REVISIONAL CIVIL.

1939.

August, 15.

Before Harries, C.J. and Khaja Mohamad Noor, J.

HAREKRISHNA DAS

v.

SUNAMANI DEI.*

Court-fees Act, 1870 (*Act VII of* 1870), *section 7(iv)(c) and Schedule II, Article 17—suit for declaration that several alienations by a Hindu widow were not binding on reversioners—prayer for interim injunction granted—suit, whether becomes one for a declaration with consequential relief—Court-fee of rupees fifteen, whether payable in respect of each alienation.*

Where the plaintiffs brought a suit claiming a declaration that several alienations made by a Hindu widow were not binding on them as reversioners and during the course of the proceeding the plaintiffs applied for and obtained an interim injunction to restrain the widow from making further alienations :

Held, that the suit was a declaratory one and the mere fact that the plaintiffs had prayed for and obtained an interim injunction could not change the nature of the suit so as to make it a suit for a declaration with consequential relief.

Gangadhar Misra v. *Rani Debendrabala Dasi*(1), not followed.

Deokali Koer v. *Kedar Nath*(2), distinguished.

Held, further, that the suit was in fact a suit for a large number of declarations, and, therefore, that a court-fee of rupees fifteen was payable in respect of each of the alienations in question.

Daivachilaya Pillai v. *Ponnathal*(3), followed.

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* Circuit Court, Cuttack. Civil Revision no. 86 of 1937, from an order of Babu S. M. Das, Subordinate Judge of Cuttack, dated the 29th May, 1937.

(1) (1925) I. L. R. 5 Pat. 211.
(2) (1912) I. L. R. 39 Cal. 704.
(3) (1894) I. L. R. 18 Mad. 459.

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Application in revision by the plaintiffs.

The facts of the case material to this report are set out in the judgment of Harries, C. J.

B. N. Das, for the petitioners.

B. K. Das and *G. G. Das*, for the opposite party.

HARRIES, C. J.—This is a civil revision brought by the plaintiffs and directed against an order passed by the learned Subordinate Judge of Cuttack in a court-fee matter.

The plaintiffs brought the suit out of which this application arises alleging that they were the reversioners of a certain last male owner and they claimed a declaration that the widow of the last male owner had only a limited interest of a Hindu widow in the inheritance and that alienations made by her without legal necessity would not enure beyond her life-time and would not be binding upon the reversionary body.

During the course of the proceedings the plaintiffs asked for an interim injunction to restrain the widow from making further alienations and the learned Subordinate Judge acceded to their application and granted an ad interim injunction. The adequacy of the court-fee paid, namely, Rs. 15, was raised and eventually the learned Judge ordered that the plaintiffs should pay a court-fee calculated on an ad valorem basis. Against that order the plaintiffs have applied in revision to this Court.

It has been strenuously contended on behalf of the plaintiffs that this is not a case where there was a claim for a declaration and consequential relief and consequently court-fee on an ad valorem basis cannot be charged. On perusal of the plaint it is clear that the plaintiffs merely asked for a declaration that defendant no. 1 had only a life estate in her inheritance and that certain alienations would not be binding upon the reversionary body. That prayer as it

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stands is one purely for a declaration. There does follow a second prayer in these terms:

"That the suit may be decreed with costs and the plaintiffs may be allowed to any other relief to which they are entitled."

This is the usual omnibus relief clause which appears in practically every plaint in this country and we cannot construe a plaint as being a plaint for a declaration and consequential relief merely because this omnibus relief clause appears.

The learned Judge, however, came to the conclusion that as the plaintiffs had applied and had obtained an ad interim injunction the suit was clearly a suit for a declaration and consequential relief. It has been argued on behalf of the opposite party that the learned Judge's view is supported by authority of this Court and of the Calcutta High Court. In the case of *Gangadhar Misra* v. *Rani Debendrabala Dasi*(1) Jwala Prasad, J., sitting singly held on somewhat similar facts that the suit was a suit for a declaration and consequential relief and accordingly he directed that an ad valorem court-fee was payable. Jwala Prasad, J., in the main based his decision upon the case of *Deokali Koer* v. *Kedar Nath*(2) but in my view the Calcutta case does not support the view taken by Jwala Prasad, J. In the Calcutta case the learned Chief Justice in delivering judgment makes it clear that in his view the suit was not a suit for a declaration. It is true that two prayers for declarations had been made in the plaint but in the view of the learned Chief Justice neither of the matters included in those two prayers could be made properly the subject-matter of a declaration. In his view, though the suit was framed as a declaratory suit, it was a suit for something more and the learned Chief Justice points out that subsequent events showed that it was a suit for something more. The plaintiff in

(1) (1925) I. L. R. 5 Pat. 211.
(2) (1912) I. L. R. 39 Cal. 704.

that suit obtained an interim injunction and the learned Chief Justice uses that fact to support his view that the suit was not one properly for a declaration but was one for consequential relief also. The Calcutta case does not decide that because a plaintiff has obtained an ad interim injunction his suit must inevitably be a suit for a declaration with consequential relief. Further it would appear that in the Patna case decided by Jwala Prasad, J. there was at the time the appeal came to the High Court a subsisting injunction though how the injunction could have subsisted up to that time is not clear.

