

## REVISIONAL CIVIL

*Before S. K. Kapur, J.*N. C. MALIK,—*Petitioner.**versus*M/s BHAI TRADERS AND FINANCIERS (P) Ltd.,—*Respondent.*

Civil Revision No 210-D of 1964.

May 12, 1966.

*Specific Relief Act (I of 1877)—S. 42—Specific Relief Act (XLVII of 1963)—S. 34—Suit for mere declaration—Whether competent when plaintiff able to ask for consequential relief—Further relief—Meaning of—Shares pledged by plaintiff with defendant to secure repayment of loan—Defendant getting shares transferred in his own name—Plaintiff's suit for declaration that the transaction was of pledge and not sale and for redemption of the shares—Whether maintainable.*

*Held*, that if it is open to the plaintiff to ask for a consequential relief, a suit for mere declaration will not be maintainable.

*Held*, that the expression used by the Legislature in the proviso to section 42 of the Specific Relief Act, 1877 (S. 34 of the Specific Relief Act, 1963) is "further relief" and not "other relief". "Further relief" must consequently be relief in relation to the legal character or right as to any property which any person is entitled to and whose title to such character or right any person denies or is interested to deny; it must also be relief appropriate to, and necessarily consequent on, the right asserted. It further appears from the reading of the proviso that it is not every kind of relief that may be prayed for but only the relief arising from the cause of action on which the plaintiff's suit is based which need only be claimed. The question whether the cancellation of a document must be asked for as a consequential relief depends upon the circumstances of each case. Where cancellation follows naturally from the circumstances of the case, it would be "further relief" within the meaning of section 42 of the Specific Relief Act, 1877.

In the present case, the plaintiff's claim in substance was that a blank transfer deed was executed by him with a view to giving effect to the arrangement of pledge between the parties. The transfer deed must remain intact and with the defendant for it was an integral part of the pledge. The plaintiff cannot ask for cancellation of the transfer deed so long as the pledge remains. In these

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circumstances by asking for the destruction of the transfer deed the plaintiff would be destroying the transaction of pledge, the very transaction he is seeking to establish.

*Petition under Section 115 of the Code of Civil Procedure, Act V of 1908 and section 44 of the Punjab Courts Act, 1918, for revision of the order of Shri Adish Kumar Jain, Commercial Sub-Judge 1st Class, Delhi, dated 12th May, 1964, holding that the plaintiff's relief for declaration to the effect that the transaction regarding the said Murphy Radio shares was a transaction of pledge between the defendant and the plaintiff and not of the sale, and that the defendant, therefore, had no right to get the shares registered in its own name is not maintainable as being a pure relief for declaration without seeking further relief of setting aside the sale documents.*

H. HARDY, SENIOR ADVOCATE AND Y. K. SABHARWAL, ADVOCATES, for the Petitioner.

N. C. CHATTERJEE, SENIOR ADVOCATE AND DHAM RAJ MALHOTRA, ADVOCATES, for the Respondents.

#### JUDGMENT

KAPUR, J.—N. C. Malik, petitioner-plaintiff, filed a suit against the respondent, Messrs Bhai Traders and Financiers (Private) Limited, with respect to certain loans taken by him, for securing which he pledged certain goods including some shares of Murphy Radio (India), Private Limited. The first prayer in the plaint as originally filed was—

“That a decree for setting aside the said sale transaction of the said Murphy shares whereby the defendant illegally and wrongfully got the same registered in his own name with the said company and for redemption and delivery of the said original and right shares be passed in favour of the plaintiff against the defendant.”

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A dispute arose about the court-fee and the trial Court decided that the plaintiff had claimed two independent reliefs and, therefore, two separate court-fees were payable. The matter came up before this Court in Civil Revision No. 449-D of 1961. The plaintiff contended that his claim in substance was that the said shares of Murphy Radio (India) Private Limited (hereafter referred to as the Murphy shares) were pledged with the defendant, but the defendant had

illegally and wrongfully got those registered in his own name and, in the circumstances, he was praying for a declaration that the transaction was that of a pledge and not of sale. In the course of arguments the learned counsel for the plaintiff prayed, in view of the circumstances mentioned in the judgment of Mahajan J., dated 26th July, 1963, that he be permitted to amend the plaint by striking out the relief for setting aside the sale. It was observed in the said judgment—

“Faced with this situation the learned counsel for the petitioner contends that the petitioner never sold the shares to the defendant-respondent. All he did was that he pledged the shares and as the defendant is alleging that the shares have been sold to him, therefore, all he is seeking is a declaration that the transaction between the parties was that of a pledge and not of a sale. If that is so, then the prayer for setting aside the sale is certainly an alternative relief and not a consequential relief and if he wants the alternative relief he must pay court-fee for the same. In this situation the learned counsel for the petitioner prays that he be permitted to amend the plaint striking out the relief for setting aside the sale. I allow this prayer and, therefore, the alternative relief for setting aside the sale of the shares is to be deleted from the plaint. If the plaintiff still persists in including that prayer, he must pay court-fee for that relief”.

