

Before Mr. Justice Brodhurst and Mr. Justice Mahmood.

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July 17.

SOMKALI (PLAINTIFF) v. BHAIRO (DEFENDANT).*

Declaratory decree—Consequential relief—Act I of 1877 (Specific Relief Act), s. 42.

S sued B in a Court of Small Causes for arrears of ground-rent of a house. The latter denied S's proprietary right to the land and his liability to pay ground-rent, and S's suit was in consequence dismissed. Thereupon S sued B in the Civil Court for a declaration of proprietary right to the land and of his right to receive ground-rent.

Held that the suit was not barred by the proviso to s. 42 of the Specific Relief Act because it did not include a claim for arrears of ground-rent; and that the suit was one in which the specific relief claimed might properly be granted.

The principle laid down in *Sadut Ali Khan v. Khajeh Abdool Gunnee* (1) applied

THE facts of this case are sufficiently stated for the purposes of this report in the judgment of Mahmood, J.

The *Senior Government Pleader* (Lala Juala Prasad) and *Munshi Hanuman Prasad*, for the appellant.

Munshi Kashi Prasad, for the respondent.

The Court (BRODHURST, J., and MAHMOOD, J.) delivered the following judgments :—

MAHMOOD, J.—The plaintiff came into Court on the allegation that the land in suit was the property of Manki, who executed a will in favour of the plaintiff on the 12th June, 1879, bequeathing all her property to the plaintiff; that the testatrix placed the plaintiff in possession of all her property before her death, which occurred on the 16th June, 1879; that 1½ biswas of land formed part of the property of Manki and devolved upon the plaintiff under the above-mentioned will; that the land was occupied by the house of the defendant, whose wife Anandi had executed a kabuliyat, dated Aghan Sudi 15th, Sambat 1905, whereunder she paid Rs. 7-0-0 per annum as ground-rent to the plaintiff; that upon her death the defendant continued in possession of the house as heir to his wife, and was consequently liable to the payment of ground-rent; that on the 18th September, 1880, the plaintiff instituted a suit in the

*Second Appeal No. 1502 of 1881, from a decree of G. E. Knox, Esq., Judge of Benares, dated the 16th September, 1881, affirming a decree of Babu Mritonjoy Mukarji, Munsif of Benares, dated the 2nd August, 1881.

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Small Cause Court for recovery of Rs. 21, ground-rent, from the defendant ; that in that suit the defendant denied the proprietary right of the plaintiff in respect of the land and his liability to pay ground-rent ; and that the suit was in consequence dismissed on the 24th December, 1880. On these allegations the plaintiff prayed for a decree establishing her proprietary right in respect of the land, and for a declaration of her right to receive Rs. 7 per annum from the defendant as *parjote* or ground-rent in respect of the land occupied by the defendant's house. The defendant resisted the suit by a total denial of the plaintiff's right to the land, and set up various other pleas which need not be noticed. The Court of first instance held that the real object of the suit was not to obtain a declaration of the plaintiff's proprietary right to the land, but a declaration that she was entitled to recover rent for it at the rate of Rs. 7 per annum, so that her suit for recovery of ground-rent might not in future be liable to dismissal by the Small Cause Court on the defendant's pleading the plaintiff's want of right ; that the plaintiff could obtain her full remedy in the Court of Small Causes which was bound to give her a decree for rent, if it found her entitled to recover it ; and that it was therefore " not in consonance with judicial and equitable principles to grant her the declaratory decree asked for in the suit." The Court further held that the proviso to s. 42 of the Specific Relief Act barred the suit, as it did not include a claim for arrears of rent due to the plaintiff from the defendant. On these grounds the Munsif dismissed the suit without going into the merits.

The lower appellate Court has upheld the Munsif's decree, being of opinion that, because it was in the plaintiff's power to have sued for recovery of past arrears of rent along with the claim for a declaratory decree in respect of the land, and the suit did not include a claim for further relief, it was therefore barred by the proviso to s. 42 of the Specific Relief Act.

I am of opinion that both the lower Courts have taken an erroneous view of the case, and have placed a wrong construction on the proviso to s. 42 of the Specific Relief Act. In the first place, the Munsif totally misunderstood the express prayer in the plaint, which distinctly sought to obtain a declaration of proprietary right

