

FULL BENCH.

Before Sir Shah Muhammad Sulaiman, Chief Justice, Mr. Justice Mukerji, Mr. Justice Banerji, Mr. Justice King and Mr. Justice Pullan.

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April, 22.

KALU RAM (DEFENDANT) v. BABU LAL AND ANOTHER
(PLAINTIFFS).*

Court Fees Act (VII of 1870), sections 7(iv)(c) and 17; schedule I, article 1; schedule II, article 17(iii)—Suit for declaration of voidness and for cancellation of a mortgage deed—Suit for cancellation of a compromise and of a decree based thereon—Declaration—Consequential relief—Substantive relief—Valuation—Ad valorem court fee—Specific Relief Act (I of 1877), sections 39, 42.

A suit on a mortgage was compromised and a preliminary decree for sale was passed accordingly, followed by a final decree. A son and a nephew of the mortgagor, who were apparently members of a joint family with him, were also made defendants, and, being minors, were represented by a guardian *ad litem*. The son and the nephew thereafter brought a suit on the allegations that the mortgage was without consideration and legal necessity, that the compromise was fraudulent, and that the decrees were obtained on account of the negligence and collusion of their guardian. The reliefs claimed were (1) that the mortgage deed be declared (or adjudged) void and be cancelled; and (2) that the compromise, the preliminary decree and the final decree be cancelled. On the question of court fee,—*Held* that relief (1) was governed by schedule I, article 1 of the Court Fees Act and relief (2) was one consolidated relief, and not three distinct reliefs, and it also was governed by schedule I, article 1.

A relief to have a registered instrument adjudged void or voidable, with the possible result of its being delivered up and cancelled and a copy of the decree being sent to the registration office for a note to be made by the registering officer in his books, is much more than a mere declaratory relief. It is undoubtedly a substantial relief of a nature differing from a declaratory one.

The expression "consequential relief" in section 7 (iv) (c) of the Court Fees Act means some relief which would follow directly from the declaration given, the valuation of which is

*Stamp Reference in First Appeal No. 345 of 1928.

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not capable of being definitely ascertained and which is not specifically provided for anywhere in the Act and cannot be claimed independently of the declaration as a substantive relief.

The court has to see what is the nature of the suit and of the reliefs claimed, having regard to the provisions of section 7 of the Court Fees Act. If a substantive relief is claimed, though clothed in the garb of declaratory decree with a consequential relief, the court is entitled to see what is the real nature of the relief, and if satisfied that it is not a mere consequential relief but a substantial relief it can demand the proper court fee on that relief, irrespective of the arbitrary valuation put by the plaintiff in the plaint on the ostensible consequential relief.

Where a suit is for the cancellation of an instrument under the provisions of section 39 of the Specific Relief Act the relief is not a declaratory one. It falls neither under section 7 (iv) (c) nor under schedule II, article 17 (iii), but under the residuary article, namely schedule I, article 1, of the Court Fees Act.

A relief for the cancellation of a decree, or to be more accurate, for the setting aside of a decree, is not a declaratory relief only. The effect is not merely a declaration as to a person's character or status as contemplated by section 42 of the Specific Relief Act, but the effect will be to render the decree void and incapable of execution and will free the plaintiff from all further liability under it. The claim, therefore, is not merely for a declaratory relief falling under schedule II, article 17 (iii). Nor does the relief fall under section 7 (iv) (c). There is no prayer for a declaration that the decree is void, or for a declaration of any sort, so the relief that the decree be set aside cannot be regarded as a "consequential" relief in any sense of that word. The court fee, therefore, in respect of the prayer for cancellation of the decree is payable under schedule I, article 1, on the value of the decree.

As the compromise has merged in the preliminary decree and the latter has merged in the final decree, the cancellation of the compromise, the preliminary decree and the final decree are not "distinct subjects" within the meaning of section 17, but in reality only one subject. The court fee for the second relief is payable on the value of the final decree only.

The following referring order was made by the Taxing Judge:—

KING, J. :—This is a reference under section 5 of the Court Fees Act, 1870.

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The plaintiffs claim the following reliefs: (1) That a certain registered mortgage deed may be declared ineffectual as against the plaintiffs and may be cancelled; (2) That a compromise and decree passed against the plaintiffs in a certain suit may be cancelled.

The suit was valued at Rs. 11,276-3-9 and a court fee of Rs. 20 only was paid. The Chief Inspector of Stamps contends that the court fee ought to be paid on the jurisdictional value of the suit, that is, a fee of Rs. 520 should be paid for the trial court and also for the court of appeal, as it is a suit for declaration with a consequential relief.

