

We decree the appeal, reverse the decree of the Court below and remand the case to the Court of the Subordinate Judge of Gorakhpur for restoration to the file of pending cases and disposal according to law. Costs of the appeal and costs incurred in the Court below will follow the result of the suit.

1891

MAHABIR
PRASAD MISR
v.
MAHADEO
DAT MISR.

Appal decreed.

Before Sir John Edge, Kt., Chief Justice, and Mr Justice Mahmood.

1891
May 8.

GOBIND NATH TIWARI (PLAINTIFF) v. GAJRAJ MATI TAURAYAN AND OTHERS (DEFENDANTS).*

Suit for declaratory decree—Declaration sought that certain property was joint ancestral property and not liable to attachment in execution of a certain decree—Court-fee payable on such suit.

The plaintiffs specified in their plaint as the reliefs sought by them:—“(1). That it be declared by the Court that the property mentioned at foot is the joint ancestral property of the plaintiffs and not liable to attachment and sale in execution of the decree of the defendant No. 4, dated 4th December 1883, against the defendant No. 1. (2) That the costs of the suit be also awarded by the decree. The suit is valued with reference to the amount of the decree and the value of the property at Rs. 6,000. (3). That any other relief which the Court may think the plaintiffs entitled to may also be granted.”

Held, that the suit should be deemed a suit for one declaratory decree only, without consequential relief, and that a court-fee of Rs. 10 was sufficient.

THE plaintiffs brought their suit in the Court of the Subordinate Judge of Gorakhpur for a declaration that certain property was joint ancestral property and not liable to attachment under a decree to which certain of the defendants were parties. They paid on their plaint a court-fee of Rs. 10. The Subordinate Judge dismissed the plaintiffs' claim without going into the merits, on the ground that it was unmaintainable having regard to the provisions of s. 42 of Act I of 1877 (Specific Relief Act). One of the plaintiffs then appealed to the High Court paying, as in the Court of first instance, a court-fee of Rs. 10. A preliminary objection was taken by the respondents that the court-fee in both Courts was insufficient, and, that being so, the appeal should be dismissed. Before deciding this objection,

* First appeal No. 138 of 1889 from a decree of Maulvi Ahmad Hasan, Subordinate Judge of Gorakhpur, dated the 25th June 1889.

1891

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TAURAYAN.

however, the Court (Mahmood and Young, J.J.) called for a report from the Taxing Officer of the Court as to the sufficiency of the Stamp. That officer's report was as follows :—

REPORT.

“ In F. A. No. 138 of 1889, the suit was dismissed and the plaintiff is the appellant in this Court.

The relief he claims, as shown by the plaint, is “ that the property is the joint ancestral property of the plaintiff and not liable to attachment, &c.” under a certain decree.

He certainly does not seek consequential relief, and his case differs from that of the appellant in F. A. No. 199 of 1887, as in that case the lower Court had granted consequential relief, or, at least, what used until more recent rulings to be considered consequential relief.

The only question then is whether he seeks more than one declaration or not.

Certainly the words of the plaint look as if two separate declarations were asked for :—(1), that the property is the plaintiff's, and (2), that it is not liable to attachment under a certain decree.

If the second part does not follow necessarily out of the first proposition I think that two declarations are asked for and that each should bear a Rs. 10 stamp, for cases are quite conceivable in which a declaration that the property belongs to the plaintiff might not connote the proposition that it was not liable to attachment in a certain case.

If, however, the latter proposition necessarily follows the former and a declaration that the property is the plaintiff's involves its freedom from liability to attachment under the decree, I think the fact of the Court Fees Act being of a fiscal nature and one to be construed strictly, and as far as possible in favor of the litigant, should be considered, and the two propositions deemed but one expressed in different manners, and that a Rs. 10 stamp would be sufficient.”

The case then came with this report before Edge, C. J., and Mahmood, J., who made the following order :

Pandit *Sundar Lal*, for the appellant.

Mr. *T. Conlan* and Munshi *Kashi Prasad*, for the respondents.

EDGE, C. J. and MAHMOOD, J.—On the report of the Taxing Officer of this Court the stamp is sufficient. The Court below must try the suit on the merits and decide on the evidence and the law as applicable to it whether or not the plaintiffs are entitled to the declaration they seek. We set aside the decree under appeal, and remand the case under s. 562 of the Code of Civil Procedure to be disposed of according to law. The costs here and hitherto will follow the result.

Cause remanded.

1891

GOBIND NATH
TIWARI
v.
GABRAJ MATI
TAURAYAN.

Before Sir John Edge, Kt., Chief Justice, and Mr. Justice Tyrrell.

KALI DAS (DEFENDANT) v. BIJAI SHANKAR AND ANOTHER (PLAINEIFFS).*

1891
May 14.

Hindu Law—Adoption by widow to deceased husband.—Deed of adoption, construction of—Powers of adoptive mother.

The widow of a separated Hindu made an adoption to her deceased husband under a power to adopt conferred upon her by her husband's will. The deed by which the adoption, the validity of which was not disputed, was evidenced, contained, amongst others, the following conditions :—“ that during my (*i.e.*, the adoptive mother's) life time I shall be the owner and manager of the estate and that after my death the adopted son should have the same rights and privileges as would have been enjoyed by the natural son of Ishan Chandar Mukarji born of me.”

Held that these words conferred upon the widow an interest and an authority not less than she would have had as the widow of a separated sonless Hindu to whom no adoption had been made, so far as her position as manager was concerned.

THE facts of this case, so far as they are necessary for the purposes of this report, appear from the judgment of the Court.

Babu *Jogindro Nath Chaudhri*, for the appellant,

Mr. *T. Conlan* and Pandit *Sundar Lal*, for the respondents.

EDGE, C. J., and TYRRELL, J.—This appeal has been brought by one of the defendants in a suit which was for recovery of money due under notes of hand given by one Musammat Sri Matia Matangini Debia. She was the widow of one Babu Ishan Chandar

* First appeal No. 28 of 1890 from a decree of Pandit Indar Narain, Subordinate Judge of Aligarh, dated the 8th November 1889.