

APPELLATE CIVIL.

Before Sir Arthur Page, Kt., Chief Justice, and Mr. Justice Baguley.

MAUNG SHEIN AND ANOTHER

v.

MA LON TON.*

1931

May 6.

Court Fees Act (VII of 1870), ss. 7 (iv) c. 7 (v)—Declaratory Suit—Consequential relief—Declaration when necessary—Unnecessary declaration, claim for—Suit for possession of land—Title based on adoption—Adoption an issue of fact—Court-fee.

Section 7 (iv) (c) of the Court Fees Act is applicable to a suit in which, having regard to the substance of the plaint, it is incumbent upon the plaintiff to obtain a declaratory decree or order to perfect his right to the consequential relief that he claims; for instance, where the plaintiff seeks relief to which he is not entitled unless and until some decree or document, or alienation of property is avoided a suit in which a declaration in that behalf is claimed is within s. 7 (iv) (c).

Arnachalam v. Rangaswamy, I.L.R. 38 Mad. 922; *Deokali v. Kedarnath*, I.L.R. 39 Cal. 704; *Hakim Rai v. Ishar Das*, I.L.R. 8 Lah. 531; *Parvatibai v. Vishwanath*, I.L.R. 29 Bom. 207—*referred to*.

If a plaintiff claims a declaratory decree where such declaration is not a necessary preliminary to obtain the real relief that is sought he is liable to pay an *ad valorem* Court-fee.

Ganga Dei v. Sakdeo, I.L.R. 47 All. 78; *Tula Ram v. Dwarika Das*, I.L.R. 50 All. 610; *Ugramohan v. Lachmi Prasad*, 5 Pat. L.J. 339—*referred to*.

Where a plaintiff seeks to recover possession of land as the adopted son of the deceased owner he need not ask for a declaration as to the validity of his adoption and the suit falls within section 7 (v) of the Act.

Ram Sunran v. Gobind Das, I.L.R. 2 Pat. 125—*referred to*.

Mukerjee for the appellants.

Ba Tun (2) for the respondent.

PAGE, C.J.—In this case the plaintiffs claim to recover possession of some paddy land of which the defendant is in possession. It was, of course, incumbent upon the plaintiffs to prove their title to be in possession, and in the plaint it is alleged, as a link in the chain of the plaintiffs' title, that they were the adopted sons of Ko Maung Gyi, to whom

* Civil First Appeal No. 258 of 1930 from the judgment of the District Court of Pyapôn in Civil Regular No. 65 of 1930.

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the land belonged and who is now dead. The plaintiffs did not seek a declaration that they were the adopted sons of the owner of the land, and there was no necessity for them to do so, for whether they had been validly adopted or not did not depend upon any order of the Court being passed declaring that they had been adopted, but upon that issue of fact being decided in their favour. In these circumstances, in my opinion, the learned District Judge was not justified in dismissing the plaintiffs' suits for default in paying an *ad valorem* Court-fee under section 7 (iv) (c) of the Court Fees Act (VII of 1870). I think that the suit fell within section 7 (v), and not within section 7 (iv) (c).

In my opinion section 7 (iv) (c) is applicable to a suit in which, having regard to the substance of the plaint, it is incumbent upon the plaintiff to obtain a declaratory decree or order to perfect his right to the consequential relief that he claims; for instance, where the plaintiff seeks relief to which he is not entitled unless and until some decree, or document, or alienation of property is avoided a suit in which a declaration in that behalf is claimed is within section 7 (iv) (c). *Deokali Koer v. Kedar-nath* (1); *Hakim Rai v. Ishar Dasgorkh Rai* (2); *Arunachalam v. Rangaswamy* (3); *Parvatibai v. Vishvanath* (4). Further, if the plaintiff elects to claim a declaratory decree or order, although it is not necessary for the plaintiff to obtain such a declaration in the particular case to enable him to obtain the relief for which the suit is really brought, in such circumstances unless his plaint is amended by striking out the prayer for a declaration, the plaintiff cannot complain if he is held liable to pay an

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

(3) (1914) I.L.R. 38 Mad. 1922.

(2) (1927) I.L.R. 8 Lah. 531.

(4) (1905) I.L.R. 29 Bom. 207.

ad valorem Court-fee under section 7 (iv) (c). *Ganga Dei v. Sukdeo Prasad* (1) ; *Tula Ram v. Dwarka Das* (2) ; *Ugramohan v. Lachmi Prasad* (3). On the other hand where, as in the present case, a declaration that a valid adoption of the plaintiffs had taken place was neither claimed in the plaint, nor a necessary preliminary to their right to recover possession of the land in suit, in my opinion, section 7 (iv) (c) does not apply. *Ram Sumran Prasad v. Gobind Das* (4).

The appeal is allowed with costs, the order dismissing the suit is set aside, and the case returned to the District Court to be determined according to law. A certificate will issue for a refund of any excess in the Court-fee that has been paid.

BAGULEY, J.—I agree.

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(1) (1924) I.L.R. 47 All. 78.

(2) (1928) I.L.R. 50 All. 610.

(3) (1920) 5 Pat. L.J. 339.

(4) (1923) I.L.R. 2 Pat. 125.