

**FULL BENCH
APPELLATE CIVIL**

Before Eric Weston, C.J., Khosla and Falshaw, JJ.
VISHWA NATH alias BHOLU,—Plaintiff-Appellant.

versus

SHRIMATI SITA BAI AND OTHERS,—Defendants-Respondents.

1952

Letters Patent Appeal No. 61 of 1949

June 6

Court-Fees Act (VII of 1870), Sections 7 (iv) (c), 7 (v) and Article I of Schedule I—Suit for declaration and possession of property sold and taken possession of in execution of a decree—Court-Fee—Court-Fee whether payable under section 7 (iv) (c) or section 7 (v) or Schedule I, Article I, of the Court-Fees Act.

Held, that the valuation of Court-Fees of a suit to set aside a decree where in execution of such decree property has been sold and possession given and where the possession of the property so sold is sought falls under section 7 (iv) (c) of the Court-Fees Act and the Court-Fee is payable on the value of the relief as fixed and stated by the plaintiff.

Letters Patent Appeal against the judgment and decree of Mr Justice Kapur, dated the 29th July 1949, in Regular Second Appeal No. 103 of 1949, modifying that of Shri Mani Ram, Senior Subordinate Judge, Amritsar, with enhanced appellate powers, dated the 28th day of January 1949, holding that portion of the claim relating to the decree for Rs. 13,643 was properly valued in the plaint, but the second portion of the claim dealing with the decree for Rs. 29,188-14-3 and for possession was not properly valued and this would fall under section 7 (v) who affirmed that of Shri Chaman Lal, Sub-Judge, 1st Class, Amritsar, dated the 24th July 1948.

D. R. MANCHANDA, for Appellant.

C. L. AGGARWAL, for Respondents.

JUDGMENT

KHOSLA, J. The following question has been referred to the Full Bench :—

Khosla J. J

“Whether the valuation for court-fees of a suit to set aside a decree where in execution of such decree property has been sold and possession given, and where recovery of possession of the property so sold is sought in the suit, falls under section 7 (iv) (c) of the Court Fees Act, and if not what court-fee is payable?”

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The matter arose in the following manner. The plaintiff Vishwa Nath, a minor, brought a suit for a declaration, that two decrees passed on the basis of awards were null and void as against him. He also prayed for possession of the property affected by the decrees by way of consequential relief. This property belonged to the plaintiff's father Kahan Chand and he effected a mortgage in favour of Shrimati Sita Bai for a sum of Rs. 20,000. The transaction was the subject-matter of an award which was made a rule of the Court. A decree in terms of this award was passed by the Senior Sub-Judge, Amritsar, on the 21st of August 1945. Execution of this decree was taken out but the mortgaged property has not so far been sold. A second award was also made in favour of Shrimati Sita Bai and this too was made a rule of the Court whereby a decree for Rs. 29,000 odd was passed in favour of the mortgagee Shrimati Sita Bai on the 21st of August 1945. Execution of the second decree was taken out and some part of the mortgaged property was put up to sale and purchased by the decree-holder. The sale was confirmed by the execution Court on the 1st of March 1947 and Shrimati Sita Bai took possession of the property.

In the present suit Vishwa Nath challenged both these decrees and prayed that in respect of the first decree an injunction should be issued against the decree-holder prohibiting her from executing the decree and in respect of the second decree he should be given possession of the property sold and purchased by the decree-holder. The plaintiff valued each of the reliefs claimed at Rs. 130 for purposes of jurisdiction and at the same figure for purposes of court-fee. Objection was taken that the amount of court-fee on the plaint was insufficient and the trial Judge upheld the objection holding that court-fee was payable on the total value of the two decrees, namely, on the sum of Rs 42,831-14-3. The deficiency in court-fee was not made up and the plaint was, in due course, rejected under Order VII, rule 11, Civil Procedure Code. On appeal the learned Senior Subordinate Judge upheld the decision of the trial Court. A second appeal

was brought to this Court and the matter came up before Kapur, J., who decided in favour of the plaintiff with regard to the first decree in which execution had not been taken out, but held that with regard to the relief claimed in respect of the second decree the plaintiff was bound to pay *ad valorem* court-fee on the ground that the relief claimed by him was really the possession of the property sold in execution proceedings, and he must therefore pay court-fee under section 7 (v) of the Court Fees Act. An appeal filed under Clause 10 of the Letters Patent came up before my Lord the Chief Justice and my brother Falshaw sitting in Division Bench, and they decided to refer the question to a larger Bench. The case was argued at considerable length before us and a great number of rulings were cited and discussed.

