

THE  
INDIAN LAW REPORTS  
PATNA SERIES.



APPELLATE CIVIL.

Before Das and Adami, J.J.

SHAIKH RAFIQ-UD-DIN

1921,  
July, 29.

HAJI SHAIKH ASGAR ALI.\*

*Contribution, suit for declaration of right to, whether maintainable—Specific Relief Act 1877 (Act 1 of 1877), section 42—Court-fee payable on.*

A suit for a declaration that the plaintiff will be entitled to contribution from the defendants if and when the occasion arises does not fall within section 42 of the Specific Relief Act, 1877.

Where, in such a suit, the plaintiff had paid a court-fee of Rs. 10 only, held, that the fee was correct.

*Deokali Koer v. Keornath*(1) and *Midnapore Zamindari Company v. Secretary of State for India in Council*(2), distinguished.

*Tewari Kora v. Bhupat Mandar*(3), approved.

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\* Appeal from Appellate Decree No. 595 of 1920, from a decision of Jadunandan Prasad, Esq., District Judge of Purnea, dated the 24th January, 1920, modifying a decision of Babu Ashutosh Mukharji, Subordinate Judge of Purnea, dated the 6th September 1918.

(1) (1912) I. L. R. 39 Cal. 704.

(2) (1916-1917) 21 Cal. W. N. 834.

(3) (1919) 4 Pat. L. J. 302.

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The facts of the case material to this report were as follows:—

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Haji Shaikh Asgar Ali, the plaintiff, and Shaikh Zahur Ali, were full brothers and jointly owned a certain business. For the purposes of the business they borrowed Rs. 1,995 from Gota Lal Sah, a *mahajan*, and in consideration thereof they executed a mortgage on the 27th *Baisakh*, 1314 M. S. On the 17th *Magh*, 1314 M. S. they borrowed a further sum of Rs. 957 from the same lender and executed another mortgage for this amount. On the 25th *Baisakh*, 1317 M. S. they jointly borrowed Rs. 125 from Sheikh Nakdu and another and executed an usufructuary mortgage bond in their favour. Later they also purchased jointly a *jote* from Musammât Nabudan which was subject to a mortgage held by Ghota Lal.

Shaikh Zahur Ali died in *Sauran*, 1319 M. S. leaving as his heirs a minor son, defendant No. 1, a daughter, defendant No. 2, and a widow, defendant No. 3. The family continued to live jointly and the plaintiff managed the business. He borrowed Rs. 1,000 from Budai Narayan in order to pay off Ghota Lal's bond for Rs. 1,995, Rs. 98 from Shaikh Amir on a bond and Rs. 100 from Lal Muhammad. Thereafter the parties desired to separate and in *Asin* 1322 M.S. a *panchayat* was held to decide the liability of the parties for the debts which had been contracted. Rupees 2,370, *plus* interest, was found to be due to the creditors. The defendants were made liable for Rs. 1,350, besides future interest and arrears of rent, and the plaintiff was declared to be liable for the remainder. The property was divided and complete separation was effected. In 1915 Ghota Lal brought a money suit against the plaintiff and defendants for his bond of Rs. 957. The present defendants denied their liability and the suit was decreed in full against the present plaintiff on the 25th September, 1916. The plaintiff thereupon instituted the present suit for a declaration that the defendants were liable for the

debts contracted before the separation to the extent of Rs. 1,350, in addition to interest from the date of separation, and for a declaration that "in case the plaintiff for any reason whatever be compelled to pay the (share of the) debts of the defendants he would be entitled to realize the same from the defendants."

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He paid a fee of Rs. 10 on his plaint.

The trial court held that the defendants were liable only for half the debt of Rs. 125 due to Shaikh Nakdu and dismissed the suit as regards the remainder of the claim. Plaintiff appealed to the District Judge who modified the decree to this extent, that he held the defendants to be liable for half the amount of the bond which had formed the subject-matter of Ghota Lal's money suit in 1915.

Defendants Nos. 1 and 3 appealed to the High Court.

*Abani Bhusan Mukharji* and *Muhammad Fakhr-ud-din*, for the appellants.

*Muhammad Hasan Jan*, for the respondent.