In the present case the prayer was the usual prayer in a case of this kind, namely, that it be declared that the widow's interest was the limited interest of a Hindu widow and consequently that certain alienations which she had made without legal necessity would not be binding upon the reversionary body. Looking purely at the relief claimed in the plaint this is a declaratory suit and a declaratory suit only.

Can the whole nature of the suit be changed by reason of the fact that the plaintiffs were so ill advised as to apply for an interim injunction which they ought never to have been granted? The plaintiffs as reversioners have no right to possession until the death of the Hindu widow and in this suit they have no right to anything while the widow is alive beyond a declaration. They had no right to ask for an injunction and it should never have been granted to them. In my view the fact that they applied during the suit for this ad interim injunction does not change the real nature of the suit. It still remains a suit for a declaration that certain alienations made by a Hindu widow were not binding upon the reversionary body. Upon the suit as framed no decree other than a purely declaratory decree could have been passed and even after the granting of this

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interim injunction no relief could have been given to the plaintiffs by the decree other than the declaration asked for. In my view this suit is a purely declaratory suit and even in the events that have happened it cannot now be regarded as a suit for a declaration coupled with some consequential relief. The suit is a pure declaratory suit and court-fees must be assessed from that point of view.

The question now arises what court-fee is payable. All that was paid was Rs. 15 and in my view this is not sufficient. Sixteen alienations were alleged by the plaintiffs to be without legal necessity and therefore not binding beyond the widow's lifetime. Each alienation without legal necessity gives the reversioners a cause of action and time would begin to run in a suit for a declaration from the time of each particular alienation. The plaintiffs in this case were in fact asking for a number of declarations and in my view they must pay a court-fee of Rs. 15 in respect of each of the alienations. The suit is in fact a suit for a large number of declarations. This view has been accepted and acted upon by the Madras High Court in the case of *Daivachilaya Pillai* v. *Ponnathal*(1). In that case a Bench held that when reversioners sue to have declared invalid as against them alienations made by a Hindu widow a court-fee of Rs. 10 (now Rs. 15) must be paid in respect of each of the alienations in question. I respectfully agree with that view and in my judgment the plaintiffs in this case must pay Rs. 15 in respect of each alienation which they propose to challenge.

As I have stated earlier, the plaintiffs originally intended to challenge some sixteen alienations but it would appear that compromises have been effected with respect to two or three of them. In my view the plaintiffs can only be compelled to pay court-fees

(1) (1894) I. L. R. 18 Mad. 459.

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at this stage upon the alienations which they now propose to challenge. Credit of course must be given to them for the Rs. 15 they have already paid.

It is quite clear that the plaintiffs had no right whatsoever to an interim injunction in this case. They have no right to possession and they have no right to restrain the widow in this suit. It is a suit purely for a declaration and consequently an interim injunction should not have been granted. As the matter is before us in revision the Court has power to discharge the interim injunction and I would, therefore, discharge it.

In the result, therefore, I would allow this application in part and vary the order of the court below and direct that Court to calculate the court-fee upon the lines indicated in my judgment. The ad interim injunction will also be discharged. Each party will bear its own costs.

KHAJA MOHAMAD NOOR, J.—I agree.

S.A.K. *Application allowed in part.*

APPELLATE CIVIL.

Before Rowland and Chatterji, JJ.

1939.

August, 15, 16.

MAZHARUL HAQ

v.

RAGHUBER SINGH.*

Execution—application for execution against surety—death of surety—heirs not brought on record—heirs entering appearance—Code of Civil Procedure, 1908 (*Act V of* 1908), *Order XXI, rule* 22, *notice under, whether necessary.*

Execution proceedings started against a surety cannot be continued, after his death, against his estate without bringing

* Appeal from Appellate Order no. 71 of 1939, from an order of T. G. K. N. Ayyar, Esq., I.C.S., District Judge of Saran, dated the 30th November, 1938, reversing an order of Babu Bijay Krishna Sarkar, Subordinate Judge at Chapra, dated the 24th June, 1938.