

## FULL BENCH

Before Mr. Justice G. H. Thomas, Chief Judge, Mr. Justice  
Ziaul Hasan and Mr. Justice R. L. Yorke

BEPIN SINGH, (PLAINTIFF-APPELLANT) v. BHAGWAN  
SINGH AND OTHERS (DEFENDANTS-RESPONDENTS)\*

1938  
August, 29

*Court Fees Act (VII of 1870), section 7 (iv)(c) and Schedule II, Article 17(iii)—Specific Relief Act (I of 1877), section 42—Declaratory suit—Suit for declaration that a decree is not binding on plaintiff—Question, whether decree sought is for mere declaration or involves consequential relief, determination of.*

The question whether a decree sought by a plaintiff is a mere declaratory decree without any consequential relief coming under article 17(iii) of the second schedule of the Court Fees Act or whether it is a decree with consequential relief, governed by section 7(iv)(c) of the Court Fees Act, depends not on whether or not the plaintiff was a party to the decree which he is seeking to avoid but on whether or not the relief claimed comes under section 42 of the Specific Relief Act. *Case law discussed.*

The case was originally heard by a Bench consisting of ZIAUL HASAN and HAMILTON JJ., who considering the question involved to be an important one, referred it for decision by a Full Bench. The referring order of the Bench is as follows:

ZIAUL HASAN and HAMILTON, JJ.:—This is an appeal in a suit in which the plaintiff alleged that if the defendants were mortgagees of certain property they nevertheless had no rights in it and in any case the plaintiff himself was not bound by that decree. A mortgage was executed by the father of the plaintiff and a decree was obtained. The office reported in this case that the suit was not for a simple declaration but one with a consequential relief contained in clause (a) (the last portion) and in clause (b) of the reliefs, and court-fees should be *ad valorem*.

The learned counsel for the appellant urges that the contention of the office that the decision in the case reported in *Roop Rani and another v. Bithal Das* (1) rules this case is unsound because in that case the plaintiff who sought what

\*First Civil Appeal No. 91 of 1936, against the decree of Pandit Kishen Lal Kaul, Subordinate Judge of Fyzabad, dated the 27th of May, 1936.

(1) (1937) I.L.R., 13 Luck., 628.

he claimed to be a mere declaration was a judgment-debtor and the effect of his obtaining a declaration would really mean setting aside a decree, while in this case the decree that was passed was not passed against the present plaintiff but against his father. There is undoubtedly this difference between the two cases, but it is doubtful whether this difference in practice is in reality a difference and not a mere distinction. The case in *Roop Rani v. Bithal Das* (1), has settled the law in this Court as regards suits for declaration by persons who were parties to a decree but has not settled it as regards plaintiffs who were not parties to a decree.

The matter for decision now is, in our opinion, no less important than the matter that was up for decision before that Full Bench and we consider that it is equally important that the question for decision now should be similarly decided by a Full Bench.

We, therefore, under section 14(1) of the Oudh Courts Act refer the following question for decision by a Full Bench of this Court:

When a plaintiff not party to a decree seeks a declaration that he is not bound by that decree or that a decree-holder cannot proceed against certain property, is he seeking to obtain a declaratory decree where consequential relief is prayed within the meaning of section 7(iv)(c) of the Court Fees Act and is he therefore bound to pay court fees accordingly?

Messrs. *Radha Krishna Srivastava* and *N. Banerji*, for the appellant.

Messrs. *H. S. Gupta*, Government Advocate, and *Durga Dayal*, for the respondents.

ZIAUL HASAN, J.:—In this first appeal the office made a report that the plaintiff-appellant who had paid court-fee on his memorandum of appeal under article 17(iii) of the second schedule of the Court Fees Act should pay *ad valorem* court-fee on the valuation of the appeal. This report was objected to by the learned counsel for the plaintiff-appellant and the matter came before a Division Bench of this Court of which I was a member. The learned counsel for the appellant relied on the Full Bench case of *Roop Rani v. Bithal Das* (1) in which it

1938

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 BEPIN  
SINGH  
v.  
BHAGWAN  
SINGH
 

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 1938  
August, 22
 

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(1) (1937) I.L.R., 13 Luck., 628.

1938

BEPIN  
SINGH  
v.  
BHAGWAN  
SINGH

Ziaul Hasan,  
J.

was said that when a person who is a party to a decree asks for a declaration about the decree being illegal and void, the grant of such a declaration in his favour necessarily has the effect of setting aside the decree and relieving him of the obligation under it and that in such a case a consequential relief should therefore be deemed to be implied in the prayer for the declaration claimed and the plaint should accordingly bear *ad valorem* court-fee under section 7(iv)(c) of the Court Fees Act. On these remarks it was contended that the rule laid down in that case did not apply to the case of a person who like, the present plaintiff-appellant, was not a party to the decree about which the declaration is sought. We were not however sure that the reasons underlying that decision turned on whether or not the plaintiff was a party to the decree which he was seeking to avoid. We therefore framed the following question for decision by a Full Bench :

“ When a plaintiff not a party to a decree seeks a declaration that he is not bound by that decree or that a decree-holder cannot proceed against certain property, is he seeking to obtain a declaratory decree where consequential relief is prayed within the meaning of section 7(iv)(c) of the Court Fees Act and is he therefore bound to pay court fees accordingly?

