Bhoop Singh vs Tarif Singh on 5 October, 1950

Equivalent citations: AIR1952ALL392, AIR 1952 ALLAHABAD 392

JUDGMENT

Mushtaq Ahmad, J.

1. This is a plaintiff's appeal in a suit for declaration that the plaintiff is a son of one Mohkam Singh and not of Ganga Sahai. His case was that he was Mohkam's son by his legally wedded wife, Mt. Kallo, who had previously been the wife of the said Ganga Sahai. Mt. Kallo having thus been the wife of each of these two persons at different times and the plaintiff's case being that he is a son of Mohkam Singh and not of Ganga Sahai, the relief prayed for by him really meant that he wanted a declaration that he was a legitimate son of Mohkam Singh by that lady.

2. The plaintiff set out a pedigree in the plaint, according to which one Hira Singh had four sons, Nagar Singh, Mohkam Singh, Bhole Singh and Ram Sahai. Nagar Singh admittedly left a son Tarif Singh, the defendant respondent in this case.

3. Mohkam Singh had left India a long time ago for the Mauritius Island, returning home after about 30 years. During his absence hia property had been taken possession of by Nagar Singh, his brother. On his return, Mohkam Singh had to bring a suit against Nagar Singh for the recovery of his property.

4. The suit giving rise to this appeal was filed on 21-9-1945 for the relief I have already mentioned. There had been two previous suits, one in 1914 and the other in 1922, by the plaintiff alleging himself to be a son of Mohkam Singh against the defendant. They were dismissed. To that part of the case I shall have to advert on a particular point later.

5. The defence was that the plaintiff was not a son of Mohkam Singh, nor was Mt. Kallo the latter's legally wedded wife, that on his return from the Mauritius Island Mohkam Singh had sued the defendant's father for the recovery of his property that the suit had been decided by arbitration to the effect that Mohkam Singh had no son and that, on Mohkam Singh's death the defendant's father would be the owner of his (Mohkam Singh's) property that the present suit was barred by res judicata in view of the dismissal of the plaintiff's previous suits in 1914 and 1922 and that it was also barred by limitation and Section 42, Specific Relief Act.

6. The Court of first instance dismissed the suit holding that in the present case the plaintiff was not entitled to a declaration of his parentage, as the grant of such a declaration would only be a stepping stone for another suit in future, that it would also be useless to grant such a declaration, the same

being in the nature of brutum fulmen, that the plaintiff was a son of Mohkam Singh but that Mt. Kallo had not been the legally wedded wife of Mohkam. The Court found in the plaintiff's favour that the decrees in the earlier suits did not operate as res judicata, that the suit was not barred by limitation, as such denial of the plaintiff's parentage by the defendant gave a fresh cause of action, and that the suit being in regard to the legal character claimed by the plaintiff as a son of Mohkam Singh, it was also not barred by Section 42, Specific Relief Act.

7. The lower appellate Court affirmed this decree, holding, in agreement with the trial Court, that no declaration of parentage could be claimed in the present case, and holding, in disagreement with that Court, that the suit was barred by the six years' rule of limitation under Article 120, Limitation Act. With regard to the question of Mt. Kallo's status as the wife of Mohkam Singh, the learned Judge remarked that, in view of his findings on the other points it was unnecessary to determine that question, adding at the same time that, if it were necessary to do so, he would not agree with the trial Court. That is to say, the learned Judge was inclined to think on the basis of the rules of presumption of legitimacy that Mt, Kallo had been the legally wedded wife of Mohkam Singh.

8. In this state of the findings of the Courts below, only two questions arise for decision, (1) whether, in the circumstances of the case, the plaintiff was or was not entitled to a declaration of his parentage, and (2) whether the suit was time barred under Article 120, Limitation Act. On the first question a number of cases were cited by the parties' counsel in the Courts below, and the arguments before me have mainly centres round those cases, except that another case in Abdul Karim v. Mt. Sarraya Begam, A.I.R. (32) 1945 Lah. 266, not mentioned in the judgments of the Courts below, has also been cited before me

9. The rulings cited by the defendant against the plaintiff were those in Mufti Ali v. Fazal Husain, 20 ALL. L. J. 557, Lakshmi Chand v. Lila Dhar, A. I. R. (12) 1925 ALL. 745 and Reshma Dubain v. Ram Dawan Tewari, A. I. R. (15) 1928 ALL. 309. Before I deal with these decisions, I may quote Section 42, Specific Relief Act, which must determine the answer to this question:

> "Any person entitled to any legal character, or to any right as to any property, may institute a suit against any person denying, or interested to deny, his title to such character or right, and the Court may in its discretion make therein a declaration that he is so entitled and the plaintiff need not in such suit ask for any further relief. Provided that no Court shall make any such declaration where the plaintiff being able to seek further relief than a mere declaration of title, omits to do so."

