

Sri Krishna Chandraji vs Shyam Behari Lal on 21 October, 1954

Equivalent citations: AIR1955ALL177, AIR 1955 ALLAHABAD 177

Author: Raghubar Dayal

Bench: Raghubar Dayal

JUDGMENT

Raghubar Dayal, J.

1. This is a reference under Section 6-C(l), Court Fees Act by the Chief Controlling Revenue Authority in Suit No. 114 of 1951, 'Thakur Shri Krishna Chandraji v. Shyam Behari Lal', in the Court of the First Civil Judge, Kanpur.

2. Thakur Shri Krishna Chandraji and Bankey Behari Lal filed this suit against Shyam Behari Lal claiming several reliefs, the first two of which are:

"(a) that it be declared that the plaintiff No. 2 is the sarbarakar of the plaintiff No. 1,

(b) that the defendant be removed from the management of the temple of plaintiff No. 1 and the charge of the temple and movable therein be handed over to plaintiff No. 2 as sarbarakar on behalf of the plaintiff No. 1."

Court fee on relief, (a) was paid according to Schedule II, Article 17, clause (iii) and on relief (b) according to clause (vi) of the same Article of the Court Fees Act.

3. The Inspector of Stamps reported to the Court concerned that the Court fee paid was insufficient and it ought to have been paid in accordance with the provisions of Section 7(iv)(a), Court Fees Act on the market-value of the property as the reliefs in the suit were for declaration that plaintiff No. 2 was the sarbarakar of plaintiff No. 1 and that the defendant be removed from the management of the property of plaintiff No. 1. The Inspector of Stamps expressed the opinion that the reliefs involved a declaration of title and consequential relief. The learned First Civil Judge did not agree with the report of the Inspector of Stamps and held that the Court fee paid was sufficient. It is subsequent to this order that this reference was made to this Court without taking recourse to the provision of Section 6-B, Court Fees Act which empowers the Chief Inspector of Stamps to apply in revision against the order passed by a Court on the report of the Inspector of Stamps. The point in this reference by the Chief Controlling Revenue Authority is whether it is a case of declaratory decree with consequential relief in terms of Section 7(iv)(a) and the plaint required an ad valorem Court fee of Rs. 2,284/14/- on the jurisdictional value of the property involved.

4. The learned Standing Counsel in support of the reference has referred us to the case reported in -- 'Madan Mohan v. Tejram George Coronation Hindu School Association', AIR 1949 All 207 (A).

In that suit the principal reliefs sought were that

(a) it be declared that the plaintiff was in fact the President of a certain school and was entitled to function as such; (b) it be declared that certain resolutions and all the proceedings carried out by the defendants were void and 'ultra vires'; (c) the defendants be restrained from altering or adding to the name of the institution; (d) the defendant.

No. 2 be restrained from functioning as the President; and (e) the defendants be restrained from interfering with the plaintiff's functioning as the President.

It was held that the injunctions sought were not independent reliefs but necessarily flowed from the declarations sought for in reliefs (a) and (b). They could be granted only if the title of the plaintiff to the aforesaid declarations was established and that, therefore, they were consequential reliefs. It is submitted by the learned Standing Counsel that, relief (b) in the present suit with respect to the removal of the defendant from the management of the temple and with respect to the delivery of the charge of the temple and moveables to plaintiff No. 2 was a consequential relief to the declaratory relief (a) because it flowed from it and could not be granted till the plaintiff succeeded in obtaining the desired declaration. If the expression "consequential relief" simply means a relief which flows from the declaratory decree and the relief which cannot be granted until the declaratory relief is granted, the contention would be sound because it makes no difference what from the relief flowing from the declaratory relief may have It was observed in the aforesaid 1949 case (A) at p. 208:

"A consequential relief means a relief which necessarily flows from the principal relief sought. It is a relief which in the circumstances of the case cannot be allowed if the principal relief is refused."

