

## Ali Haider vs Sakina Begum And Ors. on 4 November, 1953

**Equivalent citations: AIR1954ALL418, AIR 1954 ALLAHABAD 418**

### JUDGMENT

Randhir Singh, J.

1. This is a miscellaneous appeal arising out of proceedings under Section 47 of the Civil Procedure Code.

2. A suit was instituted by Srimati Sakina Begam, respondent No. 1, against the appellant and respondents Nos. 2 to 12 for a declaration, of her share in certain properties and for possession thereof on the allegations that she had inherited a share in the property which originally belonged to Yusuf Ali. The suit was contested only by the appellant, who was defendant No. 2, on various grounds. One of the grounds raised was that the court-fee paid by the plaintiff was insufficient. The Court framed an issue on this point and came to the conclusion that the court-fee paid by the plaintiff was insufficient and ordered the plaintiff to pay a further sum of Rs. 3,820/4/- as court-fee.

The plaintiff found that she was unable to pay the court-fee and she, therefore, made an application for permission to sue in 'forma pauperis'. This application was pending when it appears that the parties came to terms and the plaintiff agreed to get her suit as also the application for permission to sue as a pauper dismissed on certain conditions. A petition for compromise was then filed in Court and it was mentioned in this application that the suit, as also the application No. 29 of 1946 be consigned to records, and that the plaintiff had agreed to get her suit consigned to records in lieu of the defendant No. 2 agreeing to pay her Rs. 130/- per mensem as maintenance. It was also mentioned in the petition for compromise that if defendant No. 2 defaulted in the payment of maintenance for three months at a time, the plaintiff shall have the right to get her suit restored and reheard.

3. The Civil Judge pointed out to the parties that the condition that the suit might be restored under certain circumstances was not acceptable to the Court and a decree for this prayer could not be made. The Court then ordered the suit and the miscellaneous application No. 29 of 1946 to be dismissed in terms of the compromise. After the above order had been passed it was pointed out to the lower Court by the Government Pleader that no order for payment of court-fee had been passed and that an order should be passed under Order XXXIII, Rule 10 of the Code of Civil Procedure. The Court then ordered as follows-

"The court-fees should be paid by the defendant No. 2 and can be realised from the plaintiff also under Order XXXIII, Rule 10, Civil P. C. The Collector may be informed. The Government Pleader Mr. B. N. Roy is present and informed."

4. Objections were raised to this subsequent order of the Court by both the parties and these objections were finally disposed of by the learned Civil Judge on the 27th March, 1947. It is this order which is now in appeal.

5. The learned Civil Judge modified his order for realisation of court-fee to this extent that he ordered that the court-fee should be paid by the defendant No. 2 and the plaintiff or either of them as the Collector thought fit under Order XXXIII. Rule 10 of the Code of Civil Procedure. The question as to whether the court-fee should be realised from the plaintiff or from defendant No. 2 was left to the option of the Collector.

6. The orders passed by the learned Civil Judge in this case subsequent to the order in the original suit and the application appear to us to be misconceived. It was the duty of the learned Civil Judge to have decided the question as to whether the plaintiff was or was not a pauper before proceeding further with the case and if the plaintiff had made an application that her application for permission to sue as a pauper be dismissed, the lower Court should have asked the plaintiff to make good the court-fee which had been found deficient earlier and in respect of which an order had already been passed in the original suit which was pending.

The learned Civil Judge, however, did not make any such order and decided the suit. It has now been urged on behalf of the Government that it may be presumed that the Court accepted the plaintiff to be a pauper and that this presumption could have been raised from the petition of compromise itself. It is difficult to appreciate this argument specially in view of the fact that an application had been made by the plaintiff herself that her application for permission to sue in 'forma pauperis' may be dismissed. This clearly showed that the plaintiff was not declared a pauper and her application for permission to sue as a pauper stood dismissed. The Court, instead of asking the plaintiff to pay the court-fee, dismissed the suit in terms of the compromise.

7. It has been urged on behalf of the Government that in case a Court decides a suit in which proper court-fee has not been paid, the Government should be allowed to realise the deficient court-fee even subsequently and reliance has been placed on the provisions of Section 6A and B, and Section 12 of the Court-fees Act. It is not necessary to discuss the provisions referred to by the learned Counsel for the State in view of the fact that the suit cannot be said to have been heard and decided in the present case.

The petition of compromise clearly shows that the plaintiff asked the Court to dismiss her suit, as she had come to terms with the defendant. No executable decree was asked for by the plaintiff or the defendant by means of the petition of compromise; there was an express prayer towards the end of the petition of compromise and it was that both the suit and the application be dismissed. The result of the filing of the petition of compromise was that the plaintiff did not proceed with her suit or with her application for permission to sue as a pauper. No court-fee could, therefore, be payable under the circumstances of this case by the plaintiff.

It was open to the plaintiff to pay the court-fee and then ask the Court to proceed with the suit or to refuse to pay the court-fee and get her suit dismissed. The plaintiff seems to have adopted the latter

course and the order of the learned Civil Judge allowing the Collector to realise the court-fee from either party does not appear to us to be a good order. We are, therefore, of opinion that this order should be set aside.

8. Accordingly the appeal is allowed and the order dated the 27th March, 1947 as also the order dated the 17th January, 1947, regarding the court-fee are set aside. We make no order as to costs of this appeal.