

APPELLATE CIVIL.

Before Mukherjea J.

NARAN CHANDRA DALAPATI

v.

SIDH NATH SINGH.*

1940

May 21, 2A.

Declaratory suit—*Consequential relief*—*Suit to establish title to a house in plaintiff's possession*—*Rent decree made previously by the Court of Small Causes against plaintiff in respect of such house, if a bar to such a suit*—*Setting aside of the rent decree, if must be claimed as a consequential relief*—*Specific Relief Act (I of 1877), s. 42.*

The plaintiffs took from the defendants a lease of a bare plot of land and then built a house upon it at their own expense. The plaintiffs used to pay the defendants rent in respect of the plot of land only. In the Court of Small Causes the defendants brought a suit against the plaintiffs claiming rent in respect of the house as well. The suit was decreed after the plaintiffs had contested it. Thereupon, the plaintiffs brought the present suit against the defendants in the Court of the Munsif of Serampore, in which they claimed a declaration of their title to the house, which was in their possession, and also the consequential reliefs. *viz.*, that the rent decree made by the Court of Small Causes be set aside and that the defendants be restrained by an injunction from executing the decree. The lower appellate Court made only a decree declaring the plaintiffs' title to the house, the plaintiffs having abandoned their claim to the consequential reliefs, to which they realised they were not entitled. The defendants contended that, inasmuch as the plaintiffs had abandoned their claim to the consequential reliefs, a mere declaratory decree could not be made in their favour.

Held that, as the plaintiffs were not entitled in law to have the rent-decree set aside or injunction issued, a mere declaratory decree could be made in their favour under s. 42 of the Specific Relief Act, 1877, and the proviso to the section was no bar to such a decree.

Deokali Koer v. Kedar Nath (1) referred to.

Held further that, since the decision in *Poran Sookh Chunder v. Parbutty Dossee* (2), the law as to declaratory decrees has been altered by the enactment of s. 42 of the Specific Relief Act, 1877.

APPEAL FROM APPELLATE DECREE preferred by the defendants.

*Appeal from Appellate Decree, No. 790 of 1938, against the decree of Nilendra Nath Basu, First Subordinate Judge of Hooghly, dated Jan. 11, 1933, reversing the decree of Sarat Chandra Ray Chaudhuri, Second Munsif of Serampore, dated June 21, 1937.

(1) (1912) I. L. R. 39 Cal. 704.

(2) (1878) J. L. R. 3 Cal. 612.

1940

*Naran Chandra
Dalapati*
v.
Sidh Nath Singh.

The facts of the case material for this report appear from the judgment.

Sitarum Banerjee and *Bhudhar Haldar* for the defendants, appellants. The defendants obtained a decree for rent in respect of the house in question in the Court of Small Causes, which rejected the plaintiffs' contentions that the house was their own and that no rent was payable in respect of it. Having been unsuccessful in the Court of Small Causes, the plaintiffs brought the present suit in the Court of the Munsif of Serampore for a declaration of their title to the house. The claim to that house, which the defendants set up, was no longer in the region of a mere assertion of right but was transformed into a decree and, therefore, the present suit for declaration of plaintiff's title was not maintainable: *Poran Sookh Chunder v. Parbutty Dossee* (1).

Before the lower appellate Court the plaintiffs asked for a declaratory decree merely, and abandoned their claim to the consequential reliefs, *viz.*, the setting aside of the rent decree passed by the Court of Small Causes and the issuing of injunction to restrain the defendants from executing the decree. By so abandoning their claim to the consequential reliefs, the plaintiffs had disentitled themselves to a declaratory decree, inasmuch as the *proviso* to s. 42 of the Specific Relief Act, 1877, became a bar to such a decree.

Hiralal Chakravarty and *Shyamadas Bhatta-charjee* for the plaintiffs, respondents. If the rent decree of the Court of Small Causes is a bar to the present suit, it is a bar, because on the question of title to the house the rent decree would be *res judicata* in the present suit. But the Court of Small Causes had no jurisdiction to determine questions of title to immovable properties. The rent decree of the Court of Small Causes, therefore, would not be *res judicata* in the present suit, which is one for determination of title to the house.

(1) (1878) I. L. R. 3 Cal. 612.