DAS, J.—A preliminary question arises in this appeal as to the sufficiency of the court-fees paid by the plaintiffs-respondents on the plaint filed in the Court of first instance. The Stamp Reporter reports that there is a deficiency of Rs. 275.

It will appear on a reference to the plaint that the plaintiff sued for a declaration, *first*, that Rs. 2,370 as given in Schedule A, was borrowed for the benefit of the joint business and that the defendants are therefore liable to pay the principal amount besides interest to the extent of their share; *secondly*, for a declaration that the defendants are liable to pay Rs. 1,350 principal, besides interest and costs as per account given in Schedule (B), together with interest and costs as may be found on calculation to be due by them according to the award of the *panches*; and, *thirdly*, for a declaration that in case the plaintiff for any reason whatever be compelled to pay the share of the defendants, he would be entitled to realize the

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same, principal with interest and costs, from the defendants.

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DAS, J.

In my opinion the view taken by the Stamp Reporter is not correct. It may of course be that the suit does not lie under section 42 of the Specific Relief Act; but it cannot be suggested as was suggested in the case of *Deokali Koer vs. Kedarnath*<sup>(1)</sup> that the suit is not a suit to obtain a declaratory decree where no consequential relief is prayed for. That case which is referred to by the Stamp Reporter is clearly distinguishable. The late Chief Justice of the Calcutta High Court came to the conclusion that there was in substance a prayer for injunction and a prayer for injunction is a consequential relief within the meaning of the Statute. So far as the other case, namely, *The Midnapore Zamindari Company, vs. The Secretary of State for India in Council*,<sup>(2)</sup> is concerned, it will appear that the second declaration sought for by the plaintiff was based on the first declaration, and in the peculiar circumstances of the case the learned Judges took the view that the second declaration asked for by the plaintiff was in effect a consequential relief within the meaning of the Statute. In this Court Mr. Justice Roe took another view in the case of *Tewari Kora vs. Bhupat Mandar*<sup>(3)</sup> I am of opinion that there is no deficiency due from the respondents.

Coming now to the case. I am clearly of opinion that the suit does not lie. The whole question is, is it a suit under section 42 of the Specific Relief Act. That section declares 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 entitled, and the plaintiff need not in such suit ask for any further relief."

The plaintiff in this suit has not asked for a declaration as to his legal character. Now clearly a legal character under section 42 means the status of the plaintiff, that is to say, the status as to legitimacy,

(1) (1912) I. L. R. 39 Cal. 704.

(2) (1916-1917) 21 Cal. W. N. 834.

(3) (1919) 4 Pat. L. J. 302.

marriage, divorce, adoption and the like. It is quite clear that in this suit the plaintiff is not asking for a declaration as to his status.

Is he then asking for a declaration of his right as to any property? Clearly he is not. The right to any property must mean the right to any existing property. In this case he is not asking for any declaration as to any existing property. His whole suit is a suit for declaration that he will be entitled to contribution from the defendants if and when the occasion arises. That, in my opinion, is not contemplated by section 42 of the Specific Relief Act.

I would allow this appeal, set aside the judgments and decrees passed by the Courts below and dismiss the plaintiff's suit. In the circumstances of the case I would dismiss it without costs.

ADAMI, J.—I agree.

*Appeal allowed.*

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## APPELLATE CIVIL.

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*Before Jwala Prasad, A. C. J. and Ross, J.*

MAHRAJ BAHADUR SINGH

v.

SHAIKH ABDUL RAHIM.\*

1921,

July, 30.

*Bengal Patni Taluks Regulation, 1819 (Regulation VIII of 1819), section 14—Patni Sale—sale set aside—meanwhile part of purchase money withdrawn by person holding decree against patnidar's judgment-creditor—suit by purchaser for refund, whether maintainable.*

Where a person who held a decree against the judgment-creditor of a *patnidar* withdrew, in execution of his decree, a part of the purchase money which had been deposited in the

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\* Second Appeal No. 409 of 1920, from a decision of Jadunandan Prasad, Esq., District Judge of Purnea, dated the 7th January, 1920, confirming a decision of Babu Ashutosh Mukharji, Subordinate Judge of Purnea, dated the 13th February, 1918.