

Gainda Lal vs Ram Singh And Ors. on 27 July, 1954

Equivalent citations: AIR1954ALL782, AIR 1954 ALLAHABAD 782

JUDGMENT

Gurtu, J.

1. A suit was filed under the provisions of Order 21, Rule 63, Civil P. C., by the plaintiffs whose father had preferred an objection to the attachment of the house in suit in connection with a decree' obtained by defendant 1 as against defendant 2 in another suit No. 1455 of 1948, for Rs. 406/1/. The objection had been disallowed by the execution Court. The plaintiffs prayed for a declaration that they are the owners of the whole house or, in the alternative, of half the house. The suit was valued at Rs. 203/0/6 being half the amount of the decree (in connection with which execution had been sought) for the purpose of court-fee, and at Rs. 10,000/-, the market value of the house, for purposes of jurisdiction.

2. Along with the plaint, the plaintiffs made an application for issue of an 'interim' injunction restraining defendant 1 from executing the said decree against defendant 2 by sale of the house in suit. Notices were issued on this application and defendant 1 filed an objection to the 'ad interim' injunction granted and the application came up for final disposal. Defendant 1's objection was dismissed. The application for injunction was allowed and the sale of the house in execution of the decree was stayed. Defendant 1 has preferred this appeal.

3. The learned Civil Judge granting the injunction rejected the argument of defendant 1 that the suit was not properly filed in the Civil Judge's Court but should have been filed before the learned Munsif. On the merits, the learned Civil Judge was of the view that the decree being only for a sum of Rs. 406/1/- while the house, according to the allegation, being of the value of Rs. 10,000/-, the stay would not operate to the prejudice of the decree-holder in any way.

4. Before us, it has been contended that the order of the learned Civil Judge granting the injunction was without jurisdiction as the suit itself was not filed in a Court having jurisdiction. It was contended that the valuation of the suit for the purposes of jurisdiction should have been the value of the decree in connection with which the house stood attached. It was urged that, in effect, the suit was brought merely for the purpose of having that attachment removed.

The matter falls to be determined by the language of the amended Section 4, Suits Valuation Act. The amended section will be quoted later. Prior to the amendment, Section 4, however, read as follows:

"Where a suit mentioned in the Court-fees Act, 1870, Section 7, paragraph (iv) or Schedule II, Article 17, relates to land or an interest in land of which the value has

been determined by rules under the last foregoing section, the amount at which for purposes of jurisdiction the relief sought in the suit is valued shall not exceed the value of the land or interest as determined by these rules".

5. The view taken by the Pull Bench in --'Moolchand Moti Lal v. Ram Kishen', AIR 1933 All 249 (FB) (A) under the unamended section was to the effect that a suit for a declaration that the plaintiffs were the owners of certain immovable properties and that these properties were not liable to be attached and sold in execution of a decree obtained by one of the defendants as against another and valued at Rs. 1,342/- was correctly filed in the Munsif's Court, even though the property attached was worth Rs. 20,000/-. It was held that it is the amount of the decree sought to be realized that determines the value of the suit, where the property involved is of larger value than the amount due under the decree, but where the decretal amount is large and the market value of the property involved is smaller, it is the market value of the property that determines the value of the suit.

6. So far as the valuation for purposes of court-fee is concerned this view stands, in essence, accepted so far as the United Provinces (now Uttar Pradesh) are concerned because under an amendment made to Section 7, Court-fees Act, in 1938, an amended Sub-section (viii) stands added which runs as follows:

"In suits to set aside or to restore an attachment including suits to set aside an order passed under Order 21, Rule 60, 61 or 62 of the Code of Civil Procedure, according to half of the amount for which attachment was made, or according to half of the value of the property or interest attached.. ..".

The only question is whether the valuation for purposes of Court-fee can now be also the valuation for purposes of jurisdiction in view of amendment made to Section 4, Suits Valuation Act which amendment was brought into force by the U. P. Act 8 of 1939.

7. The amended Section 4, in so far as it is relevant to this discussion, runs as follows:

"Suits mentioned in paragraphs of Section 7 and articles of Schedule II of the Court-fees Act, 1870, as in force for the time being in the United Provinces, shall be valued for the purposes of jurisdiction at the market value of the property involved in or affected by or the title to which is affected by the relief sought, or at the amount involved in or affected by or the title to which is affected by the relief sought, and such value shall, in the case of land, be deemed to be the value as determinable in accordance with the rules framed under Section 3".

8. The view pressed before us by the appellant was that the property involved or affected by the suit under Order 21, Rule 63, in effect, was only so much of the property as it would be necessary to sell in order that the decree in connection with which the property stood attached could be satisfied. Attention was invited to Order 21, Rule 64 which gives power to the Court to order that only such portions of the property, as may seem necessary to satisfy the decree, may be sold. It was argued that, in effect, the relief sought by the plaintiffs in a suit under Order 21, Rule 63 was to get the

attachment removed. It was urged that although the property attached might be of a greater value than the value of the decree sought to be executed, none the less the sale of property was only effected for the purpose of realising the decreed amount.

On the other hand, it was urged by the respondents' counsel that in a suit under Order 21, Rule 63, the plaintiffs' right to the entire property attached is established. Attention was also drawn to the relief, as prayed for in the suit, which was in the following words:

"The plaintiffs claim a declaration that they are the owners of the whole house or, in the alternative, of half the house".

Section 4, Suits Valuation Act, in terms, enjoins that the suit shall be valued for the purposes of jurisdiction at the market value of the property involved in or affected by or the title to which is affected by the relief sought. It cannot be denied that when a particular property is attached, the property becomes wholly involved because the proprietary rights in any part of the property can no longer pass to any vendee from the owner after the attachment has taken place. Moreover, when a sale takes place, it is the whole of the property that is liable to sale and before an application is made to the court to sell only a part of the property, it cannot be said that any part of the property is not liable to sale or will be necessarily, exempted from sale. Moreover, in a suit under Order 21, Rule 63, of the Code, the rights 'inter se' the judgment-debtor and the plaintiffs in regard to the whole of the property are determined, Thus though the property is attached for the realisation of the decretal amount, which may be less than the market value of the property concerned, the property becomes wholly involved and affected notwithstanding the fact that the decretal amount may ultimately be satisfied by sale of only a portion thereof.

9. Under the circumstances, upon a correct interpretation of the language of Section 4, Suits Valuation Act, the contention of the appellant cannot be accepted and the objection in regard to the jurisdiction of the Court must be overruled.

10. In regard to the merits of the appeal, the learned Judge has rightly pointed out that the decree is only for a sum of Rs. 406/- and in the circumstances, it does not seem improper that the sale of a property valued at Rs. 10,000/- should be stayed pending the decision of the suit.

11. The result, therefore, is that this appeal is dismissed with costs.