

## **Udai Bhan Singh vs Lachhman Das And Anr. on 5 August, 1955**

**Equivalent citations: AIR1955ALL667, AIR 1955 ALLAHABAD 667**

### **JUDGMENT**

Randhir Singh, J.

1. This is a miscellaneous appeal under Section 6A(i), Court-fees Act arising out of a court-fee matter.

2. A suit was instituted by the appellant for a declaration that the plaintiff was the owner in possession of the entire village Bansī Rehayak and that the defendants had no right to put it to sale in execution of the decree dated 9/12th August, 1948.

The grounds on which the declaration was claimed were that this village belonged to one Thakur Sheo Narain Singh who was succeeded by his widow Thakurain Sujān Kunwar and that on the death of Thakurain Sujān Kunwar, who was only a life estate holder, the plaintiff became owner of the village.

A decree was passed against Thakurain Sujān Kunwar in her life time, and under the provisions of the Agriculturists' Relief Act a charge was, created on village Bansī Rehayak. The decree was put into execution and as Thakurain Sujān Kunwar had died the plaintiff, who was her legal representative, also, raised an objection to the execution, of the decree against this property.

It was alleged on his behalf that Thakurain Sujān Kunwar having died her interest in the property came to an end and the property could no longer be taken in execution of the decree. The defendants contested the suit and one of the objections raised by the defendants was that the court-fee paid by the appellant was insufficient inasmuch as the suit was governed for the purposes of payment of court-fee by Section 7(iv-A) and not by Article 17 of Schedule II, Court-fees Act.

The plaintiff had paid a court-fee of Rs. 18/12/- only. The lower Court found that the court-fee paid was insufficient and directed the plaintiff to pay ad valorem court-fee. The plaintiff has now come up in appeal.

3. It has been argued on behalf of the appellant that the plaintiff did not either in words or in substance claim any declaration with regard to the decree which stood against Thakurain Sujān Kunwar and his suit was for a simple declaration of his own title to the property. Section 7(iv-A) as amended in U. P. stands 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, (1) where the plaintiff or his predecessor-in-title was a party to the decree or instrument, according to the value of the subject-matter, and (2) where he or his predecessor-in-title was not a party to the decree or instrument according to one-fifth of the value of the subject-matter, and such value shall be deemed to be-

If the whole decree or instrument is involved in the suit, the amount for which or value of the property in respect of which the decree was passed or the instrument executed, and if only a part of the decree or instrument is involved in the suit, the amount or value of the property to which such part relates." A perusal of the words of the section clearly indicates that decrees to which a plaintiff or his predecessor-in-title was a party or was not a party are all within the purview of this section, and the difference lies only in that the court-fee will be payable on the value of the subject-matter if the plaintiff or his predecessor was a party to the decree, but court-fee only on one-fifth of the value shall be payable if he or his predecessor-in-title was not a party to the decree.

It would thus appear that the section refers to those decrees also to which a person was not a party. The mere fact that the plaintiff was not a party to the decree would not, therefore, affect the application of Section 7(iv-A), Court-fees Act.

The section would be applicable to all suits, which involve cancellation or adjudging void or voidable a decree for money or other property.

4. In the present case it cannot be disputed that the effect of a declaration in favour of the plaintiff would be that the decree being a charge against the property which is the subject-matter of the suit would no longer be a good decree and would be void so far as that property was concerned. The suit, therefore, clearly involves adjudging void or voidable the decree passed against Thakurain, Sujan Kunwar.

5. It has further been contended on behalf of the appellant that Article 17 Schedule II overrides the provisions of Section 7(iv-A) and reliance has been placed on a ruling reported in -- 'Chief Inspector of Stamps v. Mst. Hulasiya', AIR 1945 All 111 (A). The Court-fees Act has been amended in U. P. and words have been added to Article 17 which clearly show that Article 17 would apply only if no provision had been made elsewhere in the Court-fees Act for a particular kind of suit.

This means that Article 17 Schedule II, would not in its application to U. P. override the provisions of Section 7(iv-A), Court-fees Act. Learned Counsel for the respondents has, on the other hand, relied on two reported cases of this Court -- 'Madan Mohan v. Raghunandan Prasad', AIR 1944 All 208 (B), and -- 'Kamta Nath v. Chironji Lal', AIR 1944 All 271 (C),.

In the case reported in, -- 'Madan Mohan v Raghunandan Prasad', (B), a similar question arose for determination and it was held that Section 7(iv-A) would be applicable to a case where, though a specific relief for avoidance of the decree is not claimed, but avoidance of the decree is

contemplated or is involved.

The view taken by the learned Judge who decided that case appears to us, if we may say so with respect, to be the correct view. We are, therefore, clearly of opinion that Section 7(iv-A) would be applicable to the facts of the present case and court-fee is payable under that section.

6. It now remains to be seen whether sub-s. (1) or Sub-section (2) of Section 7(iv-A) would cover the present suit. Admittedly the plaintiff was not a party to the decree involved in the suit, but it is contended on behalf of the respondent that Thakurain Sujan Kunwar was a predecessor-in-title of the plaintiff and as such Sub-section (1) would apply.

The plaintiff does not claim through Thakurain Sujan Kunwar but independently of her. It would be difficult, therefore, to accept the contention that the plaintiff claims through Thakurain Sujan Kunwar or that she was his predecessor-in-title. We are, therefore, of opinion that Sub-section (2) should apply to the facts of the present case and that court-fee was payable according to one-fifth of the value of the subject-matter. While, therefore partly agreeing with the view taken by the lower Court, we find that the court-fee would be payable on one-fifth of the valuation of the suit, that is, on one-fifth of Rs. 5808/4/3. The appeal is therefore, allowed as above and the plaintiff is directed, to pay the deficit court-fee on or before 10-10-1955, in the Court below. Parties shall bear their own costs of this appeal.