 1922. The suit had been instituted on the 16th June, 1920, and the amount of Court-Fees leviable on the plaint must be determined by a reference to the law as it stood on that date. This view receives support from the provisions of Section 149 of the Code of Civil Procedure, 1908. The decision in Aradhun Dey v. Gulam Hossein Maloom 7 W.R. 461 is clearly distinguishable. In that case, a memorandum of appeal was presented to this Court without a copy of the decree. It was consequently a memorandum which could not be received, as the fundamental document was not annexed. The memorandum was accordingly returned to the appellant. When he re-filed it with the copy of the decree, not only had the period of limitation expired, but, in the interval, the Stamp Act of 1867 had come into operation. In these circumstances, Mr. Justice Jackson held that the Court-fee to be levied was the Court-fee payable when the proper memorandum was brought into Court. In the case before us, there was a proper plaint presented on the 15th June, 1920, apart from the question of Court-fee payable.

12. The result follows that the plaintiff is bound to pay Rs. 465 as additional Court-fee due on the plaint and Rs. 735 as additional Court-fee leviable on the memorandum of appeal presented to this Court. This makes an aggregate of Rs. 1,200. The plaintiff-appellant must deposit this amount in Court within one month from this date. If the deposit is made, the appeal will stand decreed and the suit will be remitted to the Court of first instance for trial on the merits. If the amount is not deposited, the appeal will stand dismissed with costs.

13. When the Court-fee shall have been paid in this Court, there will be an order under Section 13 of the Court Pees Act to enable the appellant to obtain a refund of Rs. 755 and the usual certificate will issue.

14. We may add finally that this appeal is competent notwithstanding the provision of Section 12 of the Court Fees Act. This is not a case of appraisement of or fixation of value with a view to determine the amount of fee chargeable; the dispute involves

root questions of principle as to the nature of the suit and the retrospective operation of statutes; Upadhya Thakur v. Persidh Singh (1896) 23 Cal. 723 (F.B.), Studd v. Mati Mahto (1901) 28 Cal. 334 and Prokas Chandra Sarkar v. Bishambharnath Sahi (1909) 14 C.W.N. 343.

15. The respondents are entitled to their costs in this Court in any event. We assess the hearing fee at three gold mohurs for each set. The respondent who undertook to prepare the paper book will be entitled to the costs incurred in that behalf from the amount deposited by the appellant.