In this connection reference was made to the cases reported in -- 'Kalu Ram v. Babu Lal', AIR 1932 All 485 (PB) (B) and -- 'Ram Chhabila v. Sat Narain', 1935 All L. J. 1319 (C). The latter case was similar to the 1949 case and just decided the point raised in that case. It did not refer to the earlier Pull Bench case reported in 'AIR 1932 All 485 (B)', and which laid down what the expression "consequential relief" should mean. According to the definition given in that case at p. 487 it is to be found in the following :

"In our opinion, the expression 'consequential relief in Section 7(iv)(c) means some relief which would follow directly from the declaration given, the valuation of which is not capable of being definitely ascertained and which is not specifically provided for anywhere in the Act and cannot be claimed independently of the declaration as a substantive relief. A consideration of all the Clauses (a) to (f) of Sub-section (iv), Section 7 of the Court-fees Act leads to the same conclusion."

It may be mentioned at this stage that Section 7Civ) (c), Court-fees Act in force in those provinces in 1932 related to the suits for obtaining a declaratory decree or order where consequential relief was prayed. The present Section 7 (iv)(a), Court-fees Act as applicable to this suit is in a different form and relates to suits for obtaining a declaratory decree or order where consequential relief other than reliefs specified in Sub-section (iv-A) is prayed. Sub-section (iv-A) relates to 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. It may be that this Sub-section (iv-A) includes a suit of the type which was for consideration in the five-judge Full Bench case reported in 'AIR 1932 All 485 (B)'. But that does not mean that merely because Sub-section (iv-A) is introduced in Section 7 subsequently and because reliefs specified in Sub-section (iv-A) are excepted from consequential reliefs contemplated in Sub-section (iv) (a) of Section 7, the expression "consequential relief" would include the reliefs which were claimed in the Full Bench case and were held not to amount to "consequential relief".

The legislature has not thought it fit to introduce any precise definition of the expression "consequential relief" after the decision of that Full Bench case. The exception made in Section 7(iv)(a) with respect to the reliefs specified in Sub-section (iv-A) may be just to make it clear beyond doubt that what has been decided in the Full Bench case did really not amount to a 'consequential relief'. We are of opinion that, in the absence of any different meaning given to the expression "consequential relief" in the previous Act, the meaning given to that expression in the Full Bench case should be taken to be binding. We have not been referred to any case decided subsequently which gives a different meaning to this expression and considers the meaning given to it by the Full Bench to be wrong. As already mentioned, reference to this case is made in the 1949 case.

5. According to our view the definition given in the Full Bench case does not mean that all reliefs which flow from the declaratory relief must amount to "consequential reliefs". The definition mentions four ingredients which go to make up the meaning of this expression "consequential relief". The first is that the relief should follow directly from the declaration given; the second is that the valuation of the relief be not capable of being definitely ascertained; the third is that the relief is not specifically provided for anywhere in the Act; and the fourth is that the relief cannot be claimed independently of the declaration as a substantive relief.

The 1935 and 1949 cases referred to above seem to have taken into consideration only the first ingredient, that is, that the relief said to be consequential relief should follow directly from the declaration given. Of course, all consequential reliefs must follow from the declaration given. If they are not so connected with it, they cannot be called "consequential relief", which in its plain term must mean a relief necessary as a consequence of the declaratory relief. If the expression "consequential relief" simply meant all reliefs which followed from the declaration given the Full Bench would not have mentioned the other considerations or ingredients which led to the meaning of the expression "consequential relief". A relief which followed from the declaratory decree can certainly be not granted unless the declaratory relief is granted. This consideration, therefore, is no independent consideration but is just a clarification of the first ingredient.

6. We need not discuss the implications or the requirements of the ingredients Nos. 2 and 3 as that does not appear necessary for our present case. The fourth ingredient mentioned above seems to us to have an important bearing on the question whether a certain relief answers the description of a consequential relief or not. This ingredient is that such a relief should be one which cannot be claimed independently of the declaration as a substantive relief. Claiming a certain relief is different from the granting of the relief. Of course, no consequential relief can ever be granted unless the declaratory relief has been granted. But that does not mean that any relief which follows a declaratory relief must be a consequential relief or that it cannot be claimed without asking for a relief of declaration as a substantive relief.

