Prabhunath vs Mst. Khadijatul Kubra And Ors. on 25 October, 1952

Equivalent citations: AIR1953ALL184, AIR 1953 ALLAHABAD 184

JUDGMENT

Gurtu, J.

1. This is a Court-fee matter which arises in this way. The superior proprietary rights in a village were sold. Three suits for pre-emption were thereafter filed being numbered 4, 5 and 13 of 1945. Suit No. 5 of 1945 was decreed. The other two suits were dismissed. Prabhu Nath, the appellant in the present appeals preferred an appeal to this Court from the decree passed in suit No. 5 of 1945. This is first Civil Appeal No. 15 of 1946. Likewise he filed an appeal against the dismissal of Suit No. 13 of 1945. This is First Civil Appeal No. 16 of 1946. On these two first appeals, a consolidated Court-fee of Rs. 1269/- was paid. They came up for final hearing on two dates before the Uttar Pradesh Zemindari Abolition and Land Reforms Act (U. P. Act I of 1950) came into force. These appeals were also listed on several dates for hearing in the year 1951. On 1st July 1952, the vesting order under that Act was made. Thereafter these appeals were again listed for disposal. Keeping in view Section 336 of the Act the learned counsel for the appellant in both the appeals admitted that they could not but end in dismissals. Section 336, Sub-section (2) states as follows:

> "All suits for pre-emption pending in respect of any such property in any Court whether of the first instance or appeal or revision shall stand dismissed but award of the costs incurred in any such suit shall be in the discretion of the Court."

In view of this section, an order was passed dismissing the two appeals.

2. At a penultimate stage learned counsel had already made an oral application that in the circumstances, a refund should be ordered of the Court-fee paid on these appeals. At the time of dismissal of the appeals, learned counsel were heard in regard to their oral request. The orders in respect of that prayer were reserved.

3. The contention of learned counsel was that this was a fit case in which in the interests of justice, this Court should order a refund. It was not contended that any order for refund of the Court-fees could be passed under Section 338(2) of the U. P. Zemindari Abolition and Land Reforms Act. That section deals only with the award of cost incurred. It was also conceded that the refund prayed for could not be granted under any of the relevant sections of the Court-Fees Act. It was conceded that neither Section 10, 13, 14, 15 or 19A gave the Court power to order a refund of Court-Fees which had been correctly levied on an appeal which was competent on the date on which it was filed.

4-5. Briefly the position under the Court-Fees Act is as follows:

The charging Section 6 makes Court-Fees leviable on documents mentioned in the first or second schedules. The section enjoins that no such documents shall be filed, exhibited or recorded in any Court of justice or shall be received or furnished by any public officer unless in respect of such document a fee of an amount indicated in the said schedules has been paid. Section 7 indicates how the fee is to be computed. It is clear that a court-fee is only exigible in the case of such documents etc. as are indicated in the schedule and is only payable according to the computation indicated in Section 7. Section 10 makes provision for refund where there has been an error in computation owing to a miscalculation of the net profits or market value. On the other hand, it also provides for the situation where there has been an underestimation. Section 13 provides for a refund of fee paid on a memorandum of appeal in a case where a suit is remanded in appeal on any of the grounds mentioned in Order 41, Rule 23 of the first schedule of Civil P. C. for a second decision by the lower Court. This section recognizes the equity of a person not being called upon to pay Court-fee twice over for an appeal in regard to the same matter. A remand order under Order 41, Rule 23 involves a second decision and a fresh appeal after the said decision. Section 14 deals with a refund of fee on an application for review of judgment. Likewise Section 15 provides for a refund where the Court reverses or modifies a former decision on grounds of mistake. Section 19A provides for relief where too high a Court-fee has been paid on applications for probate or for letters of administration.

6. Apart from, the refunds which can be obtained expressly under the Court-fees Act, Courts have granted a refund under their inherent jurisdiction also. Cases where such refunds have been granted are cases where an excess Court-fee has been paid by mistake of parties or as a result of a mistaken demand by the Court itself. In addition refunds have also been ordered in cases where Courts have remanded cases under their inherent powers and not under the provisions of Order 41 Rule 23 of the first schedule of the Code. Many such cases were mentioned and some were also cited at the Bar; it is not necessary to mention these but it may be stated at once that the grounds upon which refunds have been ordered in cases where an excess payment has been made are that it would be unjust not to allow a party, who has under a mistaken belief or under the orders of the Court paid an excessive amount of Court-fee, to obtain a refund thereof. It appears clear that when an amount of Court-fee is paid either by a party suo motu or on demand by the Court it is not exigible under the Court-Fees Act then the payment is really not under the Court-Fees Act at all. A Court-fee which is not payable under the Act, if paid, is in fact gratuitously paid, or demanded without warrant of law. In such cases it is obvious that no provisions under the Court-Fees Act are necessary for the purpose of supporting, an order for refund.

