

It is only defendants who have acted honestly, although they might have exceeded the actual power conferred upon them by an enactment, who would be protected. Of course, where it is established that the act done was in strict accordance with an enactment, there would be an obvious protection. But even where the power was exceeded, there would be protection in cases of good faith and *bona fide* belief. We are, therefore, of opinion that although the language of the section is unhappy, there is no good ground for departing from the view which had been expressed under the old Act and in support of which there is a preponderance of authority in India.

If the defendant were to satisfy the court that at the time when he made the report he acted honestly on some information received, he would be protected, even though the report might turn out to be absolutely false but not so to the knowledge of the defendant.

We accordingly allow this appeal and setting aside the decrees of the courts below send the case back to the trial court through the lower appellate court for disposal according to law.

APPELLATE CIVIL

Before Mr. Justice Thom and Mr. Justice Iqbal Ahmad

ISHWAR DAYAL (PLAINTIFF) *v.* AMBA PRASAD AND
OTHERS (DEFENDANTS)*

1935
February, 18

Court Fees Act (VII of 1870), section 7(iv)(c); schedule II, article 17(iii)—Declaratory suit—"Consequential relief"—Whether two declarations, or a declaration with a consequential relief—Suit by son for a declaration that a mortgage of family property made by the father was unenforceable and that the property was not saleable in execution of the mortgage decree.

A suit was brought by a Hindu son for a declaration that a certain mortgage of the family property made by the father was unenforceable, on the ground of want of legal necessity,

*First Appeal No. 139 of 1933, from a decree of Kedar Nath Mehra, Subordinate Judge of Bulandshahr, dated the 14th of February, 1933.

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and that the family property was not saleable in execution of the decree for sale which had been obtained on that mortgage: *Held*, that the suit was for a declaratory decree where no consequential relief was prayed, and the court fee payable was the fixed fee under article 17(iii) of the second schedule of the Court Fees Act, and not an *ad valorem* fee under section 7(iv)(c).

“Consequential relief” means some relief which is a necessary corollary to the principal declaratory relief prayed for. Instances of “consequential relief” are furnished by cases in which, over and above the prayer for declaration of his title, the plaintiff asks for some relief by way of injunction, or possession, or appointment of receiver, or partition of his share, etc. Such cases must be distinguished from cases in which two or more declaratory reliefs are prayed for. It may be that one of such declaratory reliefs can in one sense be said to follow from the other declaratory relief claimed, but this fact alone can not make a declaratory relief a consequential relief within the meaning of section 7(iv)(c) of the Court Fees Act.

In the present case the declaratory relief prayed for, that the mortgage was unenforceable and that the property was not saleable in execution of the mortgage decree, was really only one declaratory relief, for the reason that at the date of the suit the mortgage had merged in the decree and had ceased to exist. Indeed, if the plaintiff had simply asked for a declaration that the property was not saleable in execution of the decree, that relief could, on proof of the facts alleged by the plaintiff, have been granted to him; that relief was, therefore, a declaratory relief and not a consequential relief.

Mr. C. B. Agarwala, for the appellant.

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

THOM and IQBAL AHMAD, JJ.:—This appeal arises out of a suit brought by the plaintiff appellant for a declaration that the hypothecation bond, dated the 2nd of January, 1925, executed by defendant No. 2, the father of the plaintiff, in favour of defendant No. 1 was unenforceable and that the family property mortgaged by that deed was not saleable in execution of an *ex parte* decree for sale obtained by defendant No. 1 on the basis of the said mortgage deed. The plaintiff also prayed for a declaration that “the purchase made by defendant No. 3 in execution of a simple money decree . . . is

nul and void as against the plaintiff and the property in dispute."

The plaintiff valued the suit for the purpose of jurisdiction at Rs.10,000 and paid a court fee of Rs.20. The plaintiff's case was that there was no legal necessity for the execution of the mortgage deed by defendant No. 2, and the amount, if any, borrowed by defendant No. 2 was spent by him on "improper acts and immoral purposes". It was recited in the plaint that defendant No. 1 obtained an *ex parte* decree on the basis of the mortgage deed without impleading the plaintiff. The relief as against defendant No. 3 mentioned above was based on the allegation that the purchase made by her was in execution of a simple money decree with respect to a debt that was taken by defendant No. 2 for immoral purposes.

Defendant No. 1 alone contested the suit and one of the pleas raised by him was that *ad valorem* court fee on Rs.10,000 was payable and the plaint was insufficiently stamped. The learned Subordinate Judge, relying on the Full Bench decision in the case of *Kalu Ram v. Babu Lal* (1), accepted the contention of the defendants and called upon the plaintiff to pay *ad valorem* court fee on Rs.10,000. He granted time to the plaintiff for making good the deficiency in the court fee, but as the plaintiff failed to make good the deficiency he dismissed the suit with costs.

The plaintiff has come up in appeal to this Court and it is contended on his behalf that the court fee paid on the plaint was sufficient and the view taken by the court below was erroneous. In our judgment this contention is well founded.

