

We accordingly allow this appeal, set aside the order of acquittal passed by the learned Sessions Judge and restore the order passed by the learned Assistant Sessions Judge. The accused shall be deemed to have been serving the sentence of imprisonment passed on him in the present case concurrently with the sentence of imprisonment passed on him on the 29th of January, 1932, in sessions case No. 32 of 1931.

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FULL BENCH

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*Before Sir Shah Muhammad Sulaiman, Chief Justice, Justice Sir Lal Gopal Mukerji and Mr. Justice King*

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April, 27

SRI KRISHNA CHANDRA (PLAINTIFF) v. MAHABIR PRASAD AND OTHERS (DEFENDANTS)\*

*Court Fees Act (VII of 1870), schedule II, article 17(ii)—Suit for a declaration that a certain decree is not binding on the plaintiff and is void and ineffectual—Cancellation not specifically prayed for—“Any other relief which may be just”—Whether consequential relief—Specific Relief Act (I of 1877), sections 39, 42.*

The plaintiff prayed for a declaration that a certain decree was not binding upon him and was altogether void and ineffectual; he also added the usual prayer that any other relief which in the opinion of the court might be deemed just might also be granted. *Held* that inasmuch as the plaintiff merely asked for a declaration that the previous decree was not binding on him and was altogether void and ineffectual, his suit was one for obtaining a declaratory decree only and fell under article 17(iii) of the second schedule of the Court Fees Act and the court fee payable was rupees ten only. As regards the other relief it was *held* that such a relief is unnecessarily added in most plaints and is not intended to mean anything more than reminding the court of its power to grant other reliefs even though not specifically asked for. The words of this relief were too vague and indefinite and no specific relief was referred to therein, and it could not be regarded as one which required the demand of an additional court fee or as one which, when coupled with the declaratory relief, changed the nature of the relief claimed in the suit.

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\*First Appeal No. 21 of 1930, from a decree of Krishna Das, Subordinate Judge of Ghazipur, dated the 15th of October, 1929.

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Where the plaintiff deliberately omits to claim a consequential relief and contents himself with claiming a mere declaratory decree, the court cannot call upon him to pay court fees on the consequential relief which he should have claimed although he has omitted to do so.

In the case of suits falling under section 39 of the Specific Relief Act it has, no doubt, been held that although the plaintiff may merely ask for the instrument to be declared void or voidable, without expressly asking for it to be delivered up and cancelled, nevertheless the suit is not one for obtaining a mere declaratory decree but one for obtaining a substantive relief. But the case of a decree stands on a different footing, because a suit to avoid it does not strictly fall under section 39 of the Specific Relief Act. If, however, the plaintiff chooses to ask for a definite relief for the cancellation or the setting aside of the decree, in addition to a declaration that it is not binding on him, he is professedly asking for something more than a mere declaratory decree.

*Kalu Ram v. Babu Lal* (1) explained and distinguished.

A suit for a mere declaration that a certain decree is not binding on the plaintiff does not, strictly speaking, fall within the scope of section 42 of the Specific Relief Act. But that section is not exhaustive so as to exclude all other forms of declaratory suits, and declaratory suits have been entertained and declarations granted by the Privy Council which, strictly speaking, did not fall within the purview of that section. Therefore, although the view can be taken that a suit like the present is not one merely for obtaining a declaratory decree but is essentially one for obtaining a more substantive relief amounting to frustration or cancellation of the decree, yet having regard to the fact that the Court Fees Act being a fiscal measure should be construed strictly and in favour of the subject, and to the long course of decisions in this court, the court fee of ten rupees should be held to be sufficient.

Mr. G. S. Pathak, for the appellant.

Mr. J. P. Bhargava, for the respondents.

SULAIMAN, C. J., MUKERJI and KING, JJ.:—The following question has been referred to the Full Bench for an answer: "Whether the court fee of Rs.10 paid by the plaintiff on the plaint as filed by him was sufficient, and if not, what would be the proper court fee payable."

