## REVISIONAL CIVIL

*Before Mr. Justice Niamat-ullah and Mr. Justice Kisch*

1932
*December*, 21

LAKSHMI NARAIN RAI (PLAINTIFF) *v.* DIP NARAIN RAI (DEFENDANT)*

*Court Fees Act (VII of 1870), section 7(iv) (c); schedule II, article 17(iii)—Suit for declaration—Declaration that compromise decree is void and declaration of ownership and possession—Consequential relief not asked for—Wrong order demanding additional court fee—Revision—Civil Procedure Code, section 115—"Case decided"—Other remedy available.*

The plaintiff sued for a declaration that he was the owner in possession of a certain property. A further prayer was added for a declaration that a certain compromise decree, which had been passed against him in a former suit respecting that property, was obtained by fraud and therefore void and ineffectual against him. It was expressly stated that no consequential relief for the cancellation of the compromise decree was sought for. *Held*, that as no consequential relief was prayed for, the court fee payable was Rs.20 for the two declarations, and an *ad valorem* court fee was not payable. *Kalu Ram* v. *Babu Lal* (1), distinguished.

*Held*, also, that a revision against the order of the Munsif demanding the payment of an *ad valorem* court fee on the plaint was maintainable. The determination of the question whether an additional court fee should be paid or not marked the termination of a definite stage of the suit and settled the controversy between the parties on the particular point. The order, therefore, amounted to a "case decided" within the meaning of section 115 of the Civil Procedure Code; and the order directing payment of an additional court fee was really an order declining to exercise the jurisdiction of entertaining the suit unless the payment was made. Further, on the question of there being another remedy open to the applicant, it was doubtful whether in all circumstances the applicant would have another remedy. If he paid the additional court fee and was successful in his suit and the other side did not appeal, the applicant would have no remedy for the excess payment, although he might fail to recover his costs from the defendant.

* Civil Revision No. 385 of 1932.

(1) (1932) I.L.R., 54 All., 812.

Mr. *Krishna Murari Lal*, for the applicant.

Mr. *K. L. Misra*, for the opposite party.

NIAMAT-ULLAH and KISCH, JJ. :—The question raised in this application for revision is what is the correct court fee payable on the plaintiff applicant's plaint in which he seeks a declaration that he is the owner in possession of certain zamindari property.

The plaint recites that suit No. 24 of 1901 was instituted by the plaintiff when a minor under the guardianship of his mother to get possession of the said property in respect of which Mangla Prasad Rai, the half-brother of the plaintiff's grandfather and the father of the defendant, had got his name entered in the revenue papers on the death of Mst. Ram Dei Kuar, the widow of the plaintiff's great-uncle. It further avers that this suit had been struck off through the collusion of the mukhtar khas of the plaintiff's mother with Mangla Prasad Rai and that the latter had caused an appeal to be preferred and a compromise to be entered into in the appellate court by a person incompetent to enter into a compromise on behalf of the minor plaintiff. The allegation in the plaint is that the compromise decree was obtained by fraud.

The relief prayed for in the plaint as originally preferred was that it may be declared by the court that the plaintiff is the owner in possession of the property in suit. A court fee of Rs.10 was paid on the plaint. Thereafter the plaintiff applied for the plaint to be amended by the addition of certain words at the beginning of the prayer for relief. The amended prayer read as follows: "On account of the fact that the decree in suit No. 24 of 1901 is according to law null and void, illegal and ineffectual, it may be declared, etc. . . ."

The court below held that by the insertion of these words the plaintiff was asking for the cancellation of the decree in suit No. 24 of 1901, and, this being a consequential relief, an *ad valorem* court fee should be

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paid, based on the value of the property concerned. The learned Munsif relied for this view on the decision of the Full Bench of this Court in *Kalu Ram* v. *Babu Lal* (1).