The Full Bench has now heard the arguments of the learned counsel for the plaintiff-appellant and of the learned Government Advocate to whom notice was issued by the Division Bench on the point.

No doubt a large number of cases specially of the Madras and Lahore High Courts appear to favour the view contended for by the learned counsel for the appellant but there are decisions to the contrary also:

On behalf of the appellant reliance is placed on the cases of *Sri Ram v. Mathura Prasad* (1), *Roop Rani v. Bithal Das* (2), *Arunachalam Chetty v. Rangaswamy*

(1) (1924) 1 O.W.N., 582.

(2) (1937) I.L.R., 13 Luck., 628.

Pillai (1), Paluri Venkatasiva Rao v. Bodapati Venkatanarasimha Satyanarayanamurty (2), Manakkat Tekkepeedikayil Kooleri Naduyile Puruyil Abdullah v. Subramanyan Pattar (3), Vedala Vallabhacharyulu v. Vedala Rangacharyulu (4), Nihal Devi v. Rai Chumni Lal (5), Sukh Dial v. Durga Das (6), and Karam Chand v. Uma Dutt-Hansraj (7). On the other hand the learned Government Advocate relies on the cases of Deoraj v. Kunj Behari (8), Lallo Prasad v. Sahebdin Singh Surendra Narain Singh v. Shambhari Singh (11), Surendra Narain Singh v. Shambhari Singh (11) Dattaji Parashramji Kumbi v. Bhagirathi (12), Daroga Govind Rao v. Mohar Govind Rao (13), and Deokali Koer v. Kedar Nath (14).

1938

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 BEFIN  
SINGH  
S.  
BHAGWAN  
SINGH
Ziaul Hasan,  
J.

The case of *Sri Ram v. Mathura Prasad* (15) was decided by a Bench of the Court of the Judicial Commissioner of Oudh. In that case a plaintiff who was no party to a mortgage decree sued for a declaration that the property belonged to him and was not liable to be sold in execution of the decree. It was held that the plaintiff being no party to the mortgage decree, the suit did not involve a consequential relief and the court-fee of Rs.10 paid by him was sufficient.

The decision in the Full Bench case in *Roop Rani v. Bithal Das* (16) has already been quoted by me but it cannot to my mind be deemed to have laid down that a person who is not a party to a decree which he is seeking to avoid is not liable to pay *ad valorem* court-fee for the declaration sought by him. Because in that case the plaintiff was a party to the decree about which he was seeking a declaration and because it was there held that he should pay *ad valorem* court-fee, it cannot logically be argued that the rule laid down in that case is in

(1) (1914) I.L.R., 38 Mad., 922.

(3) (1936) A.I.R., Mad., 470.

(5) (1923) A.I.R., Lah., 373.

(7) (1930) A.I.R., Lah., 755.

(9) (1933) 11 O.W.N., 438.

(11) (1921) I.L.R., 1 Pat., 197.

(13) (1936) A.L.J., 578.

(15) (1924) 1 O.W.N., 582.

(2) (1932) I.L.R., 56 Mad., 212

(4) (1937) A.I.R., Mad., 449.

(6) (1929) A.I.R., Lah., 446.

(8) (1929) I.L.R., 5 Luck., 474.

(10) 1934) 11 O.W.N., 1292.

(12) (1938) A.I.R., Nag., 183.

(14) (1912) I.L.R., 36 Cal., 704

(16) (1937) I.L.R., 13 Luck., 628.

1938

BEPIN  
SINGH  
v.  
BHAGWAN  
SINGH

every case inapplicable to that of a plaintiff who is not a party to the decree. To my mind the words "when a person who is a party to a decree" occurring in the judgment of the late Mr. Justice SRIVASTAVA did not imply that a contrary rule will hold good in the case of a person who is not a party to the decree in question.

Ziaul Hossain,  
J.

The Full Bench case of *Arunachalam Chetty v. Rangaswamy Pillai* (1) does not also help the appellant in my opinion. In that case also the persons seeking the declaration were parties to the decree and no rule was laid down in that case about the court-fee on a suit brought by a person who was not a party to the decree the subject of the suit. The learned counsel relies on the following remark occurring in the order of reference :

"The case might be different where a declaration is sought by a person who is not a party to the bond or the decree. In a case like that the suit may properly be regarded as one for declaration. . . ."