The plaintiff in this case was a minor suing through a guardian and his case was that in a previous suit brought for the partition of a joint Hindu family property he was not effectively represented by his guardian who was very negligent and careless and did not properly look after his case. The suit was referred to arbitration which resulted in an award which was incorporated in the decree of the court. The plaintiff prayed for the following reliefs specifically: (a) It may be held that Govind Prasad, defendant third party, did not in any way look after the rights of the plaintiff during the pendency of suit No. 65 of 1927, in the court of the Subordinate Judge of Ghazipur, and that he was guilty of gross negligence on account of which the plaintiff was greatly deprived of his rights, and it may be declared that the decree No. 65 of 1927 is not in any way binding upon the plaintiff and is altogether void and ineffectual; (b) In addition to relief (a) any other relief which may, in the opinion of the court, be just may also be granted to the plaintiff against the defendants, together with the costs of this suit. He valued the subject-matter of the suit for purposes of jurisdiction at Rs.45,308 but paid a court fee of Rs.10 for the declaration that the decree is null and void. No separate valuation was given for the reliefs claimed. An attempt to supply it by way of amendment proved infructuous.

The question that arose before the Division Bench was whether the payment of Rs.10 as court fee, treating the relief claimed as one for obtaining a mere declaratory decree, was sufficient or whether the plaintiff was claiming something more, i.e. a substantial relief for which an *ad valorem* court fee should be charged.

Recently a Bench of five Judges has had to consider some provisions of the Court Fees Act in *Kalu Ram v. Babu Lal* (1). In that case the plaintiff had asked for reliefs for adjudging a certain mortgage deed void and ineffectual and for its cancellation and also for the

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cancellation of a compromise decree which resulted in a preliminary decree. The Full Bench pointed out that the reliefs claimed were something more than a mere declaratory decree and that the payment of Rs.10 was not sufficient.

The learned advocate for the respondents has relied strongly on a passage at page 822 where it was remarked that "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." Obviously, the Full Bench did not intend to lay down that where the plaintiff deliberately omits to claim a consequential relief and contents himself with claiming a mere declaratory decree, the court can call upon him to pay court fees on the consequential relief which he should have claimed although he has omitted to do so. What was held was that if the plaintiff does not ask for a mere declaratory decree, but also asks for a relief which he calls "consequential" relief, the mere fact that he calls it so would not prevent the court from demanding full court fee, if in reality the additional relief claimed was a substantive relief and not a mere consequential relief. We do not think that the observation was intended to go further than this.

On the other hand, there is no doubt that so far as suits relating to the cancellation of instruments are concerned, the Full Bench on page 821 clearly held that "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." It was clearly pointed out that it was not incumbent on a plaintiff to ask in express terms a relief for the instrument to be delivered up and cancelled and that he might merely ask for its being adjudged void or voidable. Nevertheless, a suit which falls under section 39 of the Specific Relief Act was held to be not a suit for obtaining a mere declaratory decree, but one for obtaining a substantive relief not otherwise provided for.

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The case of a decree stands on a different footing, because a suit to avoid it does not strictly fall under section 39 of the Specific Relief Act. Strictly speaking, it would not even fall within the scope of section 42 of the Specific Relief Act. Where the plaintiff chooses to ask for a definite relief for the cancellation of a decree or for the setting aside of that decree, in addition to a declaration that the decree is not binding upon him, he is professedly asking for something more than a mere declaratory decree. At the stage at which the question of court fee arises, it is immaterial to consider whether such a relief is superfluous, redundant or useless or even impossible to be granted. Obviously he has asked for more; and so long as he does not amend his plaint and abandon this relief he can be called upon to pay court fee for the relief asked for.

The case before the Full Bench (1) was of such a type. There the plaintiff had in express terms asked for the cancellation of the compromise and the preliminary decree. *Ad valorem* court fee on the consolidated prayer for the cancellation of the compromise and the decree was accordingly held to be due.

As regards the case where the plaintiff stops short of asking anything more than a mere declaration that a certain decree is not binding upon him, opinion in the various High Courts is divided. There is no doubt that section 42 of the Specific Relief Act is not exhaustive so

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as to exclude all other forms of declaratory suits. Indeed, in several cases their Lordships of the Privy Council have entertained declaratory suits and granted declarations which strictly speaking did not fall within the purview of section 42 of the Specific Relief Act. In *Robert Fischer v. Secretary of State for India* (1) their Lordships pointed out that that suit was to have the true construction of a statute declared and to have an act, done in contravention of the statute as rightly understood, pronounced void and of no effect. Their Lordships observed that that is not the sort of declaratory decree which the framers of the Act had in their mind. In *Partab Singh v. Bhabuti Singh* (2) their Lordships granted to minors, against whom a decree had been obtained by the fraud and misrepresentation of their *de facto* guardian and manager, a declaration that the decree was not binding upon them. The actual form of the decree was a decree setting aside the previous decree and declaring that the agreement of compromise and the decree based upon it were not binding upon the minors or either of them, and that they were entitled to such rights as they had before their previous suit was dismissed.

