

REFERENCE UNDER COURT-FEES ACT.

Before D. N. Mitter J.

RADHASUNDAR RAY

v.

SAKTIPADA RAY.*

1934

Dec. 10.

Court-fees—Suit for adjudging a document void or voidable with a prayer for cancellation of the same—Specific Relief Act (I of 1877), s. 39—Court-fees Act (VII of 1870), s. 7 iv (c).

The court-fee payable on a plaint or memorandum of appeal in a suit under section 39 of the Specific Relief Act for adjudging a document void or voidable with a prayer for cancellation of the document is *ad valorem* on the amount at which the plaintiff or appellant values the relief sought for, under section 7 iv (c) of the Court-fees Act.

Parvatibai Kom Mahadev v. Vishwanath Ganesh (1) and *Kamla Prasad v. Jagarnath Prasad* (2) followed.

Kalu Ram v. Babu Lal (3) referred to.

Kattiya Pillai v. Rumaswami Pillai (4) dissented from.

The effect of the declaration in a suit under section 39 of the Specific Relief Act that the instrument is void or voidable is not to include the relief that the instrument should be delivered up and cancelled. It is necessary that such relief, if sought, shall be expressly prayed for.

REFERENCE under section 5 of the Court-fees Act on questions raised by the Taxing Officer.

The facts of the case are sufficiently stated in the decision on the Reference.

Rajendrachandra Guha (with him *Mahendranath Ghosh*) for the appellant. According to the language of section 39 of the Specific Relief Act it would be sufficient for the plaintiff to ask for the instrument to be adjudged void or voidable, and the court on so adjudging the instrument to be void or voidable is

* Reference by the Registrar, Appellate Side, dated Sep. 9, 1934, under section 5 of the Court-fees Act, in Appeal from Appellate Decree, No. 73 of 1935.

(1) (1904) I. L. R. 29 Bom. 207.

(3) (1932) I. L. R. 54 All. 812.

(2) (1930) I. L. R. 10 Pat. 432.

(4) (1920) 56 Mad. L. J. 394;

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bound to order it to be delivered up and cancelled. I rely upon *Kattiya Pillai v. Ramaswamia Pillai* (1). The court-fee payable is therefore the fixed court-fee provided in Schedule I, Article 17 of the Court-fees Act for a suit to obtain a declaratory decree, where no consequential relief is prayed for, and, not according to the value of the subject-matter as provided in section 7 iv (c) of the Court-fees Act.

Saratchandra Basak for the Secretary of State. The contrary view finds support in *Parvatibai Kom Mahadev v. Vishvanath Ganesh* (2), *Kalu Ram v. Babu Lal* (3) and *Kamla Prasad v. Jagarnath Prasad* (4). The relief that the instrument should be delivered up and cancelled may not be necessary or appropriate in every case, and is to be expressly prayed for on the facts of particular cases. The wording of section 39 of the Specific Relief Act does not justify any such interpretation as has been sought to be put on it by the appellants.

MITTER J. This is a Reference under section 5 of the Court-fees Act and I have been appointed by the learned Chief Justice as a Judge to decide on this Reference.

The questions referred to are : (i) what is the court-fee payable on a plaint or memorandum of appeal in a suit for adjudging a document void or voidable under section 39 of the Specific Relief Act with a prayer for cancellation of the document in question and (in the case of a registered document) for notification to the Sub-Registrar; and (ii) does it make any difference whether or not the prayers for cancellation and notification to the Sub-Registrar are expressed or not? The second question referred need not be answered and it is sufficient for the purposes of the present appeal to answer the first question referred to above, for, in this case, it appears clear that the plaintiff, now respondent, brought the suit

(1) (1929) 56 Mad. L.J. 394 ;
119 Ind. Cas. 35.

(2) (1904) I. L. R. 29 Bom. 207.

(3) (1932) I. L. R. 54 All. 812.

(4) (1930) I. L. R. 10 Pat. 432.

in respect of a deed of relinquishment purported to have been executed by him in favour of the defendants praying for a decree declaring that the deed of relinquishment (*nâdâbinâmâ*) (*nâdâbi* document) was not executed by him and further for cancelling the deed with the usual notice to the Registration Officer concerned. The suit, therefore, is strictly in terms of section 39 of the Specific Relief Act for cancellation of the document. In such a case, it appears to me that the case comes within section 7 iv (c) of the Court-fees Act and this is really a suit for a declaration with consequential reliefs. This view finds support from a very early decision of Sir Lawrence Jenkins in the case of *Parvatibai Kom Mahadev v. Vishwanath Ganesh* (1). The view also finds support from the Full Bench decision of the Allahabad High Court in the case of *Kalu Ram v. Babu Lal* (2). Patna High Court seems to have taken the same view in the case of *Kamla Prasad v. Jagarnath Prasad* (3). Mr. Guha, who appears for the defendant appellant, contends that, according to the language of section 39, it would have been sufficient for the plaintiff to ask for the declaration that the deed in question be adjudged void or voidable and the court was bound, on such a prayer being made, to adjudge the deed void or voidable and to order it to be delivered up and cancelled. He has, in support of this contention, relied on the decision of the Madras High Court in the case of *Kattiya Pillai v. Ramaswamia Pillai* (4). It must be conceded that, in a suit under section 39, the relief is not confined to the parties at whose instance the suit has been brought. There may also be cases where it may not be possible for the court to order delivery of the document, as, for instance, when the document is lost. It cannot be said that the effect of the declaration that the deed is void or voidable includes the relief that the deed should be delivered up and cancelled, so that it is not necessary to pray expressly for such relief. It seems to me that, in

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asking for the delivery and cancellation of the deed and for making it over to the Registrar, the plaintiff, in the present case, has been asking for a substantial relief and, consequently, relief within the meaning of clause iv(ϕ).

Having regard to the language of the statute and in view of the authorities to which I have referred, namely, the authorities of the Patna, Bombay and Allahabad High Courts and dissenting from the view taken by the Madras High Court, the answer to the first question referred to above is that *ad valorem* court-fees are necessary in the present case. It is not necessary to answer the further question raised by the Taxing Officer, namely, if it does make any difference whether or not the prayers for cancellation and notification to the Sub-Registrar are expressed or not, for that question does not arise in the present case.

The balance of the deficit court-fees, which I understand is very small, due from the appellant must be paid on or before the 22nd December, 1934.

A. A.