The correctness of the order of the learned Munsif is challenged by the plaintiff in the present application for revision on the ground that the relief asked for is still only one of declaration and that no consequential relief is prayed for. It is contended on behalf of the applicant that the only effect of the amendment of the plaint is that two declarations are now asked for, firstly, that the decree in suit No. 24 of 1901 is null and void as against the plaintiff, and secondly, that the plaintiff is the owner of the property in suit, and that accordingly only the court fee payable in respect of prayers for mere declaration need be paid. The learned counsel for the applicant has stated before us in express terms that the consequential relief of the cancellation of the compromise decree is not asked for and that the applicant is prepared to take the consequences of the failure to ask for such consequential relief, whatever they may be.

In view of these clear statements by the applicant's counsel it seems to us that his contention as to the court fee payable must be accepted. It has been held by this Court in a very similar case that a suit for a mere declaration that a compromise and a decree on its basis are null and void is not to be deemed one in which consequential relief is prayed: *Radha Krishna* v. *Ram Narain* (2). In that case the relief originally prayed and on which a court fee of Rs.10 had been paid was for cancellation of a compromise and the decree based upon it, on the allegation that the plaintiff was a minor and that he was not bound by the compromise and decree which were obtained by fraud. On objection being raised the plaintiff amended his plaint to the effect that it be declared that the petition of compromise

(1) (1932) I.L.R., 54 All., 812. (2) (1931) I.L.R., 53 All., 552.

and the decree were ineffectual as against the plaintiff and that he was not bound thereby. It was held by a Bench of this Court that the plaint as amended was sufficiently stamped, the suit as framed being to obtain a declaratory decree where no consequential relief was prayed. It was further held that the question of court fee must be decided on the plaint and the decision is not affected by the question whether the suit is maintainable under section 42 of the Specific Relief Act or by any action subsequently taken by the plaintiff to obtain an injunction otherwise than by amendment of the plaint. Similarly, in *Brij Gopal* v. *Suraj Karan* (1) it was held by a Bench of this Court that for the purpose of determination of the court fee the actual relief asked for should be looked into, and it is entirely beside the consideration of the court whether the suit is likely or not to fail because the plaintiff did not ask for a consequential relief.

We are of opinion that the principles laid down in these rulings apply to the present case. The case is distinguishable from *Kalu Ram* v. *Babu Lal* (2), because in that case there were distinct prayers for the cancellation of the mortgage deed impugned in the plaint and for the cancellation of the compromise and the decree.

In our opinion the effect of the amendment is to add to the relief originally prayed for, a prayer for a further declaration that the decree in suit No. 24 of 1901 is ineffectual against the plaintiff, for which he must pay a further court fee of Rs.10.

It has been contended by the learned counsel for the opposite party that no revision lies, because the order of the court below directing the payment of additional court fee is merely an interlocutory order, no case has been decided within the meaning of section 115 of the Code of Civil Procedure and the plaintiff's proper

(1) [1932] A.L.J., 466. (2) (1932) I.L.R., 54 All., 812.

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course was to wait for the dismissal of the suit by disobeying the order and then move this Court by way of appeal.

In our opinion this contention cannot be accepted. In *Ramrup Das* v. *Mohunt Shiyaram Das* (1) it was held by a Bench of the Calcutta High Court that the High Court can interfere in revision in such interlocutory orders where the orders appear to be a denial of jurisdiction. The same view was taken by the Madras High Court in *Dodda Sannekappa* v. *Sakravva* (2) in which it was held that an order for payment of deficient court fee was really an order declining to entertain jurisdiction unless certain things were done. The High Court can interfere in revision with an erroneous order for payment of deficient court fee and it is not necessary that the plaintiff should wait for the dismissal of the suit by disobeying the order and then move the High Court by way of appeal or revision. A number of earlier decisions of the Madras High Court on the subject were reviewed by a Bench of that Court in *Kulandaivelu Nachiar* v. *Indran Ramaswami Pandia* (3) and the competency of the High Court to interfere with such an order in revision was re-affirmed. The Patna High Court has also interfered in revision with similar interlocutory orders in *Bankey Behari* v. *Ram Bahadur* (4) and *Maharaj Bahadur Singh v. Raja Prithichand Lal* (5).