The origin and purpose of section 42 of the Specific Relief Act and the history how declaratory decrees came to be granted have been set out in the judgment of their Lordships in *Robert Fischer's* case (1). No doubt there has been some laxity in allowing plaintiffs to frame their complaints by asking for declarations of all sorts. But where a plaintiff expressly asks for something more than a mere declaration, for example, cancellation or the setting aside of a decree, it is difficult to hold that the claim is one merely for obtaining a declaratory decree. The difficulty arises only where he simply asks that it be declared that a certain decree which has been passed against him previously is null and void and is not binding

(1) (1898) I. L. R., 22 Mad., 270 (252). (2) (1913) I. L. R., 35 All., 487.

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upon him. The view taken in some cases of the other High Courts is that in such a suit the plaintiff is trying to get rid of a decree which stands in his way and which is capable of being executed against him, and that without having that decree set aside or cancelled the plaintiff would have no right to resist its execution, and accordingly such a relief is not one merely for obtaining a declaratory decree but is for obtaining a more substantive relief, which is not specifically provided for in the Court Fees Act and would accordingly fall under article 1 of the first schedule. It cannot be denied that there is something to be said for such a view, because in substance the object of the plaintiff is to frustrate a decree which has been passed against him and to nullify it and to get it out of his way. On the other hand, the Court Fees Act is a fiscal measure and is to be construed strictly and in favour of the subject. There is also no doubt that there is a long course of decisions in this Court in which it has been laid down consistently, and over and over again, that where nothing more than a mere declaration is sought for, the suit is one for obtaining a declaratory decree and no *ad valorem* court fee for such a relief can be charged. We may in this connection refer only to the recent cases of this Court in *Radha Krishna v. Ram Narain* (1), *Brij Gopal v. Suraj Karan* (2), *Lakshmi Narain Rai v. Dip Narain Rai* (3) and *Mohammad Ismail v. Liyaqat Husain* (4). We accordingly think that on the principle of *stare decisis*, if nothing else, this course of decisions should not now be disturbed.

We accordingly hold that inasmuch as the plaintiff in this case merely asked for a declaration that the previous decree was not in any way binding upon him and was altogether void and ineffectual, his suit was one for obtaining a declaratory decree only and falls under article 17(iii) of the second schedule.

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

(2) [1932] A. L. J., 466.

(3) (1932) I. L. R., 55 All., 274.

(4) [1932] A. L. J., 165.

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The learned advocate for the respondents has further urged that inasmuch as the plaintiff added relief (b) which was to the effect that in addition to relief (a) any other relief which may, in the opinion of the court, be just may also be granted to the plaintiff against the defendants, he must be deemed to have claimed more than a mere declaratory decree. But such a relief is unnecessarily added in most plaints and is not intended to mean anything more than reminding the court of its power to grant other reliefs even though not specifically asked for. As the words are too vague and indefinite, and no specific and definite relief is referred to therein, we cannot regard it as one which requires the demand of additional court fee nor do we consider that coupled with the declaratory relief it changes the nature of the relief claimed.

Our answer to the question referred to us is in the affirmative.

### REVISIONAL CRIMINAL

Before Mr. Justice Bennet and Mr. Justice Bajpai  
EMPEROR v. RUDRA DATT BHATT\*

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*District Boards Act (Local Act X of 1922), sections 34, 182—  
Indian Penal Code, section 168—Member of District  
Board engaging in trade on contracts by the Board—  
Sanction to prosecute—Criminal Procedure Code, section  
197—Whether complaint by District Board necessary.*

A member of a District Board, without obtaining the permission of the Commissioner, entered into contracts, in another person's name, given on behalf of the Board by its Education Committee for the supply of coir matting and carried on that business for about two years. The Local Government sanctioned, under section 197 of the Criminal Procedure Code, his prosecution under section 168 of the Indian Penal Code read with section 34 of the District Boards Act. This sanction was conveyed in a letter addressed to the

\*Criminal Revision No. 563 of 1932, from an order of A. Hamilton, Sessions Judge of Kumaun, dated the 25th of July, 1932.