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We are only concerned with the plaintiff's claim with regard to the second decree, namely, his claim for a declaration that the decree be declared null and void because the alienations upon which it is based were without consideration and necessity and (by way of consequential relief) for possession of the property purchased by Shrimati Sita Bai. The question for consideration is whether a relief of this type is a relief for a declaration with a consequential relief under section 7 (iv) (c) or is in essence a possessory relief coming under section 7 (v) or Schedule I, Article 1, of the Court Fees Act.

Shrimati Sita Bai is in possession of the land as the result of an auction held in execution of a decree. This decree was passed by a Court of competent jurisdiction and therefore the plaintiff cannot seek possession of the property as long as this decree stands in his way. Although the object of his suit is to obtain possession of the land he cannot do so unless the decree is declared ineffective against him and that being so, it is clear that the plaintiff must of necessity ask for a declaration that the decree is not binding upon him and until this is done he cannot sue for possession, and in this view of the matter the suit must be held to be a suit under section 7(iv)(c) of the Court Fees Act. Support is lent to this view by

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a number of cases cited before us. In A. I. R. 1930 Oudh, page 104, the plaintiff brought a suit for a declaration that he was owner of certain property which had been sold in execution of a mortgage decree. It was held that before the plaintiff could ask for possession it was necessary to get rid of the decree and therefore the suit fell under section 7 (iv)(c). Similarly in A. I. R. 1945 Patna, page 421, a suit was brought by Hindu sons for a declaration that certain alienations made by their father and the decrees and sales consequent upon these alienations were null and void as against them. The plaintiffs also prayed for possession by way of consequential relief. It was held by a Division Bench of the Patna High Court that with regard to private sales the plaintiffs could treat them as null and void and sue for possession of the property without seeking a declaration, but in respect of those properties which had been sold in execution of a decree there was a legal impediment in their way. Until the decrees were set aside possession could not be given to them and so with regard to these properties they were obliged to ask for a declaration and therefore their suit in so far as it related to properties sold in execution of decrees fell under Section 7 (iv) (c). Similarly in A. I. R. 1949 Patna, page 363, the suit by a son for the possession of property sold in execution of a money decree against his father was held to be a suit under section 7 (iv)(c). In that case the plaintiff had not asked for a declaration at all, but the High Court held that possession could not be given without setting aside the sale and therefore it must be inferred that the plaintiff had also asked for a declaration. In A. I. R. 1951 Orissa, page 10, a Hindu son sued for a declaration that the property sold in execution of a decree was not validly sold and also prayed for possession of the property. It was held that the suit fell under section 7 (iv)(c) of the Court Fees Act.

As against these cases reliance was placed upon the following cases ; A. I. R. 1944 Oudh. 118, I. L. R. 16 Pat. 766, A. I. R. 1940, Mad. 113, A. I. R. 1949 Mad.

105 and A. I. R. 1946 Bom. 363. These cases are, however, all distinguishable from the case before us. In Madras there is a special section 7 (iv-A) added to the Act. A similar section has also been enacted in the United Provinces. In A. I. R. 1944 Oudh, 118 a suit was brought for the possession of land sold in execution of a mortgage decree. It was held that court-fee was payable under section 7 (iv-A) in respect of the declaration sought and also separately for possession of the property. In A. I. R. 1940 Mad. 113 which was a suit by a son for partition of the joint Hindu family property section 7 (iv-A) was applied. Some of the properties had passed into the hands of stranger alienees and it was held that this made no difference to the case. Similarly in A. I. R. 1949 Mad. 105 a son filed a suit for the possession of property alienated by the father. It was held that the transfer could be treated null and void and so the plaintiff could maintain a possessory suit and his plaint should therefore have been stamped under section 7 (v) of the Court Fees Act. I. L. R. 16 Pat. 766 was also a case in which a document, namely, a deed of gift was challenged. It will therefore be seen that there is not a single case excepting the Oudh case in which a decree stood in the way of possession being given to the plaintiff and in this case the decision was made on the basis of the special provincial law applicable. There is therefore preponderance of authority in favour of the view that where a plaintiff prays for possession of property which has been sold in execution of a decree by a competent Court, he must also ask for a declaration that the decree is not binding upon him and his suit therefore falls under section 7 (iv) (c) of the Court Fees Act.