No case of this Court interfering in revision with an order to pay additional court fee has been brought to our notice, but there are certain decisions of this Court which have a bearing on the point under consideration. In *Jagannath Sahu* v. *Chhedi Sahu* (6) the question before this Court was whether it could interfere in revision with an order refusing to supersede an arbitration when the arbitrator had been appointed without compliance with the provisions of paragraph 5 of the second

(1) (1910) 14 C.W.N., 932.
(2) (1916) 36 Indian Cases, 831.
(3) (1927) I.L.R., 51 Mad., 664.
(4) (1918) 44 Indian Cases, 891.
(5) A.I.R., 1929 Pat., 427.
(6) (1928) I.L.R., 51 All., 501.

schedule of the Code of Civil Procedure and the court had refused to supersede him on the application of the aggrieved party. It was held by a Bench of this Court that the order applied against was clearly an order deciding a case within the meaning of section 115 of the Code of Civil Procedure, and therefore the application for revision was competent. In the course of their judgment the learned Judges observed that "On the 29th of May, 1928, the controversy between the parties was whether the arbitration should be superseded or should be continued and another arbitrator appointed in place of Babu Bhagwati Prasad, as desired by the defendant. The court settled that controversy by its order of that date, which directed that the arbitration should continue and appointed Babu Ganesh Prasad to act as arbitrator. The controversy thus terminated. We think that the order of the learned Subordinate Judge in that connection was clearly an order deciding a case within the meaning of section 115 of the Code of Civil Procedure."

A similar view was taken in *Puran Lal* v. *Rup Chand* (1). The *ratio decidendi* in these cases is that where the order of the court below disposes of the entire matter in controversy at the particular stage of the case, such an order can be made the subject of an application in revision. We think that the same reasoning is applicable to the present case and the determination of the question whether an additional court fee should be paid or not marked the termination of a definite stage of the suit and settled the controversy between the parties on the particular point. In our opinion, therefore, the order of the court below is an order deciding a case and amounts to a failure to exercise a jurisdiction vested in that court. Such an order can be the subject of an application in revision to this Court.

(1) (1931) I.L.R., 53 All., 778.

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It is further contended that this Court ought not to interfere as there is another remedy open to the applicant. In the present case it is doubtful whether in all circumstances the applicant would have another remedy open to him. If the applicant having paid the additional court fee was successful in his suit and the other side did not appeal, the applicant would have no further opportunity to agitate the matter of his wrongly having been called upon to pay additional court fee, even though he might fail to recover his costs from the defendant.

We accordingly allow the application in revision with costs and direct that the plaint be admitted on the payment within two months of a further sum of Rs.10 as court fee.

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*Before Mr. Justice Iqbal Ahmad.*

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*December*, 23

LAL SINGH (PLAINTIFF) *v.* GULAB RAI (DEFENDANT)*

*Limitation Act (IX of 1908), section 20, proviso—Part payment of principal—Acknowledgment of such payment in the handwriting of the debtor—Such acknowledgment need not be within limitation if the payment is within time.*

The part payment of the principal of a debt, made within the period of limitation, gives a fresh start to the period of limitation, provided an acknowledgment of the payment appears in the handwriting of, or in a writing signed by, the person making the payment. But it is not necessary that the acknowledgment of the payment in the handwriting of the debtor should be made within the period of limitation. It is enough if the payment is made within the period of limitation and it does not matter that the acknowledgment in writing is made by the debtor after the expiry of the period of limitation.

Mr. *Panna Lal*, for the applicant.

The opposite party was not represented.

IQBAL AHMAD, J. :—This is a plaintiff's application and is directed against the decree of a court of small

* Civil Revision No. 469 of 1932.