

## STATE OF U.P.

v.

RAM KRISHAN BURMAN (DEAD) BY L. RS. &amp; ORS.

September 26, 1969

[J. C. SHAH, V. RAMASWAMI AND A. N. GROVER, JJ.]

*Court Fees Act, 1870 (7 of 1870), s. 7 (iv-A) inserted by U.P. Legislature—A decree for a mere declaration of title to property whether a decree 'for money or other property' or an 'instrument securing money or other property' within meaning of section—Undesirability of prolonging litigation by raising pleas without merit.*

As the reversioner of a Hindu widow's estate one 'R' instituted suit No. 4 of 1950 in the court of the Civil Judge Jaunpur, for a declaration that he was the 'owner in possession' of the said estate. 'B' who claimed to be an heir of the widow was impleaded as a party defendant. The suit was decreed *ex-parte*. 'B' then filed suit No. 14 of 1956 in the same court against the heirs of 'R' who died after the passing of the decree in his suit. In suit No. 14 of 1956 'B' claimed that as heir of the said widow he was entitled to her *stridhana* properties. He averred that in suit No. 4 of 1950 'R' had arrived at an oral compromise with him promising him 5/16th share in the whole estate; that the oral compromise was later reduced into a memorandum; that 'R' had represented to him that a compromise decree would be obtained in the suit; and that taking advantage of his ignorance 'R' had obtained an *ex-parte* decree against him. On these allegations 'B' prayed that he be declared the owner of all the properties left by the widow, and in the alternative he be declared owner of her *stridhan* properties, the decree in suit No. 4 of 1950 having no adverse effect on his rights. On the footing that he had claimed a mere declaration 'B' paid Rs. 18/12/- as court-fees as in a claim under Sch. II cl. 17(iii) of the Court Fees Act. The Inspector of Stamps, however, reported to the Civil Judge that in his view the case fell within s. 7(iv-A) of the Act as incorporated therein by the U.P. State Legislature and court fee was payable on the value of the subject-matter of the suit. The Civil Judge ordered the plaintiff to amend the plaint and pay the court fee remaining due. In appeal the High Court decided in favour of the respondent. The State of U.P. appealed. It was contended on behalf of the appellant: (i) that the plaintiff sought a declaration adjudging void the decree in suit No. 4 of 1950 which was a decree "for money or other property" within the meaning of s. 7(iv-A) since that expression must include a decree concerning or relating to money or other property; (ii) that in any case the decree in suit No. 4 was an 'instrument' securing money or other property having market value and s. 7(iv-A) was therefore attracted; (iii) that the relief for declaration was a mere device intended to conceal the true purport of the claim.

HELD : The appeal must be dismissed.

(i) A decree for declaration of title to money or other property is not a decree for money or property. The expression "decree for money or other property" means only a decree for recovery of money or other property. It does not include a decree concerning title to money or other property. [592 E-F]

(ii) A decree *ad invitum* is not an instrument securing money or other property : such a decree is a record of the formal adjudication of the

**A** court relating to a right claimed by a party to the suit. It does not by its own force secure money or property. [592 G]

(iii) The relief for declaration was not a mere device or subterfuge intended to conceal the true purport of the claim for the property in dispute was in the possession of the District Magistrate, and if the Civil Court declared the plaintiff's title he would be entitled to secure recognition of his rights by the District Magistrate. [593 A-B]

**B** CIVIL APPELLATE JURISDICTION : Civil Appeal No. 444 of 1966.

Appeal by special leave from the judgment and order dated October 9, 1963 of the Allahabad High Court in F.A.F.O. No. 268 of 1957.

**C** *N. D. Karkhanis* and *O. P. Rana*, for the appellant.

*R. Gopalakrishnan*, for respondents Nos. 1(i), to (iv), (vii) and (xi).

The Judgment of the Court was delivered by

**D** **Shah, J.** One Radhey Lal instituted Suit No. 4 of 1950 in the Court of the Civil Judge, Jaunpur, for a declaration that he was the "owner in possession" of the estate left by Dhan Devi. To that suit Ram Krishan Burman was impleaded as a party-defendant. This suit was decreed *ex parte*. Ram Krishan then filed Suit No. 14 of 1956 in the Court of the Civil Judge, Jaunpur, against the heirs of Radhey Lal (who had died since the passing of the decree in Suit No. 4 of 1950), claiming that he was "appointed an heir by Dhan Devi" of properties described in lists B, J & D in the plaint, that the dispute concerning the inheritance to the estate left by Dhan Devi was settled between him and Radhey Lal, that Radhey Lal admitted his title to the properties in Lists B, J & D and it was agreed that in the properties in Lists A, B, J & D Radhey Lal had 11/16th share and that he had 5/16th share, that a memorandum was drawn up in that behalf, and that Radhey Lal represented to him that a compromise decree will be obtained in that suit, but thereafter taking advantage of his ignorance Radhey Lal obtained a decree *ex parte*.

**E**

**F**

**G** The following substantive reliefs were claimed by the plaintiff :

"(a) that a declaratory decree in favour of the plaintiff and against the defendants declaring the plaintiff as the owner of the properties in Lists, A, B, J & D be passed;

**H** (b) in case in the opinion of the Court prayer (a) cannot be granted, then, alternatively, declaration declaring the plaintiff as the owner of properties in B, J and D being the *stridhana* of Rani Dhan Dai Kaur be

issued, decree in Suit No. 4 of 1950 has no adverse effect on the rights of the plaintiff;"

The plaintiff valued the properties in dispute at Rs. 5,99,503/6/3, but on the footing that he had claimed a mere declaration paid Rs. 18/12/0 as court-fees as in a claim under Sch. II cl. 17(iii) of the Court-Fees Act.