As regards the court fee payable in respect of the first relief, the appellant relies upon the Full Bench ruling of this Court in *Karam Khan v. Daryai Singh* (1). That was a suit for the cancellation of a mortgage deed. The Taxing Judge expressed an opinion that the suit was of the kind mentioned in section 39 of the Specific Relief Act and that it was in the nature of a simple declaratory suit. The point was referred to a Full Bench of five Judges who delivered the following judgment: "We concur in the opinion expressed in this reference, that the case is in the nature of a simple declaratory suit." On this view, a fixed court fee of Rs. 10 only is payable under article 17(iii) of the second schedule.

I think it must be conceded that the appellant's contention must prevail, so far as the first relief at least is concerned, if this Full Bench ruling is followed. The judgment is unfortunately brief and no reasons are given. I cannot understand why a suit for cancellation of an instrument, such as a mortgage deed, imposing liability upon the plaintiff's property, should be held to be a suit for a mere declaration where no consequential relief is prayed. The cancellation of such an instrument seems to me to involve a substantial relief and to be quite different from a mere declaration. The legislature seems to have made a clear distinction between suits for cancellation of instruments, which are dealt with in chapter V of the Specific Relief Act, and suits for declaratory decrees, which are dealt with in chapter VI of the same Act. *Prima facie*, therefore, the legislature recognized a distinction between suits for cancellation of instruments and suits for declarations. There is, moreover, in my opinion a substantial difference between such suits. The cancellation of an instrument which imposes a liability upon the plaintiffs' property is a substantial relief and not equivalent to a mere declaration of non-liability.

(1) (1883) I.L.R., 5 All., 331.

This Full Bench ruling has been expressly dissented from or not followed by several High Courts. In *Samiya Marali v. Minammal* (1), where the suit was for setting aside a registered sale deed, it was held that this was a suit for a declaration with consequential relief and the court fee was payable under section 7(iv)(c) of the Court Fees Act. The ruling in *Karam Khan v. Daryai Singh* (2) was expressly dissented from.

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In *Parvatibai v. Vishvanath Ganesh* (3) the suit was for the cancellation of a sale deed. The court held that the suit was one for a declaration with a distinct prayer for consequential relief and expressly dissented from the ruling in *Karam Khan v. Daryai Singh* (2).

According to Desai's Index (11th edition), the Allahabad ruling has also been expressly dissented from in *Maung Kyin v. Po Thin* (4). Unfortunately the report of that case is not available in this library. That case was however referred to in the case of *Sit Soe v. Ma Thin* (5) which shows that the former ruling decided that a suit for setting aside documents affecting land must be treated as a suit for a declaration involving consequential relief.

In *Arunachalam Chetty v. Rangasawmy Pillai* (6), it was held by a Full Bench of the Madras High Court that a suit for a declaration that an instrument is not binding upon the plaintiff amounts to a suit for cancellation of the instrument and the court fee is governed by section 7(iv)(c). The ruling in *Karam Khan v. Daryai Singh* was cited and not followed. In *Mussammatt Noowoogagar v. Shidhar Jha* (7) a suit for the avoidance of a registered deed of gift was held to involve consequential relief and the ruling in *Karam Khan v. Daryai Singh* was cited but not followed. In *Kuber Saran v. Raghubar* (8), where the suit was for a declaration that certain deeds were voidable against the plaintiff and that the deeds should be cancelled, it was held that the suit was one for a declaration with a prayer for consequential relief. The ruling in *Karam Khan v. Daryai Singh* was discussed and not followed.

So far as I can ascertain, the only reported case in which the Allahabad Full Bench ruling was followed is *Durga Bakhsh v. Mirza Mohammad Ali Beg* (9).

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| (1) (1899) I.L.R., 23 Mad., 490. | (2) (1883) I.L.R., 5 All., 331. |
| (3) (1904) I.L.R., 29 Bom., 207. | (4) (1901) 2 L.B.R., 266. |
| (5) (1924) 84 Indian Cases, 201. | (6) (1914) I.L.R., 38 Mad., 922. |
| (7) (1913) 3 Pat. L.J., 194. | (8) A.I.R., 1929 Oudh, 491. |
| (9) (1898) 1 Oudh Cases, 123. | |

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It appears therefore that the Allahabad Full Bench ruling has been dissented from, or referred to and not followed, in a number of rulings of other High Courts. Personally I regard the ruling as wrong for reasons already given, and the decision is certainly unsatisfactory, being so brief as to suggest that the question was not fully discussed and considered. In *Radha Krishna v. Ram Narain* (1), to which decision I was a party, it was suggested that the ruling in *Karam Khan v. Daryai Singh* was unsatisfactory, but we were able to distinguish it for the purpose of deciding that case.