The paramount condition which, according to this section, a plaintiff must satisfy before he brings a suit for a mere declaration, therefore, is that he should be entitled to any 'legal character' or to any 'right as to any property'. On the plaint, as framed, no question arose of any right to any property. Indeed, there was no reference to any property in the plaint, much less was there any relief sought in respect of any right to a property. The only question then is whether in his plaint the plaintiff had alleged that he was entitled to any 'legal character' within the meaning of this section. I am making this observation not so much with a view to express my own opinion on this question at this stage, but only to provide assistance in construing and appreciating the rulings relied upon by the

defendant in the Courts below, which I have already ref-erred to above.

10. In Mufti Ali v. Fazal Husain, 20 ALL. L. J. 557, it was laid down that, where the declaration sought was of such a nature that it was not calculated to produce any effect whatever unless it was a stepping stone for a fresh litigation, to grant the declaration would be acting against the general principles governing the proper exercise of discretion in such matters. The real emphasis laid was on the fact that the suit in that case should have been filed under Section 92, Civil P. C. There was no question of the plaintiff claiming a legal character' in that ease, though a question of a right to property was undoubtedly involved. It could not be said in that caee that the object of the plaintiff was not to arm himself with a judicial recognition of his right to a property for which he would be entitled to bring a suit in future In the present case, as we know, the suit was brought for a declaration of the true parentage of the plaintiff according to his claim. It may be that even after obtaining a decree for declaration, he lays no claim to the property of his father, now held by his cousin, the defendant, but remains content with a decree vindicating his status as a son of his father.

11. In Lakshmi Chand v. Lila Dhar, A. I. R. (12) 1925 ALL. p. 745, Mukerji J. held that a mere declaratory decree should not be granted where the grant of the decree would be useless affair, and that the grant of a declaratory dearee was within the discretion of the Court, but the Court was not bound to make a declaration simply because it was within the competence to do so. In that case also there was no question of the plaintiff claiming a legal character. The plaintiff, there, had sold a zamindari share to the defendant, at the same time entering into an agreement with the defendant to pay a certain rent as his ex proprietary tenant. That rent was later on affirmed by the revenue Court in proceedings under Section 36, U P. Land Revenue Act. The plaintiff brought a suit for the avoidance of the agreement on the ground that it had been obtained by fraud and undue influence. Both the Courts below had negatived this allegation. Mukerji J. in these circumstances, held that the case of fraud having been negatived and the revenue Court having already accepted the rent fixed by the parties themselves, it was useless to grant any declaration, particularly when that agreement was not void. I cannot conceive how that case can help the defendant respondent.

12. In Reshma Dubain v. Ram Daman Tewari, A. I. R. (15) 1928 ALL. 809, the same learned Judge, sitting with Mears C. J., held that the mere fact of a person claiming to be a relation of a minor did not amount to claiming a legal character, and that a suit of that nature was not maintainable in the civil Court. In the course of the judgment, the learned Judge re-marked that the declaration, if granted, would be only in the nature of brutum fulmen. This, in my opinion, is not the position in the present case. Indeed, the learned Mansif also took the facts of this ruling as clearly distinguishable from the facts in this case, although he eventually held that, in the particular circumstances, the plaintiff was not entitled to a declaration.

13. Before I proceed to examine the cases relied upon by the plaintiff-appellant, I may briefly mention the nature of the previous litigations. The first of the series was a suit filed by Mohkam Singh against the defendant's father to reciever his property, which the latter had wrongfully occupied during Mohkam's absence abroad. That suit was referred to arbitration, as a result of which possession was awarded to Mohkam Singh over about 14 bighas of land, which he was to hold only during his life time. The second suit was in 1914, which was brought by the plaintiff and his

brothers for a declaration that the decree passed in pursuance of the award made in the earlier suit was not binding on them. By an application made by the plaintiffs of that suit, the same was got dismissed, as the dispute had been compromised between the parties. The last was a suit in 1922 by the plaintiff, and Risal, one of his two brothers, to recover possession over 10 bighas of land on the allegation that the defendant's father had agreed to deliver possession over the same. This also ultimately failed. The trial Court held with reference to the decrees passed in these suits that they did not operate as res judicata to bar the suit giving rise to this appeal. The lower appellate Court agreed to that finding.