This was only an opinion expressed by the Judges referring the case to a Full Bench and the judgment of the Full Bench does not appear to have endorsed it, nor indeed was it necessary to do so as the case was that of a person seeking to avoid a decree to which he himself was a party.

The case of *Paluri Venkatasiva Rao v. Bodapati Venkatanarasimha Satyanarayanamurthy* (2), is not also in point not only because the plaintiff in that case was, unlike the present appellant, a party to the decree, but also because the decision in the case rested on a local Court Fees Act of the Madras Presidency.

The decision in *Manakkat Tekkepeedikayil Kooleri Naduyile Purayil Abdullah v. Subramanayan Pattar* (3) is a single-Judge decision and is based on the following remark of ANANTA KRISHNA AYYAR, J. in *Paluri*

(1) (1914) I.L.R., 38 Mad., 922. (2) (1932) I.L.R., 56 Mad., 212.

(3) (1936) A.I.R., Mad., 470.

*Venkatasiva Rao v. Bodapati Venkatanarasimha Satyanarayanamurty* (1):

1938

BEPIN  
SINGH  
v  
BHAGWAN  
SINGH

“A decree will have full force and binding effect between the parties to it until it is set aside by the persons who were parties to it; but persons who were not parties to it can only sue for a declaration in respect of their rights in relation to the decree.”

Ziaul Hasan,  
J.

But in view of the fact that the plaintiff in case of *Venkatasiva Rao v. Satyanarayanamurty* (1) was a party to the decree and of the decision in that case that the suit was a suit for cancellation of the previous decree falling within section 7(iv-A) (as amended by Madras Act V of 1922) of the Court Fees Act, it cannot be said that what ANANTA KRISHNA AYYAR, J. said is a general proposition of law. The case of *Vallabhacharyulu v. Rangacharyulu* (2) follows the case of *Venkatasiva Rao v. Satyanarayanamurty* (1) and the same remark of ANANTA KRISHNA AYYAR, J. has been referred to with approval.

In *Nihal Devi v. Chunni Lal* (3), the suit was for a declaration that a mortgage decree obtained against certain property be declared void and inoperative and not liable to execution *qua* the property in suit on the ground that the property was dedicated property. It was no doubt held by a Bench of the Lahore High Court that a person not a party to a decree may sue to have it declared void without claiming any consequential relief and that such a suit is not governed by section 7(iv)(c). A similar view was taken in *Sukh Dial v. Durga Das* (4) and *Karam Chand v. Uma Dutt-Hansraj*, (5), in which reliance was placed on the earlier case of *Nihal Devi v. Chunni Lal* (3).

Coming now to the cases relied on by the learned Government Advocate I find that the case of *Deoraj v. Kunj Behari* (6) is not in point as in that case a Hindu

(1) (1932) I I.R., 56 Mad., 212.

(3) (1923) A.I.R., Lah., 373.

(5) (1930) A.I.R., Lah., 755.

(2) (1937) A.I.R., Mad., 449.

(4) (1929) A.I.R., Lah., 446.

(6) (1929) I.I.R., 5 Luck., 474.

1938

BEPIN  
SINGH  
v.BHAGWAN  
SINGHZiaul Hasan,  
J.

son did not ask for a declaratory decree only but sued for possession also.

In *Lallo Prasad v. Sahebudin Singh* (1) a suit had been brought for a declaration that a simple money decree obtained by the defendant against the father of the plaintiffs was not binding and the joint family property in the hands of the plaintiffs was not attachable. It was held that *ad valorem* court-fee was payable because the obvious result of the decree asked for by the plaintiffs would be to save them from payment of the decretal money and consequential relief is implicit in the declaration asked for. It appears to me that the present case is completely governed by this decision.

In *Mathura Prasad v. Ram Lal* (2), it was held that the question of court-fees must be decided on the allegations made in the plaint and the relief actually asked for therein and that it is the bounden duty of courts to look into the substance of the relief claimed. In this case the plaintiff who was seeking the cancellation of a deed of *waqf* and a will was not a party to those documents.

In *Surendra Narain Singh v. Shambhari Singh* (3) the members of a joint Hindu family sought for a declaration that the sale of the property held in execution of a decree obtained on a hand-note against two members of the family was null and void to the extent of the plaintiffs' shares in the property. It was held that the suit was in fact a suit for a declaration with consequential relief.

In the case of *Dattaji Parashramji Kumbi v. Bhagirathi* (4) a person who was a *bona fide* purchaser for value of lands which were found to be burdened with a charge of a maintenance decree, brought a suit for a declaration that the land was not liable for the maintenance charge and it was held that although the relief asked for a mere declaration, yet it involved a consequential relief of amendment of the maintenance

(1) (1933) 11 O.W.N., 488.