It has been held in *Khachera v. Kharug Singh* (2) that a Division Bench has no jurisdiction to hear a stamp reference even when it is referred to them by a Taxing Judge. I think, however, there is no legal objection to referring the point to a Full Bench and this seems to be the only practicable course when it is necessary to decide whether a previous Full Bench ruling of this Court should be maintained or overruled.

As regards the second relief for cancellation of the decree, there is abundant authority for the view that the suit should not be treated as one for a mere declaration, but as a suit for a declaratory decree where consequential relief is prayed or as a suit on which a court fee is payable on the value of the decree. Even when the plaintiff has worded his relief so as to seek a mere declaration that a decree is void and ineffectual as against him, it has been held that it amounts to a suit for a declaration involving a consequential relief and that the court fee is payable under section 7(iv)(c). I may refer to the rulings in *Arunachalam Chetty v. Rangasawmy Pillai* (3), *Sripal Singh v. Jagdish Narayan* (4), *Deokali Koer v. Kedar Nath* (5), *Harihar Prasad v. Shyam Lal* (6) and *Ganesh Bhagat v. Sarada Prasad Mukerjee* (7).

The appellant has relied upon *Radha Krishna v. Ram Narain* (1). But this ruling does not help him, as in that case the plaintiff sued for a mere declaration that a decree was not binding upon him and he deliberately omitted a prayer for cancellation of the decree. In the present case there is an express prayer for cancellation of the decree, so the ruling has no application.

It is also argued that the court fee payable on the second relief is governed by the authority of the Full Bench ruling

(1) (1931) I.L.R., 53 All., 552.

(2) (1910) 7 A.L.J., 842.

(3) (1914) I.L.R., 33 Mad., 922.

(4) (1921) 24 Oudh Cases, 361.

(5) (1912) I.L.R., 39 Cal., 704.

(6) (1913) I.L.R., 40 Cal., 615.

(7) (1914) I.L.R., 42 Cal., 370.

in *Karam Khan v. Daryai Singh* (1). I think that ruling can be distinguished, since a decree cannot, I think, be held to be an "instrument" and therefore a suit for the cancellation of a decree would not come strictly within the terms of section 39 of the Specific Relief Act. There is, however, undoubtedly some similarity between a suit for the cancellation of a decree and a suit for the cancellation of an instrument; so, it is open to difference of opinion whether the ruling in *Karam Khan v. Daryai Singh* is applicable. This point may also be referred to a Full Bench. If it is held that a suit for the cancellation of an instrument or decree is not a suit "to obtain a declaratory decree where no consequential relief is prayed", the further question arises whether it should be held to be a suit "to obtain a declaratory decree where consequential relief is prayed", or a suit not specifically provided for, and so governed by schedule I, article 1. This point is of some importance, since there is much authority for the view that, if section 7(iv)(c) applies, the plaintiff's valuation of the relief must be accepted, however inadequate and arbitrary it may be.

I suggest that with the permission of the Hon'ble CHIEF JUSTICE the following questions be referred to a Full Bench :—

1. What provisions of the Court Fees Act determine the court fee payable in respect of relief No. 1, i.e. that the mortgage deed in suit may be declared void and ineffectual as against the plaintiffs, and that it may be cancelled?

2. What provisions of the Court Fees Act determine the court fee payable in respect of relief No. 2, i.e. that the specified compromise and decrees may be cancelled?

Let the case be submitted to the Hon'ble CHIEF JUSTICE for orders.

The two questions of law, mentioned above, were then referred to a Full Bench of five Judges.

Dr. N. C. Vaish, for the appellant.

Mr. U. S. Bajpai, for the Crown.

SULAIMAN, C. J., MUKERJI, BANERJI, KING and PULLAN, JJ. :—The Taxing Judge has referred two questions of law to a Full Bench. The case itself has not been referred to us. Section 5 of the Court Fees Act has in no way been contravened. The final order will be passed by the Taxing Judge himself in the light of the observations of this Full Bench.

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The suit was instituted by the nephew and the son of Sundar Lal, who had executed a mortgage deed on the 20th of December, 1918, in favour of the defendant appellant Kalu Ram. In the mortgage suit the present plaintiffs also were impleaded under the guardianship of their grandmother. The suit was decreed and a preliminary decree was passed on the 16th of September, 1925, which resulted in a final decree on the 2nd of April, 1927.