14. I have given this synopsis of the earlier litigations with a view to clarify my views on the question of the maintainability of the suit in view of the provisions of Section 42, Specific Relief Act. I would here briefly notice the rulings relied upon by the plaintiff appellant on this question.

15. In Chinnosami Mudaliar v. Ambalavana Mudaliar, 29 Mad. 48, it was held that the setting up of an adoption alleged to have been made by the plaintiff was such an infringement of his right as sole owner as to entitle him to sue for a declaratory decree under Section 42, Specific Relief Act, declaring that the person alleged to have been adopted was not his adopted son. That was a case in which the motive underlying the suit was to avoid a possible danger to the plaintiff's title to property. The learned Judges put the position in these words:

> "It is thus clear that the adoption has been set up under circumstances which would operate to the prejudice of the plaintiff if he did not take steps to have it declared not true, if, as he alleges, it never, in fact, took place; for an adopted son becomes from the moment of his adoption a coparcener with his adoptive father with all the incidents attaching to such a Status under the Hindu Law. Consequently, the setting up of the adoption is such an infringement of the plaintiff's rights, if he is a sole owner, as to entitle him to obtain a declaration under the provisions of the Specific Relief Act."

16. There was no question of a declaration of a legal character so much as there was a question with reference to a right to property. I do not, therefore, think that this case lends any direct support to the learned counsel for the plaintiff.

17. In Bai Shri Vaktuba, v. Agarsinghji, 34 Bom 676, it was held that the Taluqdar-plaintiff, bringing a suit for declaration that a certain person was not his son and that he was not born to the plaintiff's wife, and for an injunction restraining his wife, a defendant in the suit, from pro-claiming to the world that the alleged adoptee was the plaintiff's son and from claiming maintenance for him as such son, was entitled to such a declaration. In the course of the judgment Scott C. J. remarked :

> "It is contended on behalf of the plaintiff that he is a person entitled to a right to his Talukdari estate free from any claim to maintenance by or on behalf of defendant 2 and therefore that the Court may, in its discretion, make a declaration in this suit that he is so entitled."

A few lines later, followed the observation :

> "It is well known that disputes often arise as to the true paternity of boys who are put forward as heirs to Talukdari estates."
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> This case also, it is obvious, involved only a danger to a right to property and no question of a 'legal character', strictly so called, within the meaning of Section 42, Specific Relief Act.

18. In Bansilal v. Shankarlal, A.I.R. (20) 1933 Nag. 292, it was held that a suit for a declaration that the plaintiff was and continued to be the adoptive father of the defendant was virtually a suit to declare that the defendant was the adopted son of the plaintiff and was maintainable. I am inclined to think that this case certainly lends support to the appellant's contention, though it may be that a declaration of a person being the adoptive father of another may, where the former owns some property, involves an element of injury to his absolute title to that property. It is nevertheless a case in which the 'legal character,' by which I mean the status of the adoptive father, is involved.

19. Before I refer to cases in which the words 'legal character' in Section 42, Specific Relief Act, were interpreted as an expression of wide import so as to embrace the status of the person concerned, I may just make a brief observation with regard to the meaning which, in my view, should be assigned to that expression. In the first place, it must be kept in view that these words have specific reference to the person or the party seeking a declaration under this section without the same being affected by the circumstance whether or not he has a right to any property also. The words 'legal character' and right as to any property have been used disjunctively and not conjunctively, so as to entitle the plaintiff to a declaration on the exclusive basis of either the one or the other. Again, the word 'legal' before the word character is also not without significance. It signifies the status in society of the person seeking a declaration. Whether a man is a legitimate son of an other, whether he is the adoptive father of another, whether he has legally married a particular woman or whether by virtue of his relationship with a particular family, he is entitled to a certain privilege and concession are instances of questions involving his 'legal character' within the meaning of this section, and if he finds a danger or entertains any fear of a challenge to his status as such, he may surely seek relief in a Court of law. This position appears to be amply supported by the rulings which I shall now mention.

20. In Naqi Hussain v. Mt. Chhaji Begam, A. I. R. (12) 1925 Oudh 210, it was remarked :

> 'It may be that the plaintiff has the intention of using the declaration which he may obtain from the Court for the purpose of inducing the authorities concerned to accept his claim to the pension, but this motive of his cannot, in my opinion, be either a bar to the maintainability of the suit for a declaration under Section 4, Pensions Act, or a sufficient ground for dismissing it in the exercise of the discretion under Section 42, Specific Relief Act .....