The Inspector of Stamps reported to the Civil Judge that in his view the case fell within s. 7(vi-A) as incorporated by the U.P. State Legislature, and court-fee was chargeable according to the value of the subject-matter, and the plaintiff was liable to pay Rs. 3,528/8/- as court-fee on the plaint. The Civil Judge ordered the plaintiff to amend the plaint and to pay the court-fee remaining due.

The plaintiff appealed against the order of the Civil Judge to the High Court of Allahabad. The High Court held that the court-fee paid by the plaintiff was proper, and set aside the order holding that the case did not fall within s. (iv-A) of the Court-Fees Act. The State of U.P. has appealed to this Court with special leave.

Section 7(iv-A) of the Court-Fees Act as enacted by the U.P. State Legislature, insofar as it is relevant, reads :

"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.

(1) where the plaintiff or his predecessor-in-title, was a party to the decree or the instrument, according to the value of the subject-matter, and

"

There is no dispute that the plaintiff claimed a declaration adjudging void the decree in Suit No. 4 of 1950 declaring Radhey Lal to be the "owner in possession of the estate of Dhan Devi". The plaintiff by his plaint had claimed two declarations in the alternative, and *prima facie*, the plaint was of the description in Sch. II Cl. 17(iii) of the Court-Fees Act. But counsel for the State of U.P. contends that the reliefs claimed fell within s. 7(iv-A) of the Court-Fees Act. Counsel says that the expression "decree for money or other property" does not mean a decree awarding money or other property, but a decree concerning or relating to money or other property, and he says that where the Court declares the plaintiff's title to money or property *simpliciter*, the decree is one for money or for other property. We are unable to

- A** agree with that contention. The expression "for" occurs twice in the opening part of the clause. Evidently the expression "for" when it occurs for the first time means "for obtaining a decree ordering (payment or recovery of)". The expression "for" also occurs in several other clauses of the Court-Fees Act. In s. 7 of the Court-Fees Act as amended by the U.P. Legislature which
- B** deals with computation of court-fee payable in certain classes of suits, following clauses occur :

"(i) In suits *for* money . . . . .

(ii) (a) In suits *for* maintenance and annuities or other sums payable periodically :—

**C**

(b) In suits *for* reduction or enhancement of maintenance and annuities or other sums payable periodically—

**D**

(iii) In suits *for* movable property other than money, where the subject-matter has a market value—

(iv) In suits :—

(b) *for* accounts

(iv) B. In suits—

**E**

(a) *for* a right to some . . . . . to arise out of land.

(iv) C. In suits—

(a) *for* the restriction of conjugal rights,

**F**

(b) *for* establishing or annulling or dissolving a marriage,

(c) *for* establishing a right to the custody or guardianship of any person.

**G**

(v) A. In suits *for* possession . . . . .

(v) B. In suits *for* possession between rival tenants.

(vi) A. In suits *for* partition.

(vii) In suits *for* the interest of an assignee of land-revenue.

**H**

(ix) In suits against a mortgage *for* the recovery of the property mortgaged.

(x) In suits *for* specific performance—

(xi) In the following suits between landlord and tenant—

(a) *for* the delivery by a tenant of the counter-part of a lease,

(c) *for* the delivery by a landlord of a lease,

(cc) *for* the recovery of immovable property from a tenant,

(f) *for* abatement of rent,

(g) *for* commutation of rent,

In all these clauses the expression “for” is used as meaning “for obtaining a decree ordering (payment or recovery of)”. If the expression “for” occurring for the first time in s. 7 (iv-A) means in the context in which it occurs obtaining a decree for cancellation of or adjudging void or voidable a decree, it would be difficult to hold that the expression “decree for money or other property” has a wider connotation and means a decree which concerns or relates to money or other property.

A decree for declaration of title to money or other property is not a decree for money or other property. In our judgment the expression “decree for money or other property” means only a decree for recovery of money or other property. It does not include a decree concerning title to money or other property.

It was urged that in any event the plaintiff had sued for adjudging void or voidable an “instrument” securing money or other property having market value. But a decree in *invitum* is not an instrument securing money or other property : such a decree is a record of the formal adjudication of the Court relating to a right claimed by a party to a suit. It does not by its own force secure money or property. A consent decree in certain cases may be regarded as an instrument securing money or other property, where the decree proceeds upon a contract which had that effect, but that is only because a consent decree is a record of the contract between the parties to which is superadded the seal of the Court. In our view the High Court was right in holding that the court-fee paid on the plaint was proper. It may be pointed out that the plaintiff had claimed nothing more than a declaration with regard to certain properties.

- A** We are also unable to accept the contention of counsel for the State that the relief for declaration was a mere device or subterfuge intended to conceal the true purport of the claim. It is evident that the District Magistrate, Jaunpur was in possession of the property in dispute and if the civil court declared the title of the plaintiff, he would be entitled to secure recognition of his rights.
- B**

- Before parting with the case we must observe that we have felt greatly perturbed by the course which this litigation has taken. The suit was filed in 1956. And after 13 years only the question of court-fee payable on the plaint is decided. In the meanwhile the original plaintiff died. The delay is largely attributable to the rigid attitude of the State which has by insisting upon a comparatively small claim, held up the proceedings for all these long years by raising contentions which had no merit. We trust the Court of First Instance will take up this suit for hearing with the least practicable delay and dispose of the suit according to law. The State to pay in this appeal the costs of the heirs of the original plaintiff.
- C**
- D**

G.C.

*Appeal dismissed.*