

Ram Lakhan And Anr. vs Raj Kumar on 12 August, 1953

Equivalent citations: AIR1954ALL313, AIR 1954 ALLAHABAD 313

JUDGMENT

Agarwala, J.

1. This is a report by the taxing officer about deficiency in Court fee. The facts are simple :
2. Ram Lakhan and Ram Naresh, plaintiffs-appellants, filed a suit for partition against their uncle, Raj Kumar, in respect of movable and im-movable properties. They claimed a half share in all of the properties on the ground that all of them were Joint family properties. The defence to the suit was that part of the immovable property was the self-acquired property of Raj Kumar and the plaintiffs were not entitled to claim any share therein.
3. The trial Court decreed the suit in part. and dismissed it in respect of some items of the property in dispute. Both parties were dissatisfied with that decree. The plaintiffs appealed to the lower appellate Court in respect of items which were held not to be joint family property while the defendant filed cross-objections in respect of some of the properties which had been held to be joint family properties and not the self-acquired property of Raj Kumar.

The plaintiffs valued their appeal at the value of the property which was the subject-matter of the appeal. So did the defendant value his cross-objections at the value of the property in respect of which he alleged that it belonged to him exclusively and paid Court fee in accordance with such valuation. The court below dismissed both the appeals and the cross-objection. The defendant submitted to the decree of the Court below but the plaintiffs have filed the present second appeal in this Court and have valued their appeal at the valuation of the property in dispute in the second appeal and not at the value of the entire property which was the subject-matter of the original suit.

The taxing officer has reported that both in the Court below and in this Court the plaintiffs were liable to pay Court fee on the value of the entire subject-matter of the suit and not on the value of the items of property which were in dispute in the appeal in the Court below or which are in dispute in this second appeal. The report further says that the defendant-respondent was also liable to pay the deficiency in Court-fee on the cross-objection filed by him in the lower appellate Court on the same ground.

4. The point has to be decided upon the language of Section 7(vi-A) which runs as follows: "In suits for partition according to one-fourth of the value of the plaintiff's share of the property and according to the full value of such share if on the date of presenting the plaint the plaintiff is out of possession of the property of which he claims to be a coparcener or co-owner and his claim to be a co-parcener or co-owner on such date is denied."

It is the common case of the parties that the plaintiffs were liable to pay court fee on one-fourth of the value of the property and not on its full value. The whole question is whether they were to pay court-fee on the value of the plaintiff's share in the suit or on the value of the appellants' share of the property in dispute in the appeal. According to Section 2(iv) of the Act, "suit" includes an appeal and according to Section 2(i) an "appeal" includes a cross-objection. Therefore in order to compute the court-fee payable on an appeal, we have to read "appellant" in place of "plaintiff" and "appeal" in place of "suit". Thus substituting the word "appeal" for "suit" and "appellant" for "plaintiff" in Section 7(vi-A) the Section would read thus:

"In appeals for partition according to one-quarter of the value of the appellant's share of the property....."

If the question is about the Court fee payable in a suit, obviously the property referred to to the Section is the property involved in that suit.

Similarly if it is a question of appeal, the property referred to in the Section would be the property involved in the appeal. Consequently the appellant would have to pay Court fee according to one-fourth of the value of the appellant's share of the property involved in the appeal. The same rule would apply to a respondent filing a cross-objection, it is not disputed that the Court fee has been paid in the present case, both in the Court below and in this Court, on the value of one-fourth of the appellants' share in the property involved in the appeal. There is, therefore, no deficiency in the payment of Court fee.

5. Learned Counsel appearing for the taxing officer has pointed out that as against this view there is a decision of a Division Bench of the late Chief Court of Avadh in -- 'Mool Chand v. Sita Ram', First Appeal No. 87 of 1945 (Oudh) (A). In that case it appears that the appellant filed a first appeal against a final decree for partition. Several questions relating to Court fee were raised and the last question raised was the same as arises in this appeal. The Court briefly disposed of the matter in these words :

"The learned Counsel for the appellants contends, however, that he challenges only one item of the partition decree and does not challenge the rest. The contention, we think, is untenable. The decree stands or falls as a whole and the fact that the partition of one item alone is questioned would be hardly material. We, therefore, accept the office report that there is a deficiency of Rs. 131/4/- in respect of Court fee paid by the appellants Nos. 1 to 6 in this Court."

The relevant provisions of the Court Fees Act were not considered by the learned Judges at all.

The question of Court fee has to be decided upon the language of Section 7(VI-A) which has reference to the value of the plaintiff's share of the property. It is hardly relevant to consider whether the decree of the Court below will stand or fall as a result of the decision in the appeal. It does not appear that any clear argument was addressed to the Court. In the circumstances we do not think that the observations of the learned Judges are in any way binding on us. We, therefore, hold that the Court fee paid in the Court below as well as in this Court is adequate.