(2) (1934) 11 O.W.N., 1292.

(3) (1921) I.L.R., 1 Pat., 197.

(4) (1938) A.I.R., Nag., 183.

decree and section 7(iv)(c) of the Court Fees Act applied.

In the case reported in *Daroga Govind Rao v. Mohar Govind Rao* (1) also the plaintiffs were no parties to the mortgage-deed executed by defendants 2 and 3 nor to the decree based thereon. It was held by a Bench of the Allahabad High Court that according to the allegations contained in the plaint, the plaintiffs were in substance asking for the cancellation of the mortgage bond on the basis of which the decree was obtained and were under the circumstances liable to pay *ad valorem* court-fee.

Ziaul Hasan,  
J.

The case of *Deokali Koer v. Kedar Nath* (2) contains in my opinion the principle on which cases of the kind now before us should be decided. The plaint in that case contained three reliefs of which relief I was as follows:

“That it may be declared that the registered deed, dated 1st June, 1896, for Rs. 14,000 executed by defendant no. 9 in favour of the father and ancestors of the defendants 1 to 8 is collusive, nominal, invalid, fraudulent and without consideration; that the decree passed on the basis thereof which is pending execution in no. 83 of 1909 in the 1st Court of Subordinate Judge at Arrah has been collusively and fraudulently obtained and it is ineffectual, inoperative and invalid and that for the satisfaction of the said decree, the mortgaged property in question mentioned in the said decree cannot be sold.”

The learned Chief Justice, Sir LAWRENCE JENKINS remarked:

“It is in this section (section 42, Specific Relief Act) that the law as to merely declaratory decrees applicable in the circumstances of this case is now to be found. . . .

...We have to be guided by its provisions as they are expressed. The section does not sanction every form of declaration but only a declaration that the plaintiff is ‘entitled to any legal character or to any right as to any property;’ it is the disregard of this that accounts for the multiform and, at times, eccentric declarations which find a place in Indian plaints.

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“Now what are the declarations that are sought in this case? None relate to the plaintiff’s legal character; so



1938

BEPIN  
SINGH  
v.  
BHAGWAN  
SINGH

only those are permissible which relate to 'any right as to any property.' Of the declaration in the first prayer of the plaint none as expressed, is a declaration of this character; it may be that the proposition at which the plaintiff aims is in some measure involved in those declarations, but that is not what is sanctioned by section 42."

*Ziaul Hasan, J.* Applying this test, which if I may say so with respect, is the correct test in cases of this kind, to the case now before us, it seems to me clear that the suit of the plaintiff-appellant does not fall within the purview of section 42 of the Specific Relief Act and consequently it cannot be said to be a suit merely for a declaratory relief.

I may add that the late Mr. Justice SRIVASTAVA who wrote the leading judgment in the Full Bench case of *Roop Rani v. Bithal Das* (1) referred to above, applied the test laid down in *Deokali Koer v. Kedar Nath* (2), to the case before him and remarked:

"I might also point out that as was held in *Deokali Koer v. Kedar Nath* (2), the declaration sought in this case does not relate either to the plaintiff's legal character or to any right as to any property, and is not therefore one contemplated by section 42 of the Specific Relief Act. In this view of the matter also the present suit cannot be regarded as 'a suit to obtain a declaratory decree where no consequential relief is prayed'."

To my mind the real test in cases of the kind now before us is not whether the plaintiff was or was not a party to the decree or document sought to be avoided by him but whether or not the declaratory decree sought by him comes within the purview of section 42 of the Specific Relief Act. I would therefore answer the question referred to the Full Bench as follows:

The question whether a decree sought by a plaintiff is a mere declaratory decree without any consequential relief coming under article 17(iii) of the second schedule of the Court Fees Act or

(1) (1937) I.L.R., 13 Luck., 628.

(2) (1912) I.L.R., 39 Cal., 704.

whether it is a decree with consequential relief governed by section 7(iv)(c) of the Court Fees Act, depends not on whether or not the plaintiff was a party to the decree which he is seeking to avoid but on whether or not the relief claimed comes under section 42 of the Specific Relief Act.

1938

BEPIN  
SINGH  
v.  
BHAGWAN  
SINGH

THOMAS, C. J.:—I agree.

1938

August, 27

YORKE, J.:—I agree.

By COURT (THOMAS, C. J. and ZIAUL HASAN and YORKE, JJ.):—The question referred to the Full Bench is answered as follows:

1938

August, 29

The question whether a decree sought by a plaintiff is a mere declaratory decree without any consequential relief coming under article 17(iii) of the second schedule of the Court Fees Act or whether it is a decree with consequential relief governed by section 7(iv)(c) of the Court Fees Act, depends not on whether or not the plaintiff was a party to the decree which he is seeking to avoid but on whether or not the relief claimed comes under section 42 of the Specific Relief Act.