7. So far as the refund ordered in cases where the Court has remanded a case under its inherent jurisdiction are concerned, the payment on the memorandum of appeal in which the order of remand is made cannot be characterized as a payment not under the Act. The Court-fee paid on the memorandum of appeal in such a case is certainly exigible under the Court-Fees Act. Therefore, the refund of it. would in a sense amount to circumventing the Act if there is no express provision empowering such a refund or there is nothing in the Act to indicate that such a refund is not contrary at least to the spirit of the Act. It is clear that Section 13 of the Court-Fees Act recognizes the justice of returning the Court-fee paid on the memorandum of appeal where in consequence of a remand order under Order 41 Rule 23 of the first schedule of the Code of second decision by the-lower Court becomes necessary. As the section appears to concede that it is just to refund the fee in a case where a remand is made under Order 41, Rule 23, it would appear that it concedes the principle that upon a remand, the Court-fee should be returned. It is true that Section 13 does not in terms empower a refund in a case where the remand is under the inherent powers of the Court but it would appear that the application of the rule, which is applicable to orders of remand under Order 41, Rule 23, to the case of remand under the inherent powers of the Court would not be out of tune with the section read as a whole. At the time when the Court-Fees Act was passed, it is possible that it was not realized that ultimately Courts would assume jurisdiction to themselves of remanding: a case under their inherent powers also and so no provision was made for such a contingency. Therefore, though a refund in the case of remand under the Court's inherent powers cannot be in terms granted under Section 13, it may well be granted on the basis that such a refund would be in accordance with the spirit of Section 13, It is to be noted that there is no express prohibition against a refund being granted in as case where a remand is ordered under the inherent powers of the Court.

8. Many cases were cited as already stated at the Bar in support of the proposition that a refund could be ordered in cases where excess-payment of Court-Fees had been made or obtained. Though there is some slight divergence of judicial opinion on this matter, it may be taken now to be fairly well settled that such a refund may be ordered. This has been recognised by practically all the High Courts.

9. Refunds have also been ordered as already indicated in cases where a remand had been made under the inherent powers of the Court.

10. Learned counsel has, however, cited other cases in which refunds have been claimed, and, in some instances allowed in quite different circumstances. In -- 'Swami Dayal v. Mohd. Sher Khan', 11 Oudh LJ 148, the facts were that an appeal had been preferred against a preliminary decree. A further appeal was later preferred against the final decree. The appeal against the preliminary decree having succeeded, the appeal from the final decree became unnecessary. Under the circumstances a refund of court-fee relative to the appeal from the final decree was ordered. Again in

> -- 'Mohd. Sadiq AH v. AH Abbas', 7 Luck 588, a refund of Court-fee was allowed upon withdrawal of an appeal. Again in -- 'J.C. Galstaun v. Janaki Nath', AIR 1934 Cal 615, the facts were these: The petitioner had filed an appeal along with his application for extension of time under Section 5, Limitation Act and obtained a rule which was eventually discharged. He then applied under Section 151, Civil P. C. for a certificate authorising a refund and was successful. In -- 'Mohd. Azim Khan v. Saadat Ali Khan', 1945 Oudh WN 329, an unnecessary appeal had been preferred but was not prosecuted and was dismissed, but here a refund was disallowed.
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> 11. In the first three cases mentioned above, a refund could not have been ordered under any of the sections of the Court-fees Act, and in none of them could it be said that an excess of Court-fee had been paid or had been demanded and paid when the appeal was presented. It is difficult, therefore, to appreciate the basis of these decisions. The result in each of allowing a refund undoubtedly was that there was a refund of the exigible fees paid. In other words, the net result was that the documents which could only be taken into consideration upon payment of Court-fees were taken into consideration without such payment.

The case reported in -- 'J.C. Galstaun v. Janaki Nath', AIR 1934 Cal 615, was expressly dissented from in a later case of the Calcutta High Court reported in -- 'Indu Bhusan Roy v. Secretary of State', AIR 1935 Cal 707. The facts of this latter case were as follows: An insufficiently stamped plaint was presented and after several adjournments had been granted in order to enable the plaintiff to pay the deficit, the plaint was rejected. Thereafter an application for permission to pay up the deficit court-fee was made and five days were granted for this purpose. The suit was restored upon the deficit in court-fee having been paid. Upon this a rule was obtained from the High Court which was eventually made absolute, it being held that the Judge's order was without jurisdiction. It was accordingly set aside. Upon this the petitioner asked for a certificate authorising him to receive back from the Collector the whole sum which was paid on account of Court-fee.

Henderson J. observed as follows:

> "In the present case we are asked to grant relief to a litigant who failed because he did not follow the correct procedure. If we were to do that, it would be difficult to refuse relief to a litigant who failed on any preliminary ground. It would then be difficult to resist the conclusion that mere failure was in itself a sufficient ground for a refund."

Nasim Ali J. observed as follows:

> "But where a litigant has paid fees which he was bound to pay under the law for his plaint or memorandum of appeal, the Court by ordering refund under the inherent power cannot indirectly exempt him from the obligation imposed upon him by the Statute and thereby nullify the provisions of Section 6 of the Court-Fees Act."

