

Shri Nath Singh And Ors. vs Kashi Nath Rao And Ors. on 5 January, 1951

Equivalent citations: AIR1951ALL570, AIR 1951 ALLAHABAD 570

JUDGMENT

Agarwala, J.

1. This is a pltf's appeal arising out of an order demanding extra court-fee from them.
2. In the suit the pltf's claimed two reliefs, (1) a perpetual injunction restraining defts 5 to 9 from interfering with the user of the land in dispute by the pltf's & other members of the Hindu community & restraining them from making any construction thereon which would have the effect of changing the present condition of the said land, & for (2) a perpetual injunction ordering the defts 5 to 9 to demolish the wall A B & A C & to repair the portions of the temple & Dharamshala alleged to have been dismantled by them. The pltf's valued the suit for purposes of jurisdiction at Rs. 5100/- & for purposes of payment of court-fee at Rs. 507/- for each of the reliefs.
3. There was an objection with regard to court-fee. The Ct below held that the value of relief No. 2 was correct but that of relief No. 1 was low. It appointed a comr. to ascertain the value of the land involved in the case. The comr reported that the value of the land was Rs. 16260/7/-. The Ct below held that the pltf's should have valued relief No. 1 at 1/10th of this amount, that is, at Rs. 1626/-/81/2 & that they had to pay court-fee to the extent of Rs. 193/12/-.
4. The pltf's have challenged this order in this appeal. Their contention is that the value of their right of user which was claimed by them should have been ascertained & not the value of the entire immovable property over which the user was claimed.
5. This contention, in our opinion, has no force. Section 7(iv)(b), Court-fees Act is the relevant section which provides, that the amount of fee payable under this Act shall be computed as follows:

"In suits * * * *

(b) to obtain an injunction;

* * * * according to the amount at which the relief sought is valued in the plaint;

Provided that in the case of -- (b) such amount shall not be less than one-tenth of the market-value of the property involved in or affected by the relief sought or Rs. 50/- whichever is greater, & in the case of the remaining classes of suits not less than

one-fifth of such value or Rs. 200/- whichever is greater.

* * * * Explanation 1: When the relief sought is with reference to any immoveable property the market-value of such property shall be deemed to be the value computed in accordance with Sub-sections (v), (v A) or (v B) of this section as the case may be."

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6. Now there can be no doubt that although the pltfs did not claim proprietary rights in the immovable property, the immovable property itself was undoubtedly "involved in or affected by" the relief sought by the pltfs & under Explanation 1, when the relief sought is "with reference to any immovable property" the market-value of such property has to be ascertained as laid down in Section 7(v), Court-fees Act. The immovable property involved in or affected by the relief, or which is referred to in the relief, is the land itself & it is the value of that land that has been taken into account by the Ct below.

7. Learned counsel has referred to a decision of a Bench of the Calcutta H. C. in 'Mohammad Eshaque v. Mohammad Amin', A I R (35) 1948 Cal 312. That was a decision under Section 7(v), Court-fees Act. The relief involved in the case was for possession by a Mutwalli of certain wakf property. It was held that the value of the property was the value of the rights of the Mutwalli & not the value of the wakf property itself. We express no opinion about the correctness of that decision because the point is not before us in the present case.

8. So far as Section 7(iv)(b) is concerned, there is no doubt in our minds that the value to be calculated is the market value not of the user of the pltfs but of the property over which the user is claimed & with reference to which an injunction is sought.

9. There is no force in this appeal & it is accordingly dismissed with costs.