It may be that the facts which would justify to a declaration of. right may have to be determined before a certain relief is granted. But if no such declaration is sought, the mere fact that such facts have to be adjudged will not make the other relief which alone is claimed to be a consequential relief or a relief which cannot be granted or claimed. We are of opinion that this fourth ingredient, means that it is necessary for a relief to be a consequential relief that that relief be not capable of being claimed, in the absence of a claim for declaration, as a substantive relief, that is to say, no suit for that relief can lie unless the suit also contemplates a declaratory relief. It is only in such suits that it can be said that the relief sought is so linked with the declaratory relief that it should be considered a relief consequential to the declaratory relief.

7. It has been strenuously contended by the learned Standing Counsel and the learned Counsel for the defendant-opposite party that the definition in this Full Bench case was for the purposes of that case and was applicable only to cases where the relief sought related to the adjudging of certain instruments to be void and to the cancellation of those instruments. We do not agree with this contention. The definition has been given irrespective of the facts of the case. It was in the light of the definition given that the facts of that case were scrutinised and it was held that what was said to be a consequential relief was not a consequential relief.

We have been referred to two Full Bench cases,

-- 'Sri Krishna Chandra v. Mahabir Prasad', AIR 1933 All 438 (D) & -- 'Bishan Sarup v. Musa Mal', AIR 1935 All 817 (E) and to the cases reported in

--- 'Munni Singh v. Basdeo Singh', AIR 1937 All 148 (F) and -- 'Madan Mohan v. Raghunandan Prasad', AIR 1944 All 208 (G). The first three . cases had no occasion to refer to the definition of the expression "consequential relief" given in the Full Bench case and therefore their reference to the Full Bench case was with respect to the distinction, if any, between the facts in that case and the facts in the case under consideration. In the last case reference to that definition was made. There is nothing in that case to indicate that that definition simply amounted to this that a consequential relief is a relief which followed from a declaratory relief. The point for consideration in that case was different and was whether a second declaratory relief could be considered to be a consequential relief to the first declaratory relief.

8. It follows from what has been said above with respect to the definition of the expression "consequential relief" given in 'AIR 1932 All 485 (FB) (B)', that one of the facts to be considered in the present reference is whether relief (b) with respect to the removal of defendant and the delivery of the charge of the temple and its property is such a relief which could not have been claimed without asking for the relief of declaration. It appears to us that the suit for relief (b) alone was maintainable, and in this connection we may refer to the case reported in -- 'Sri Thakur Sita-ramji Maharaj Manrtir v. Raghunath Das', AIR 1944 All 279 (H). That was a suit by Sri Thakur Sitaramji Maharaj & Seth Lakhmi Kunwar who claimed that he was the duly appointed sarbarakar of the other plaintiff. The defendant had been working as a sarbarakar. Relief (a) was that the defendant be removed from the management of the temple of plaintiff No. 1 and the charge of the temple and movables therein be handed over to plaintiff No. 2 as manager on behalf of plaintiff No. 1.

This relief is practically in the same terms in which relief (b) in the present suit is. It was held in that case that Section 7(v), Court fees Act did not apply to that suit and that the court-fees paid on the relief claimed in accordance with Schedule II, Article 17, Clause (vi) was the correct one. It should follow that relief (b) could be sued for independently of the relief for a declaration, that therefore it is not a consequential relief to the relief for declaration and that the court-fees paid is sufficient.

9. Our answer to the reference, therefore, is that this is not a case of a declaratory decree with consequential relief in terms of Section 7(iv)(a), Court-fees Act and the plaint does not require an 'ad valorem' court-fee of Rs. 2,284/14/-on the jurisdictional value of the property involved.

10. We assess the cost of the learned Standing Counsel at Rs. 160/-.