

Gulab Chand vs Jaswant Singh And Ors. on 1 August, 1955

Equivalent citations: AIR1956ALL71, AIR 1956 ALLAHABAD 71

JUDGMENT

Agarwala, J.

1. This is an appeal by the plaintiff under Section 6-A, Court-fees Act against an order holding that the Court-fee paid on the plaint was insufficient on the ground that the relief claimed involves cancellation or adjudging void of a Will. The facts of the case are as follows:

2. The plaintiff claimed that his father carried on a certain business and owned certain property; that he held a decree for Rs. 22,800/-against Rani Jai Raj Kunwar; that on 17-3-1941, Chiranji Lal executed a Will in respect of his property bequeathing Rs. 7000/- out of the decretal amount to the plaintiff and half share of a certain house described in the plaint to the plaintiff and defendants 3 and 4; that Chiranji Lal wanted to give his business to the . plaintiff and defendant 4; that on account of the trickery of defendant 1 no mention was made of this intended gift in the Will; that thereafter, when Chiranji Lal came to know that the gift in respect of the business assets had been omitted in the Will, he made an oral Will on or about the 23rd or 24th of March, 1941, to effectuate his intention; that in this way the plaintiff became the owner upon the death of Chiranji Lal of an amount of Rs. 7000/- out of the decretal amount and of half of the share in the business and of one sixth share in the house, that Chiranji Lal died on 29-12-1944, and the oral Will aforesaid was his last Will and Testament; that defendant 1 denies the plaintiff's right and puts forward another Will dated 26-12-1944 as the last Will of Chiranji Lal; that on that date he was not in his proper senses and was not in a fit position to execute a Will as he was incapable of understanding matters or to execute a Will intelligently; that the Will aforesaid dated 26-12-1944 is merely a forged paper and is not genuine and that the cause of action arose in the case when the defendant denied the plaintiff's right.

3. On these allegations the plaintiff framed his reliefs as follows:

A declaration may be made to the effect that the plaintiff is the owner of a sum of Rs. 7000/-out of the bonds which have been detailed at the bottom of the plaint and that he is owner of the business to the extent of one half and of the house to the extent of one sixth.

4. It is stated before me that by an application the plaintiff wanted the amendment of the relief claimed in the plaint by the addition of a relief in the alternative to the effect that if the Will dated 26-12-1944 was found to be genuine then the plaintiff was entitled to a certain share in the propety. It is not known whether the amendment application was allowed or not. The Court passed an order on 24-7-1950 to the effect that the plaint involved the cancellation of the Will put up by the

defendant, and therefore court-fee was payable under Section 7(IV-A), Court-fees Act as amended in U.P.

5. Learned counsel for the appellant contends that the relief claimed was a plain and simple declaratory relief. It was one for a declaration of the defendants' right to a share and that the Will put. up by the defendant came only in the relief by means of an application for amendment. It was further contended that even if the relief involved cancellation of the will or its being adjudged void, still no Court-fee was payable under Section 7(ivA) because a 'Will' is merely a declaration of the Intention of the testator and is not an instrument by Which he secures any property or money within the meaning of Section 7(iv-A), Court fees Act.

6. Section 7(iv-A) runs 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."

7. The word 'instrument' has not been defined in the Court fees Act. It has been defined in the Stamp Act as including "every document by which any right or liability is, or purports to be, created, transferred, limited, extended, extinguished or recorded. I consider that this is a fair definition which may well be applied to interpret the word 'instrument' in the Court-fees Act as well. Now, a Will executed by a person is of no value so long as he is alive because it can at any time be torn away and repudiated by him. It cannot be enforced against the testator so long as he is alive. as such cannot be said to be a document by which any right or liability is, or purports to be, created, transferred, limited, extended, extinguished or recorded during his life time.

This was so held by a Bench of this Court in -- 'Chief Inspector of Stamps v. Ramesh Chan-dra' AIR 1944 All 84 (A), where their Lordships dealing with a Will executed by the defendant to the suit, 'that is, a Will which was executed by the person alive on the date when the question arose before the Court, held that a Will is no more than the declaration of an intention Of the testator and it cannot possibly be described as an instrument securing any property within the meaning of Section 7(iv-A), Court-fees Act. It is very important to notice that the testator in that case was alive and it was in view of this circumstance that the above observation was made.

8. After the death of the testator, however, a Will becomes a document by which a right or liability is created, transferred, limited, extended, extinguished or recorded. It is enforceable in a Court of law as an instrument conferring title on a party. It, therefore, becomes an instrument securing money or other property within the meaning of Section 7(iv-A), Court-fees Act, when the testator has died and the Will has taken effect. This was the view taken by a learned single Judge of the Oudh Chief Court, although the point was not argued and was conceded by counsel, vide, -- 'Ram Narain Singh v. Pancham Singh,' AIR 1944 Oudh 29 (B).

In a subsequent case, however, a learned single Judge of this Court relying upon the earlier decision in AIR 1944 All 84 (A) (ubi supra), was of opinion that the Will was not an instrument securing any

property within the meaning of Section 7(iv-A), Court-fees Act. The learned Judge's attention was not drawn to the fact that in the case reported in AIR 1944 All 84 (A) the testator was still alive and the question arose during his life time. I have no doubt whatsoever that had this fact been brought to the notice of the learned Judge he would have held otherwise. In my opinion, a Will after the death of the testator becomes an instrument securing money or property within the meaning of Section 7(iv-A), Court-fees Act.

9. The next question then is whether the first relief claimed in the plaint involved the cancellation of or adjudging void or voidable, the Will, in my opinion, though the relief as claimed in the plaint was for a declaration as to the plaintiff's right in certain property, yet when the plaint is read as a whole it cannot be denied that what the plaintiff really wanted was that the subsequent Will as put forward by the defendant may be declared ineffective or void for the reasons mentioned in the plaint. Unless the Will put forward by the defendant was considered and a declaration as to its validity or its invalidity given, the relief claimed by the plaintiff could not be awarded to him. This is therefore a case in which the relief claimed by the plaintiff involved the cancellation or adjudging void or voidable an instrument.

It will be noticed that although I have used the word 'relief' the word in Section 7(iy-A) is 'suit' and not merely 'relief'. If a suit involves the cancellation or adjudging void or voidable an instrument, court-fee would be payable under Section 7(iv-A), Court-fees Act. There can be no doubt whatsoever that the plaint in the present suit did involve this relief. If we were to take the alternative, relief it is conceded that it involved the adjudging void of the subsequent Will. As the Will was executed by the predecessor of the plaintiff, court-fee is payable under Section 7(iv-A), Clause (1), and not under Section 7(iv-A) Clause (2) Court-fees Act.

10. There is no force in this appeal which is dismissed with costs.

11. Leave to appeal to a Division Bench is granted.