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in respect of the land, and was not confined to a mere declaration of the plaintiff's right to recover ground-rent at the rate of Rs. 7. The proprietary right to the land itself was therefore included in the subject-matter of the suit; and having regard to the express language of the plaint, it is difficult to conceive how the Munsif arrived at the conclusion that "the real object of the suit was not to obtain a declaration of the plaintiff's proprietary right to the land." Such being the case, both the lower Courts have erred in holding that the suit was one in which the plaintiff had omitted to sue for consequential relief in respect of the same cause of action. In a suit of this nature the only consequential relief could have been recovery of possession of the land, a relief to which the plaintiff is admittedly not entitled, as, although she claims the declaration of proprietary right to the land, her whole case is that that proprietary right does not entitle her to oust the defendant, but only to recover ground-rent from him. It was therefore not in her power to claim "further relief" in this suit beyond a mere declaration of proprietary right in respect of the land, a right which according to her case entitled her to claim Rs. 7 per annum as ground-rent from the defendant. It is true that she does not claim recovery of arrears of rent in this suit, but that circumstance alone is not sufficient to make her claim less complete, so far as her declaratory suit is concerned. The claim for arrears of rent, though dependent upon proprietary title, is in itself a separate claim, which may or may not be joined with a suit to obtain a declaration of title to immoveable property, and like mesne profits the arrears of rent may form the subject of a separate suit. Indeed, it is only by the express provisions of the Civil Procedure Code, s. 44, *Rule a., Exception (a)*, that a plaintiff has the option of joining claims in respect of mesne profits or for arrears of rent with a suit relating to immoveable property; but his claim is none the less complete if he omits to join such claims with a suit relating to immoveable property. Moreover, in the present case there was sufficient reason for the plaintiff for not joining the claim for arrears of rent with the present suit. A claim for recovery of arrears of rent was cognizable by the Small Cause Court of Benares, and the plaintiff was at liberty to seek that relief by a suit in that Court. On the other hand, she is entitled, if so advised, to relinquish her claim for ar-

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rears of rent altogether, and her suit for a declaration of right cannot fail by reason of such relinquishment. The suit therefore did not fall under the prohibitory proviso to s. 42, Specific Relief Act.

But the question remains to be determined whether the present case is one in which the Court would be justified in granting specific relief.

S. 42 of the Specific Relief Act lays down that "any person entitled to any legal character or to any right as to any property may institute a suit against any person denying, or interested to deny, his title to such character or right, and the Court may, in its discretion, make therein a declaration that he is so entitled, and the plaintiff need not in such suit ask for any further relief." Now, in the present case the defendant not only denies the plaintiff's right, but his denial has actually prevented the plaintiff from obtaining her relief in the Court of Small Causes in which the suit for recovery of arrears of rent was formerly instituted. The Munsif has held that the Court of Small Causes was bound to decide the plaintiff's suit for arrears of rent on its own merits, and that that Court had erred in declining to entertain that suit because the plaintiff's right to the land was denied by the defendant. Be it as it may, the fact remains that the position taken up by the defendant has prevented the plaintiff from obtaining relief in a Court which, but for defendant's denial of the plaintiff's right, would have adjudicated upon her claim for arrears of rent. Moreover, it is quite clear that the decision of the Small Cause Court could in no case constitute a final adjudication in regard to the proprietary right to the land, so as to bind the parties, and finally settle the dispute between them. In the case of *Sadut Ali Khan v. Khojeh Abdool Gunnee* (1) the Lords of the Privy Council held that the Court had exercised a sound discretion in entertaining a suit for a declaratory decree where a zemindar, who in a suit for enhancement had had his zemindari right denied, came into Court to have that right ascertained and declared. In laying down this rule their Lordships observed:—"It must be assumed that there must be cases in which a merely declaratory decree may be made without granting any consequential relief, or in which the party does not actually seek for conse-

(1) 19 W. R. 171.

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quential relief in the particular suit ; otherwise the 15th section of the Code of Civil Procedure (Act VIII of 1859) would have no operation at all. What their Lordships understand to have been decided in India on this article of the Code, and in the Court of Chancery upon the analogous provision of the English Statute, is that the Court must see that the declaration of right may be the foundation of relief to be got somewhere. And their Lordships are of opinion that that condition is sufficiently answered in the present case, even if it be assumed that no other consequential relief was in the mind of the party, or was sought by him, than the right to try his claim to enhance in the other *forum* in which he is now compelled by statute to bring an enhancement suit. It was a necessary preliminary to such a suit that he should establish his right to a share in the zemindari title."

This principle, in my judgment, is fully applicable to the present case. A final adjudication by a Court of competent jurisdiction is the only means which can preclude the defendant from harassing the plaintiff in the Small Cause Court, by resisting her claims for arrears of rent, on the ground that she has no proprietary title to the land and no right to receive ground-rent from him. The nature of the suit was therefore a fit one for granting a declaratory decree, and the lower Courts ought to have tried the case on the merits.

I would decree this appeal, and setting aside the decrees of both the lower Courts, remand the case to the Court of first instance under s. 562, Civil Procedure Code, for trial on the merits. Costs to abide the result.

BRODHURST, J.—I concur in decreeing the appeal and in remanding the case under s. 562 for disposal on the merits.

Cause remanded.