The case of *Poran Sookh Chunder v. Parbutty Dossee* (1) was decided by the primary Court before the enactment of Specific Relief Act, 1877, and when the law as to declaratory decrees was different from what it is now under s. 42 of the Act. Before the Act, no declaratory decree could be made, unless the party seeking such a decree was entitled to some consequential relief in the same Court or unless the declaratory decree was required as a step to further reliefs in some other Court. In *Poran Sookh Chunder v. Parbutty Dossee* (*supra*), the plaintiff's suit for a declaration of her title was dismissed because she was held not to have been entitled to any consequential relief in the same Court and the declaratory decree was not shown to have been necessary as a step to further relief in any other Court. But since the enactment of the Specific Relief Act, 1877, all that the plaintiff in a suit for declaration of title need show is that he has some legal character or some right to property, his title to which is being denied by the defendant. It is no longer necessary for the plaintiff to show that he has a right to any consequential relief.

1940
*Naran Chandra
 Dalapati*
 v.
Sidh Nath Singh.

The plaintiffs in the present case are not affected by the proviso to s. 42 of the Specific Relief Act, 1877. They are not entitled to claim the setting aside of the rent decree passed by the Court of Small Causes, nor the injunction, because a judicial decree passed by a Court having jurisdiction to pass it is always binding on the parties, and cannot be set aside except on the grounds of fraud. By abandoning their claim to have the rent decree set aside and the injunction issued, the plaintiffs have not abandoned anything which they were able to seek by way of further relief.

Cur. adv. vult.

MUKHERJEA J. This is an appeal on behalf of the defendants, and it arises out of a suit commenced by the plaintiffs for establishment of their title to

1940

*Naran Chandra
Dalapati*
v.
Sikh Nath Singh.
Mukherjee J.

certain residential structures and privies described in sch. *kha* to the plaint. There were further prayers in the plaint, for setting aside a decree for rent obtained by the defendants in a Small Cause Court suit against the plaintiffs in respect of the said structures and for a permanent injunction restraining the defendants from executing the rent decree. The facts lie within a rather narrow compass.

The plaintiffs' case is that they took lease of a plot of land measuring about three *cottāhs* from the defendants about twenty or twenty-one years ago at a rental of Rs. 1-3 as. per annum and built upon it a house consisting of ten rooms with masonry walls and thatched roof. They were paying rent all along to the defendants for the land only, at the rate of Rs. 1-3 as. per year. But the latter instituted a rent-suit in the Small Cause Court against the plaintiffs claiming rent for the structures as well, at the rate of Rs. 6 per annum and, in spite of the claim being contested by the plaintiffs, succeeded in obtaining a decree. It is this decree which threw a cloud upon the plaintiffs' right to the structures and obliged them to institute the present suit.

The defence was that the defendants were owners of the structures as well as of the land, and that both were let out to the plaintiffs at a rental of Rs. 6 per annum. It was further contended that the decree in the Small Cause Court suit was obtained after proper contest and could not be set aside in law.

The trial Court, on a consideration of the evidence on record, came to the conclusion that the defence version was right and that the structures belonged to the defendants and not to the plaintiffs. In this view of the case, the plaintiffs' suit was dismissed. On appeal, the learned Subordinate Judge reversed the finding of the trial Court and came to the finding that the structures belonged to the plaintiffs. He, therefore, gave the plaintiffs a declaration of title with respect to the house and the privies. The prayer for setting aside the rent decree was not pressed in

the appeal and was rejected. It is against this decision that the present Second Appeal has been preferred.

Mr. Sitaram Banerjee, who appears for the appellants, has raised only one point in support of the appeal. He does not dispute the finding of the lower appellate Court that the structures were the property of the plaintiffs. But his contention is that the lower appellate Court should not have given the plaintiffs a mere declaration of title when the prayer for consequential relief, made by them, in the shape of setting aside the rent decree, was rejected as not being maintainable in law. In support of this contention he has relied upon a decision of this Court in *Poran Sookh Chunder v. Parbutty Dossee* (1). I do not think that this contention is sound. The aforesaid case was decided in accordance with the provisions of s. 15 of the Code of Civil Procedure, 1859, which was replaced later on by s. 42 of the Specific Relief Act, 1877. In the case mentioned above, the plaintiff, who was in possession of certain lands, sued to have a declaration of her *lâkhiraj* right in respect of the same, on the allegation that her right was injured by reason of the defendants having obtained a rent decree against her in a Small Cause Court with regard to the said lands. It was held by Jackson J. that such a suit was not maintainable. "In the present instance", so runs the judgment,—

the claim which the defendants have set up is no longer in the condition of a mere assertion or a claim for right; it has passed into a decree. Consequently the plaintiff could not bring this suit for the purpose of setting aside the judgment of the Small Cause Court, and, therefore, no relief could be had in respect of that. It appears to me, therefore, that under the law as it stood before the Specific Relief Act was passed, the plaintiff could not maintain the present suit.

