

## **Raja Ram vs B. Hashmatullah And Anr. on 4 January, 1950**

**Equivalent citations: AIR1950ALL410, AIR 1950 ALLAHABAD 410**

### **JUDGMENT**

Agarwala, J.

1. This is a plaintiff's appeal against an order of the Civil Judge of Moradabad ordering the plaintiff to make good the deficiency on the plaint within the time fixed by it.

2. The plaintiff's case in the plaint was that Hashmatullah, defendant 1, was originally the sole proprietor of a running concern styled Hashmatullah & Co. In September 1943 Hashmatullah agreed to take in the plaintiff as a financing partner. The plaintiff desired that defendant 2 Kaushalaya Nandan should also be taken as a partner. Hashmatullah was not agreeable to this suggestion. Subsequently, however, it was agreed that Hashmatullah was to be a partner of one half, while the plaintiff and Kaushalaya Nandan were to be partners in the other half in equal shares. This arrangement was recorded in an agreement dated 29th February 1944 which was executed by Hashmatullah and Kaushalaya Nandan only, Kaushalaya Nandan standing as a benamidar for the plaintiff to the extent of a half share. The partnership was for a term of five years. According to the plaintiff the partnership is still running. But as mutual confidence had been destroyed, he sued for dissolution of the partnership and for recovery of the profits due to him.

3. As the plaint originally stood, it was mentioned in para. 11 that the plaintiff had heard that defendant 2 was giving out that the partnership had already been dissolved and that a fresh agreement of partnership had been entered into between Hashmatullah and defendant 2. He had also alleged that this dissolution and a fresh partnership were not binding on him, The Inspector of Stamps reported that as the suit involved cancellation of the fresh agreement to which reference was made in para. 11 of the plaint, the plaintiff was bound to pay an additional court-fee for cancellation of that document as required by Section 7(IV-A), Court-fees Act, as amended in the United Provinces. Defendant 2 also raised a similar point but gave it up at a subsequent stage, The plaintiff applied for amendment of the plaint. The plaint was amended and all reference to the subsequent alleged fresh agreement between Hashmatullah and Kaushalaya Nandan was deleted from para. 11 of the plaint and a fresh para. 11-A was added to the plaint. In this paragraph the plaintiff stated that even if the partnership was dissolved he was still entitled to the amount that he had invested with interest and profits up to the date of alleged dissolution of the partnership. A relief (d) was also added in para. 17 of the plaint to the effect that even if it be proved that the partnership had been dissolved, the plaintiff was entitled to recover the amount invested by him with interest and profits from whichever defendant was held liable for the same.

4. As the plaint stands after the amendment, it does not make any reference to any agreement subsequent to the one which was originally made in February 1944 and it does not expressly or

impliedly seek the cancellation of that document. The suit, therefore, is a simple suit for dissolution of partnership or in the alternative, if the Court holds that partnership had already dissolved, for recovery of the amount due to the plaintiff. It is conceded that if the plaint does not involve the cancellation of any document, it is properly stamped. The learned civil Judge held that the plaintiff ought to pay an additional court-fee as the plaint involved the cancellation of an agreement. We do not agree with this view.

5. Court-fee has to be paid on the plaint, as it stands. In determining the question of court-fee, the Courts are not entitled to take into consideration either the allegations once made by the plaintiff himself but which have been deleted or amended by him, or the allegations made by the defendant in his written statement or the fact that the plaintiff will ultimately have to prove something in order to get the relief which he has claimed in the plaint. The Court has simply to see what relief is expressly claimed by the plaintiff in the plaint and Under Section 7(IV A), Court fees Act, also what relief is involved in the plaint, reading it as a whole, though that relief is not expressly claimed as one of the reliefs in the plaint. Beyond this the Court has to see nothing. In our opinion, on the plaint, as it stands, neither there is an express prayer for a relief for cancellation of the document which was originally mentioned by the plaintiff in para 11, nor is there an implied claim for such a relief. If at the trial of the suit the Court finds that in order to get the relief claimed, the plaintiff was bound to pray for the cancellation of the document, it would be open to the Court to take that fact into consideration in deciding the case. But the question whether the suit is maintainable or not without a particular relief being claimed is not open to be considered when the Court has to decide the matter of court-fee.

6. We, therefore, allow this appeal, set aside the order of the Court below, and hold that the plaint is properly stamped. Let the case proceed in the lower Court according to law.

7. We make no order as to costs.