In the present suit the plaintiffs sought to avoid the mortgage deed on the ground that it was fictitious and without consideration and legal necessity, the compromise on the ground of fraud, and the decree on the ground of negligence and collusion of the guardian. Two main reliefs claimed were as follows: (1) The mortgage deed, dated the 20th of December, 1918, and registered on the 21st of December, 1918, may be adjudged void and ineffectual as against the plaintiffs and it may be cancelled; (2) The compromise and the preliminary decree, dated the 16th of September, 1925, and the absolute decree, dated the 2nd of April, 1927, of the court of the Subordinate Judge of Jhansi *in re* Kalu Ram *versus* Sunder Lal and others, may be cancelled.

The plaintiffs valued the first relief at Rs. 5,000 and paid Rs. 10 as court fee thereon and valued the second relief at Rs. 6,276-3-9 and paid another Rs. 10 on it. A difference arose between the Registrar, who is the Taxing Officer of this Court, and the appellant's counsel, and the former referred the matter to the Taxing Judge, who has referred the following questions to us: (1) What provisions of the Court Fees Act determine the court fee payable in respect of relief No. 1, i.e. that the mortgage deed in suit may be declared void and ineffectual as against the plaintiffs, and that it may be cancelled? (2) What provisions of the Court Fees Act determine the court fee payable

in respect of relief No. 2, i.e. that the specified compromise and decrees may be cancelled?

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The main question for consideration is whether the reliefs fall under section 7(iv)(c) and are to obtain a declaratory decree where consequential relief is prayed, or under article 17(iii) of the second schedule to obtain a declaratory decree where no consequential relief is prayed, and if not, whether under article 1 of the first schedule as a plaint not otherwise provided for in the Court Fees Act where the amount or value of the subject matter in dispute can be ascertained, or under article 17(vi) of the second schedule, that is, a suit not otherwise provided for and where it is not possible to estimate at a money value the subject matter in dispute. It is quite clear that if the reliefs fall under either of the first two provisions of law, the last two general articles would not be applicable.

The learned counsel for the appellant relies strongly on the Full Bench ruling of this Court in *Karam Khan v. Daryai Singh* (1) in which it was laid down that a suit in which the relief for the cancelment of a mortgage deed is claimed is in the nature of a simple declaratory suit. The report of the case is very brief and the judgment is also very short. The original plaint in the vernacular is not available in this Court. If the learned Judges meant to lay down that a suit for the cancellation of an instrument under the provisions of section 39 of the Specific Relief Act was a mere declaratory suit under schedule II, article 17(iii), then with great respect we are unable to agree with that view.

The only reported cases brought to our notice in which this ruling has been followed are *Hira Lal v. Wali Bhagat* (2) and *Durga Bakhsh v. Mirza Mohamad Ali Beg* (3). We may point out that the Full Bench ruling has been expressly dissented from by

(1) (1883) I.L.R., 5 All., 331.

(2) Weekly Notes, 1889, p. 124.

(3) (1898) 1 Oudh Cases, 123.

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some of the other High Courts, vide *Samiya Mavali v. Minammal* (1), *Parvatibai v. Vishranath Ganesh* (2) and *Mussammatt Noowoagar v. Shidhar Jha* (3). But in these cases it has been taken for granted without any discussion of section 39 of the Specific Relief Act that a relief for the cancellation of an instrument is a consequential relief.

Section 42 of the Specific Relief Act covers cases where a declaration can be granted to a person entitled to any legal character or to any right as to any property, except where the plaintiff being able to seek further relief than a mere declaration of title omits to do so.

Under section 39 of the Act "any person against whom a written instrument is void or voidable, who has reasonable apprehension that such instrument, if left outstanding, may cause him serious injury, may sue to have it adjudged void or voidable; and the court may, in its discretion, so adjudge it and order it to be delivered up and cancelled." In the case of cancelling a registered instrument, the law further provides that the court shall also send a copy of its decree to the officer in whose office the instrument has been registered.

The illustrations to the section make it obvious that the relief is available even to persons other than parties to an instrument, and in respect of both void and voidable instruments. It is equally clear that a plaintiff need only ask for the instrument to be adjudged void or voidable and need not in express terms ask for it to be delivered up and cancelled. Even though no relief for cancellation is asked for, a court may grant cancellation also. But this does not prevent a plaintiff from also asking in express terms a relief for its being delivered up and cancelled, if he feels that having it merely adjudged void or voidable would not be adequate for his purpose.