> The relief for a declaration of status is substantial relief per se and under the provisions of Section 42, Specific Relief Act, such a claim would be maintainable, though it has no reference whatsoever to any right as to any property."

21. In U Arzeina v. Ma Kyin Shwe, A. I. R. (27) 1940 Rang. 298, the suit was for a declaration of non paternity and of non liability to pay maintenance, and it was held that the relief affected not merely the plaintiff's legal character, but also his liability to pay an amount of maintenance and that the same was permissible under Section 42, Specific Relief Act. I should think that, even if no particular consequence followed the granting of a declaration of non paternity, the relief was entertainable.

22. Then there are two Full Bench decisions, one of the Calcutta High Court in Noor Jehar Begum v. Eugene Tiscenko, A. I. R. (19) 1942 Cal. 325, and the other of the Lahore High Court in Abdul Karim v. Mt. Sarraya Begam, A.I.R. (38) 1945 Lah 266, in which the Calcutta case was noticed with approval In the former the meaning of the expression 'legal character' received the attention of the learned Judges, and it was held that the words were wide enough to include the status of a person. In the latter also the same meaning was assigned to those words. It was pertinently remarked that :

> "Where the relationship does carry with it certain legal consequences, even though it may not affect or involve any right to property, a suit for a declaration as to the existence of such relationship is competent."

Now what is the position here? In two earlier litigations, the plaintiff had no doubt failed to recover his father's property. He may not have still entertained any hope to get that property. In the plaint, as I have already remarked, there was no reference to this property, nor was any relief claimed with reference to it. The plaintiff nevertheless must have realised that, having lost his property, or at least apparently lost it, he may also lose his status, if he allowed the challenge thrown by the defendant to go unheeded. His motive in bringing the suit may have entirely been to guard himself against such a challenge, independently of his right to any property left by his father, by establishing his legitimate origin as a son of Mohkam Singh. He felt himself under the pressure of a feeling that he should have the cloud thrown by the defendant removed, no matter if he had already failed in recovering his father's property. He surely evinced an anxiety to have his paternity judicially recognised, so that he might be sure to keep it beyond the range of attack by any one whatsoever. The trial Court in this case, while holding that Section 42, Specific Relief Act did not bar the suit, nevertheless refused relief to the plaintiff on the view that in this particular case he was not entitled to it. It explained the position by referring to the present litigation being only a spring board for a future suit and also by mentioning the relief now sought to be a useless relief. The lower appellate Court only generally affirmed that view. In this approach to the question the Courts below in my view, clearly blundered. They should not have influenced their judgments by presuming any future action on the part of the plaintiff to claim his father's property after he had armed himself with a declaratory decree in the present case. For aught we know, an intention in that behalf may, in fact, have been completely absent in the plaintiff's mind and his primary object in launching the present suit may have been only to get a judicial recognition of his status as a legitimate son of his father to regain such loss of reputation as the defendant may have managed to cause, and to preserve the same against any further danger. In view of these considerations and on the authority of the cases which dealt with

this matter, I have come to the conclusion that the plaintiff was entitled to a decree for declaration in this case.

23. As regards the question of limitation, on which the Courts below differed, the lower appellate Court took an obviously wrong view. The latter Court applied Article 120, Limitation Act, which is an article applying to eases not provided for by any other article of the Act. It pointed out that the defendant having for a number of years been denying the parentage of the plaintiff, limitation had long since commenced to run against the latter, and that the present suit was, therefore, time-barred. The trial Court, on the other hand, had held that each denial of the plaintiff's status was a fresh encroachment on the latter's right giving rise to a fresh cause of action in his favour. I entirely agree with this view. A man may have revelled in slanderous attacks on another for a time, but he acquires no license by their mere frequency or the long period of their duration to resume his role, after a certain period, with impunity. It would be fallacious to imagine any artificial barrier to the power of the Court to grant redress on any ground of anciency of the offence first committed. The person traduced would on each repetition of the libel have a right to challenge it and claim relief. I need say nothing more on the point.

24. Accordingly, I am unable to agree with the judgments of the Courts below, and I allow this appeal, set aside the decrees of those Courts and grant a decree to the plaintiff in the terms prayed for with costs throughout.

25. Leave to appeal under the Letters Patent is refused.