In my opinion, the law has been changed by s. 42 of the Specific Relief Act, 1877.

Section 15 of the old Civil Procedure Code of 1859 stood as follows:—

No suit shall be open to objection on the ground that a merely declaratory decree or order is sought thereby, and it shall be lawful for the civil Courts to make binding declarations of right without granting consequential relief.

(1) (1878) I. L. R. 3 Cal. 612, 615.

1940

*Naran Chandra
Dalapati*
v.
Sidh Nath Singh.
Mulherjee J.

1940

*Naran Chandra
Dalapati*
v.
Sidh Nath Singh.
Mukherjea J.

The language was the same as in s. 50 of the (English) Chancery Procedure Act of 1852. A large number of decisions, some of which were of the Judicial Committee, interpreted the section to mean that a declaratory decree could be made under it, only when there was a right to some consequential relief, which, if asked for, might have been given by the same Court or, when in certain circumstances it was required as a step to relief in some other Court: *Strimathoo Moothoo Vija Ragoonadah Ranee Kolandapuree Natchiar v. Dorasinga Tever* (1); *Sheo Singh Rai v. Dakho* (2). In the case of *Poran Sookh Chunder v. Parbutty Dossee* (*supra*) the defendants had already obtained a rent decree against the plaintiff, and it was not possible for the plaintiff to pray for setting aside the decree by way of a consequential relief. There was no other consequential relief which the plaintiff might have prayed for either in that Court or in some other Court. Consequently, the Court had no authority to make a declaration in her favour under s. 15 of the old Civil Procedure Code. Section 15 of the old Code of 1859 was repealed by the Code of Civil Procedure of 1877, and s. 42 of the Specific Relief Act, 1877, which was passed earlier in the same year, is now the only provision where the law relating to declaratory decrees is to be found. That section, which is said to be a reproduction of the Scottish action of declarator, has altered and to some extent widened the provision of the earlier section. This section, as has been pointed out by Jenkins C. J. in the case of *Deokali Koer v. Kedar Nath* (3), does not sanction every kind of declaration, but only a declaration that the plaintiff is "entitled to any legal character or to any right as "to any property." To this extent its scope is more restricted than that of s. 15 of the old Civil Procedure Code. At the same time, in order to enable the plaintiff to get a declaration, it is only necessary now

(1) (1875) 15 B. L. R. 83;
L. R. 2 I. A. 169.

(2) (1878) I. L. R. 1 All. 688;
L. R. 5 I. A. 87.

(3) (1912) I. L. R. 39 Cal. 704, 709.

for him to show that he has some legal character or some right to property and that his opponent is either denying or is interested in denying his title to such legal character or right. It is not necessary for him to show that he has a right to some consequential relief which he might have claimed at the same time or which is preparatory to his obtaining relief in other Court. If there is a cloud cast on his title or legal character he is entitled to seek the assistance of the Court to dispel it by a declaratory decree, provided he is not in a position at that time to ask for any other relief consequent on the declaration prayed for.

1940
Naran Chandra
Dalapati
v.
Sidh Nath Singh.
Mukherjea J.

In the present case, it cannot be disputed that the plaintiff cannot, in law, pray for setting aside the Small Cause Court decree. A judicial order passed by a Court having jurisdiction to pass it is always binding on the parties and cannot be set aside except on grounds of fraud. The Small Cause Court could not decide any question of title and on that question the decree would not certainly be *res judicata* in a subsequent suit, but no suit would lie merely to annul the decree.

In these circumstances, the plaintiff in the present case is not, in any way, hit by the proviso to s. 42 of the Specific Relief Act, 1877, and they can maintain a suit for a mere declaration of title on the ground that a cloud has been cast upon it by the defendants' action.

I think that the decision of the Court of appeal below is perfectly right and that this appeal must be dismissed with costs, hearing-fee being assessed at one gold mohur.

Appeal dismissed.