(1) (1899) I.L.R., 23 Mad., 490. (2) (1904) I.L.R., 29 Bom., 207.

(3) (1918) 3 Pat. L.J., 194.

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The court has discretion to adjudge a written instrument void or voidable and has also discretion to order it to be delivered up and cancelled. Section 39 cannot mean that where the court adjudges an instrument void or voidable, it is bound to order it to be delivered up and cancelled. It is easy to conceive of cases where the court, while adjudging it void or voidable, may not think it fit or possible to order it to be delivered up and cancelled. For instance, an instrument executed by another person may not bind the plaintiff and may yet bind the executant. In such a case it cannot actually be cancelled. Or the original registered instrument may have been lost, in which case it cannot be ordered to be delivered up.

A relief to have a registered instrument adjudged void or voidable, with the possible result of its being delivered up and cancelled and a copy of the decree being sent to the registration office for a note to be made by the registering officer in his books, is much more than a mere declaratory relief. It is undoubtedly a substantial relief of a nature differing from a declaratory one.

We may note that section 39 of the Specific Relief Act is in chapter V which is headed "Of the cancellation of instruments", whereas there is a separate chapter VI headed "Of declaratory decrees". Obviously the legislature intended to draw a distinction between a decree adjudging a written instrument void or voidable, which may result in its cancellation, and a mere declaratory decree. Though the Specific Relief Act was passed some years after the Court Fees Act, the distinction existed before the Specific Relief Act was passed and it cannot be said that for the purposes of Court Fees Act a relief for adjudging an instrument void is of a declaratory nature.

In our opinion, the expression "consequential relief" in section 7(iv)(c) means some relief which would

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follow directly from the declaration given, the valuation of which is not capable of being definitely ascertained and which is not specifically provided for anywhere in the Act and cannot be claimed independently of the declaration as a substantive relief. A consideration of all the clauses (a) to (f) of sub-section (iv), section 7, of the Court Fees Act leads to the same conclusion.

The court has to see what is the nature of the suit and of the reliefs claimed, having regard to the provisions of section 7 of the Court Fees Act. If a substantive relief is claimed, though clothed in the garb of a declaratory decree with a consequential relief, the court is entitled to see what is the real nature of the relief, and if satisfied that it is not a mere consequential relief but a substantive relief it can demand the proper court fee on that relief, irrespective of the arbitrary valuation put by the plaintiff in the plaint on the ostensible consequential relief. Suppose a plaintiff asks for a declaration that the defendant is liable to pay him money due under a certain bond and also asks for recovery of that amount; or suppose that he asks for a declaration that he is the owner of certain property and is entitled to its possession and asks for recovery of its possession; surely the reliefs for the recovery of money or for the recovery of possession cannot be treated as mere consequential reliefs which can be arbitrarily valued at any low figure and court fees paid on that arbitrary valuation only. In our opinion, where a suit is for the cancellation of an instrument under the provisions of section 39 of the Specific Relief Act the relief is not a declaratory one. It falls neither under section 7(iv)(c) nor under schedule II, article 17(iii), but under the residuary article, namely schedule I, article 1, of the Court Fees Act. We hold therefore that the court fee payable on the first relief is governed by schedule I, article 1.

As regards the second relief, the prayer that the compromise may be cancelled is similar to a relief for the cancellation of the mortgage deed and is governed by the same article.

In our opinion a relief for the cancellation of a decree, or to be more accurate, for the setting aside of a decree, is not a declaratory relief only. The effect is not merely a declaration as to a person's character or status as contemplated by section 42 of the Specific Relief Act, but the effect will be to render the decree void and incapable of execution and will free the plaintiff from all further liability under it. The claim, therefore, is not merely for a declaratory relief falling under schedule II, article 17(iii). Nor does the relief fall under section 7(iv)(c). There is no prayer for a declaration that the decree is void, or for a declaration of any sort, so the relief that the decree be set aside cannot be regarded as a "consequential" relief in any sense of that word. We hold that the court fee in respect of the prayer for cancellation of the decree is payable under schedule I, article 1, on the value of the decree.

As the compromise has merged in the preliminary decree and the latter has merged in the final decree, we consider that the cancellation of the compromise, the preliminary decree and the final decree are not "distinct subjects" within the meaning of section 17, but in reality only one subject. The court fee for the second relief is payable on the value of the final decree only.

Accordingly our answers to the questions referred to us are as follows: (1) Relief No. 1 is governed by schedule I, article 1; (2) Relief No. 2 is one consolidated relief (and not distinct reliefs) and it also falls under schedule I, article 1.

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