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The next point to consider is what court-fee is payable. Our attention was drawn to section 8 of the Suits Valuation Act which provides that in a case covered by section 7 (iv) (c) the value for purposes of jurisdiction must be the same as the value for purposes of court-fee. Our attention was also drawn to section 9 of the Suits Valuation Act according to

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which certain suits must be valued according to the rules laid down by the High Court and this valuation, once it has been arrived at, must be treated as the proper valuation for purposes of court-fee also. The argument is that first under section 9 you fix the value for purposes of jurisdiction. Then under the provisions of section 8 this value becomes the value for purposes of court-fee also. Therefore sections 8 and 9 of the Suits Valuation Act really impose a restriction upon the freedom of the plaintiff to value his relief under section 7 (iv) (c) of the Court Fees Act. This matter was considered in three recent decisions of the Lahore High Court and in all of them the view taken was that section 9 has nothing to do with section 8 and where a suit falls under section 9 the plaintiff may fix whatever value he likes upon his relief for purposes of court-fee even if he has to fix a much higher value for purposes of jurisdiction. In A. I. R. 1946 Lah. 94 the plaintiff filed a suit for a declaration that he was the owner of some land across which a public street had been constructed. He also prayed for three injunctions by way of consequential relief. He valued his suit at Rs 10 both for purposes of jurisdiction and for purposes of court-fee. It was held that this suit came under section 9 of the Court Fees Act and according to the rules framed by the Lahore High Court the value for purposes of jurisdiction must be at least Rs 101, but it was held by the Full Bench that the two values could be different and the value for purposes of court-fee could be Rs 10 as assessed by the plaintiff. The same view was expressed in A. I. R. 1949 Lah. 1, in which reference is made to rule 10 framed under section 9 of the Court Fees Act and the principle was reiterated in A. I. R. 1949 Lah. 116. It seems to me therefore that the plaintiff was entitled to value his relief at Rs 130, for purposes of court-fee even though he should have valued it at a much higher figure for purposes of jurisdiction. The rulings which lay down that the two values must be the same date before 1942 when the special rules under section 9 were framed by the Lahore High Court. In suits of this nature two positions will arise,

either the relief can be adequately assessed or it cannot be, but in either case the relief can be assessed for purposes of court-fee at any arbitrary value that the plaintiff chooses. If the case is covered by section 9 of the Suits Valuation Act, the value for purposes of jurisdiction will be different, otherwise it will be the same as the value for purposes of court-fee. That the plaintiff can put in any arbitrary value was recognised by the Privy Council in I. L. R. 43 Bom. 376. There are several rulings of the Lahore High Court in which the same view was expressed and a list of these rulings is given in A. I. R. 1949 Lah. 116 at page 119. There appears to be an established practice in Patna and Orissa that the Court can revise such arbitrary value and our attention was drawn to A. I. R. 1951 Orissa, page 10, A. I. R. 1945 Pat. 421 and A. I. R. 1944 Pat. 17, but there appears to be no such recognised practice in this Court or in the Lahore High Court. In the circumstances I would answer the question referred to us as follows :—

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The valuation of court-fees of a suit to set aside a decree where in execution of such decree property has been sold and possession given and where possession of the property so sold is sought falls under section 7 (iv)(c) of the Court Fees Act and court-fee is payable on the value of the relief as fixed and stated by the plaintiff.

In the present case the plaintiff therefore paid the correct amount of court-fee.

FALSHAW, J. I agree with the view of my learned brother Khosla, J., and have nothing to add.

WESTON, C.J. I agree.