The question whether the court fee paid is or is not sufficient must be decided with reference to the relief prayed for in the plaint, irrespective of the fact whether the omission of the plaintiff to ask for some further or

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

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consequential relief would or would not entail the dismissal of the suit in view of some statutory provision, e.g. the provisions of section 42 of the Specific Relief Act. At the stage at which the consideration of the question of court fee arises the court is not concerned with the question as to what reliefs should have been prayed for by the plaintiff. It has to confine its attention to the reliefs contained in the plaint and to see whether the court fee paid by the plaintiff is or is not sufficient in accordance with the provisions of the Court Fees Act. Further, in the decision of the question of court fee the court has to bear in mind the principle that a fiscal enactment is to be strictly construed and in favour of the subject.

It is contended on behalf of the plaintiff appellant that as the plaintiff merely prayed for a declaratory decree the case fell within the purview of article 17(iii) of the second schedule to the Court Fees Act, which provides a fixed court fee of Rs.10 for a plaint "to obtain a declaratory decree where no consequential relief is prayed". It is contended, on the other hand on behalf of the defendants respondents that the prayer contained in the plaint was not only for a declaratory decree but also for a consequential relief and the plaintiff was therefore liable to pay *ad valorem* court fee on the amount (Rs.10,000) in accordance with section 7(iv)(c) of the Court Fees Act which provides about court fee in suits to obtain a declaratory decree or order where consequential relief is prayed.

The Full Bench decision in *Kalu Ram v. Babu Lal* (1), mentioned above, has no application to the case before us. In that case the relief prayed for in the plaint was for the cancellation of an instrument and also for the cancellation of the compromise, the preliminary decree and the final decree in a certain suit, and it was held by this Court that the court fee payable was under the residuary article, schedule I, article 1 of the Court Fees

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Act. We are not concerned in the present case with any prayer for the cancellation of any instrument or for the cancellation of any decree. The only question that we have to consider is whether the reliefs sought by the plaintiff were mere declaratory reliefs or there was also a consequential relief prayed for by the plaintiff. In the Full Bench case mentioned above it was observed that the words "consequential relief" in section 7(iv)(c) mean some relief which follows directly from the declaration given and "cannot be claimed independently of the declaration as a substantive relief". Similarly in *Murza Hyder Alli v. Hussain Raza Sahib* (1), it was held that consequential relief means a substantial and immediate remedy in accordance with the title that the court has been asked to declare. In short, consequential relief means some relief which is a necessary corollary to the principal declaratory relief prayed for by the plaintiff. Instances of consequential relief within the meaning of section 7(iv)(c) of the Court Fees Act are furnished by cases in which, over and above the prayer for declaration of his title, the plaintiff asks for some relief by way of injunction, or possession, or appointment of receiver, or for partition of his share, etc. Such cases must be distinguished from cases in which two or more declaratory reliefs are prayed for by the plaintiff. It may be that one of such declaratory reliefs can in one sense be said to follow from the other declaratory relief claimed by the plaintiff, but this fact alone cannot make a declaratory relief a consequential relief within the meaning of section 7(iv)(c) of the Court Fees Act. Instances of suits in which more than one declaratory relief were prayed for and each of the reliefs was held to be an independent declaratory relief are furnished by the decisions of this Court in *Brij Gopal v. Suraj Karan* (2), *Lakshmi Narain Rai v. Dip Narain Rai* (3) and *Abdul Samad Khan v. Anjuman Islamia*,

(1) (1914) 24 Indian Cases, 316.

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

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

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Gorakhpur (1). In the last mentioned case the plaintiff prayed for a declaration that a deed of gift executed by a certain person in favour of the defendant was illegal and ineffectual as against the plaintiff and that the defendant had no right to interfere with the possession of the plaintiff. It was held that a court fee of Rs.20 paid on the plaint was sufficient as the relief claimed in the plaint involved two declarations.

In the case before us the declaratory relief prayed for by the plaintiff—that the hypothecation bond was unenforceable and that the family property was not saleable in execution of the decree obtained by defendant No. 1—was really only one declaratory relief, for the simple reason that on the date of the suit the hypothecation bond had merged in the decree and had ceased to exist, and it was the apprehension of the family property being sold in execution of the decree that led the plaintiff to institute the suit and to claim the relief noted above. Indeed, if he had simply asked for a declaration that the property was not saleable in execution of the decree, that relief could, on proof of the facts alleged by the plaintiff, have been granted to him. The relief for a declaration that the family property was not saleable in execution of the decree was, therefore, a declaratory relief and not a consequential relief. The plaint was therefore sufficiently stamped and the court below was wrong in dismissing the suit.

For the reasons given above we allow this appeal, set aside the decree of the court below and remand the case to that court with directions to re-admit it to its original number and to try and dispose of it according to law. Costs here and hitherto shall be costs in the cause and shall abide the result.

(1) [1933] A.L.J., 1537.