

Agra Province Zamindar Association vs Prem Mohan Verma on 16 February, 1950

Equivalent citations: AIR1950ALL447, AIR 1950 ALLAHABAD 447

JUDGMENT

Mushtaq Ahmad, J.

1. This is a defendant's application in revision against a decree of the Small Cause Court Judge, Allahabad. The suit was for recovery of Rs. 990 including Rs. 90 as interest as arrears of counsel's fee.
2. The plaintiff, opposite party, who is an advocate of this Court, was instructed by the applicant to file a suit against the U. P. Government in the name of one Sheikh Mohammad Zia, a zamindar, to challenge the validity of the U. P. Tenancy Act XVII [17] of 1939.
3. A suit was accordingly filed, and it was registered as Suit No. 22 of 1940 of the Court of the Civil Judge, Allahabad. Some time later a motion was made to this Court by the plaintiff, U. P. Zamindar Association, to transfer the suit from the file of the Civil Judge to this Court on its original side. On transfer, the suit was registered in this Court as Suit No. 1 of 1940. On 22nd August 1941, the defendant, U. P. Government, filed its defence. Eventually the suit was decreed by the High Court on 24th August 1943.
4. The case of the present plaintiff-opposite party is that, in addition to Rs. 900 which he had received for his work in the High Court in Suit No. 1 of 1940, a similar sum plus interest was due to him for what he had already done when the case was pending in the Court of the learned Civil Judge, Allahabad. He alleged that, though no fee, in fact, had been settled between him and the applicant, he was entitled to the full amount of the legal fee, that is, Rs. 900, having regard to the difficult work which he had under-taken in obtaining legal advice and then drafting the plaint and doing other incidental things in that connection. It is not denied that the questions involved in the suit were of a difficult nature and they did require some study and research in order to put up a good case before the U. P. Government for getting the U. P. Tenancy Act declared invalid.
5. The Court below, holding that the plaintiff-opposite party was entitled to the amount claimed, decreed the suit, and the present application was filed by the U. P. Zamindar Association in this Court against that decree.
6. A preliminary objection was taken to the hearing of this application by Dr. N. P. Asthana, learned counsel for the opposite party, on the ground that the permanent General Secretary, Mr. Bindeshri Prasad having resigned during the pendency of the suit in the Court below and no one else having

been appointed to that office until after the filing of the application, the defendant was not entitled to file the same in the name of the U. P. Zamindar Association through Mr. Shiv Prasad Sinha, the Additional Secretary of the Association. We have been referred to the provisions of Section 6, Societies Registration Act XXI [21] of 1860 and Rule 45 of the "Rules & Regulations" of the Association. Learned counsel clarified his position by contending that it was not competent to the Association to file this revision at all, as, on the date they filed it, there was no General Secretary working in succession to Mr. Bindeshri Prasad who had already resigned. This on the face of it, would appear rather startling that the law should have been so deficient as not to provide for a contingency that has arisen in the present case. The situation, so far as this case is concerned, did not, however, present any difficulty, inasmuch as, before the application was filed, the Managing Committee had passed a resolution on 6th September 1947, authorising the Additional Secretary, Mr. Shiv Prasad Sinha, to file the same, and it was by virtue of that authority that the revision was subsequently filed. Section 6 of Act XXI [21] of 1860 reads:

"Every Society registered under this Act may sue or be sued in the name of the President, Chairman or Principal Secretary, or trustees, as shall be determined by the Rules & Regulations of the Society, and in default of such determination, in the name of such person as shall be appointed by the Governing body for the occasion."

7. During the time Mr. Bindeshri Prasad served as the General Secretary of the Zamindari Association, there was, of course, no difficulty. If he had resigned and until a successor to him had been appointed, the question arises in whose name the Association had to sue or be sued. In the "Rules and Regulations", to which we have already referred, there is no provision made to apply to the contingency that would occur when the Secretary of the Association has resigned and no one else has, for a certain period of time been appointed in his place. The word "determined" in the section we have quoted would, of course, have a meaning only so long as it is possible to make a choice between one official and another out of those mentioned in the preceding lines, but, where there is no such official through whom the Association may sue or be sued, and when there is also no provision in the 'Rules and Regulations' to determine the choice, all that is possible to say is that the situation is covered by the words "in default of such determination" in the later part of the section. In such a case, the section provides that the Society may sue or be sued "in the name of such person as shall be appointed by the governing body for the occasion". Rule 34 of the Rules and Regulations authorises the Managing Committee to exercise a general power in the matter of management and control of the affairs of the Association, that is to say, the Managing Committee in this case was entitled to exercise all the powers of the 'governing body', the meaning and scope of which expression is defined in Section 16 of the Act. The resolution passed by the Managing Committee on 6th September 1947, authorising Mr. Shiv Prasad Sinha to file the present application in revision in this Court did therefore comply with the requirement mentioned towards the end of Section 6 of the Act, there being no provision in the 'Rules & Regulations' applicable to the contingency when the old Secretary had ceased to function. We, therefore, think that Mr. Shiv Prasad Sinha was competent to represent the Association when this revision was filed, and we accordingly, decline to accept the preliminary objection.

8. The position with regard to the merits of the revision is by far much simpler than the position qua the preliminary objection we have just disposed of. The whole argument pressed upon us by the learned counsel for the applicant was that the plaintiff-opposite party having given a receipt on 16th May 1946, for Rs. 900 received by him from the applicant, he was not entitled to any further sum by way of counsel's fee. Learned counsel read the receipt as referring to the entire proceeding relating to the litigation between Mohammad Zia and the U. P. Government, in whichever Court it might have been. This interpretation of the receipt might have been justified if there was no specific reference to a specific suit in the receipt. We, however, find such a reference to "Suit No. 1 of 1941" in the receipt. This meant obviously that the receipt did not embrace any other suit or proceeding of any other Court. Apart from the language of the receipt, it is also contended that it would be unreasonable to hold that while the plaintiff was acknowledging receipt of a certain amount as counsel's fee in connection with a certain litigation, a certain sum should still have been allowed to remain outstanding and not adjusted at the time when the sum of Rs. 900 was paid and a receipt taken therefor. Indeed, it was vehemently argued that nothing worth the name had, in fact, been done in the case until the time it had remained on the file of the learned Civil Judge, Allahabad. At the same time, it was admitted that the defendant-applicant had paid Rs. 450 to the plaintiff-opposite party even before that matter came to this Court. If this was so, then certainly the defendant admitted that the plaintiff had done something till that stage, so that to deserve that amount. This position would essentially be destructive of the argument that the plaintiff had done nothing prior to the suit coming to this Court on transfer. If, then, something had been done by the plaintiff prior to the suit coming to this Court, for which something had also been paid to him, this resolves the controversy into a very simpler issue, namely as to whether what had been paid to him until then was all that was due to him or whether something more was payable. The Court below, rightly or wrongly, has held that a further sum of Rs. 900 is due to the plaintiff in respect of the proceedings in the Court of the Civil Judge, that is to say, in respect of all that had taken place before the suit reached this Court. This involves only a question of the amount due and not the abstract question, which may or may not have a legal aspect, whether anything was, in law actually due to the plaintiff. What was the amount actually due to the plaintiff is hardly a question of law, and it is obviously a question of fact. It would not be open to us sitting in revision to say that the amount fixed by the Court below was excessive and that it should have been much smaller, there being no question of law involved within the meaning of Section 25, Small Cause Courts Act. In this view, we have no alternative but to affirm the judgment of the Court below.

9. Accordingly, we dismiss this application in revision but direct the parties to bear their own costs in this Court.