As indicated above, both the learned Judges thus disagreed with the case reported in --'J.C. Galstaun v. Janaki Nath', AIR 1934 Cal 615.

The case reported in -- 'AIR 1934 Cal 615', also came up for consideration in -- 'Chindam-baram Chettiar in re', AIR 1934 Mad 566. The learned Judges remarked:

> "Once a case like -- 'AIR 1934 Cal 615, is recognised we ought to permit refund in all cases where appeals are dismissed on the ground of limitation. We are not prepared to go so far. The fact that the delay in -- 'AIR 1934 Cal 615', is due to the fault of the legal adviser has no bearing on the right of the Crown to the court-fee paid."

Refund was accordingly refused.

12. In -- 'Secretary of State v. Veerayya Vandayar', AIR 1940 Mad 451, the facts were these: The respondent, as inamdar, in 1934 filed a number of suits in the court of the District Munsif of Tanjore for the ejectment of tenants. He claimed that he was the owner of the Kudiwaram rights and that the defendants had refused to surrender to him possession of the lands which they were cultivating. At the time the suits were filed, the respondent was entitled in law to institute the suits in the District Munsif's Court and there to substantiate his claim that he possessed Kudiwaram rights. During the pendency of the suit, the Legislature amended the Estates Land Act, 1908, and the amendment had the effect of making the respondent's inam an estate within the meaning of the Act which meant that the amendment took away the right of the civil Court to grant a decree for ejectment. The only course left to the respondent was to apply to the revenue Court for an order of compensation for loss of the Kudiwaram rights, if he possessed them. The District Munsif returned the plaint to the respondent whereupon the respondent applied for refund of Court-fee. The District Munsif thought that he had inherent power to grant a certificate for the purpose of enabling the respondent to obtain refund from the Collector and accordingly issued a certificate. The District Munsifs order was attacked in revision. It was said that the District Munsif should have refused to grant a certificate as his proper course was to dismiss the suit, the argument being that the Legislature had not said that the suits could not be filed but had merely taken away the right of the Court to grant a decree. This argument prevailed. The learned Judges observed as follows:

> "Therefore the position is that the Act does not take away the jurisdiction of the civil Court to receive plaints of the nature of those filed by the respondent but as a result of the amendment the relief sought cannot be granted. The suit having been properly filed in the civil Court but in the meantime the Legislature having taken away the right to the relief claimed, the proper course for the District Munsif to adopt was to dismiss the suits. In these circumstances the Courts cannot invoke its inherent powers to order a refund of the Court-fee or to grant a certificate under the Court-fees Act."

This last mentioned case may well provide the basis for the decision of the matter in hand. There can be no doubt when the two preemption appeals were filed, the appeals were competent. There can also be no doubt that Court-fee was payable on these appeals and that an' excess of Court-fee was

not paid but the correct amount was paid. These .appeals came up for hearing on two days even prior to 21st January 1951 when the Uttar Pradesh Zemindari Abolition and Land Reforms Act came into force. If these appeals had been heard on either of these two days, there can be no doubt that the appeals could have been proceeded with and could have been disposed of on the merits. As already stated when these appeals were taken up on 16th October 1952, the U. P. Zemindari Abolition and Land Reforms Act was in full force. Section 336(2) of the said Act does not state that all suits for pre-emption pending in respect of any such property in any Court whether of the first instance or of appeal were not properly pending. It only says that they would stand dismissed. The section in no way made the filing of the said appeals or their prosecution illegal. All that the section does is that it prevents the hearing on merits and brings the appeals to an automatic termination by dismissing them. The net result of the section is that the appellant if, no longer in a position to obtain the relief which he sought in the suit. Moreover the Court's jurisdiction in regard to costs still remains intact. It is still empowered to award these at its discretion.

13. It is true that as a result of this Act the appellant cannot get his relief. Therefore, he has in effect been forced to throw away the expenses incurred by him in payment of Court-fees and in prosecuting the suit. This consequence, however, flows not from any act of the Court, nor indeed from any act of his own; the consequence flows from legislation which denies to him the relief which he sought. It is difficult to see how the Court can exercise its inherent powers in the interest of justice when no injustice has been suffered as a result of any act of a party or of the Court.

14. The oral prayer of the appellant cannot be granted under any section of the Court-Fees Act nor can it be granted ex debito justi-tiae. It is not necessary to elaborate on the differences of approach in regard to the Court's power to grant a refund in cases where a remand has been made under its inherent jurisdiction or in regard to a refund where excess Court-fee has been paid in error. The request of the learned counsel in the present case goes far beyond what has hitherto been conceded or claimed and cannot be sustained, either in principle or in statutory law. Accordingly the oral request for refund of the Court-fee is refused. It is not necessary to consider the form in which this Court would have couched its order in case it had decided to accede to the oral prayer.

15. Counsel for the State appeared on the court issuing notice to oppose the oral application. In the circumstances of the case, parties including the State will bear their own costs of this application.

Kaul, J.

16. I agree and have nothing to add.

By The Court

17. The prayer for refund of Court-fee is refused.