In pursuance of this order the plaintiff filed an amended plaint and the first prayer in the amended plaint reads:—

“That a decree for declaration to the effect that the transaction regarding the said Murphy Radio shares was a transaction of pledge between the plaintiff and the defendant and not of sale and that the defendant had, therefore, no right to get the shares registered in its own name and redemption of those shares as a consequential relief be passed”.

It is necessary at this stage to mention the basis of the suit. The case of the plaintiff is:—

- (a) The plaintiff approached the defendant for some loan against pledge of securities which the defendant agreed.

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- (b) Various goods were pledged by the plaintiff from time to time against the loans raised and one of the items of goods pledged was 1,000 ordinary shares of Murphy Radio (India), Private Limited against which he raised a loan of Rs. 5,000.
- (c) The defendant realised the dividends on the Murphy Shares.
- (d) The defendant took signed blank transfer form from the plaintiff along with the share certificates as well as a letter without date addressed to the Murphy Radio (India), Private Limited showing that the said shares had been sold by the plaintiff to the defendant though, in fact, the shares were never sold but were delivered to the defendant by the plaintiff simply by way of pledge as a security for the loan raised by him ; and
- (e) The defendant has illegally got the said shares registered in his own name on the basis of the said signed blank transfer form.

The plaintiff valued the relief with respect to the declaration at Rs. 15,000 and paid court-fee thereon. On the amended plaint being filed an objection was taken, and that is the only objection I am concerned with, that a suit for mere declaration was not maintainable and a prayer for setting aside the sale of Murphy shares after cancellation of the instrument of sale should also have been made. Two issues were framed by the trial Court:—

- (1) Whether the suit is properly valued for purposes of court-fee and jurisdiction ?
- (2) Whether the suit for declaration is maintainable ?

With respect to issue No. (1) the trial Court deferred the decision while on issue No. (2) it held that "the plaintiff's relief for declaration to the effect that the transaction, regarding the said Murphy Radio shares was a transaction of pledge between the defendant and the plaintiff and not of the sale, and that the defendant, therefore, had no right to get the shares registered in its own name is not maintainable as being a pure relief for declaration without seeking further relief of setting aside the sale documents". Aggrieved by this decision the plaintiff has come up in revision and it has been contended that in the circumstances of this case a suit for mere declaration is properly maintainable.

It has been agreed between the learned counsel for the parties that decision in this revision petition must turn on the construction of the proviso to section 42 of the Specific Relief Act, 1877, which reads—

“Provided that no Court shall make any such declaration where the plaintiff, being able to seek further relief than a mere declaration of title, omits to do so.”

At the outset I may point out that I agree with Mr. Chatterjee, learned counsel for the respondent, that if it be open to the plaintiff to ask for a consequential relief the suit for mere declaration would not be maintainable. I also agree that the relief as to redemption is not a consequential relief. The sole question that arise, therefore, is whether a suit for mere declaration is competent. The expression used by the Legislature in the said proviso is “further relief” and not “other relief”. “Further relief” must consequently be relief in relation to the legal character or right as to any property which any person is entitled to and whose title to such character or right any person denies or is interested to deny; it must also be relief appropriate to, and necessarily consequent on, the right asserted. It further appears from the reading of the proviso that it is not every kind of relief that may be prayed for, but only the relief arising from the cause of action on which the plaintiff’s suit is based which need only be claimed. The question whether the cancellation of a document must be asked for as a consequential relief depends upon the circumstances of each case. Where cancellation follows naturally from the circumstances of the case, it would be “further relief” within the meaning of section 42. What then are the circumstances here? In substance the plaintiff’s claim is that a blank transfer deed was executed by him with a view to giving effect to the arrangement of pledge between the parties. I have also been referred to the letter mentioned in paragraph 11 of the plaint saying that the said shares had been sold by the plaintiff to the defendant. According to the said letter the plaintiff agreed that in case the loan was not repaid by February, 1954, the defendant could get the shares registered in his name. It is obvious, therefore, that at least according to the allegations in the plaint the blank transfer deed was given merely to secure the interest of the defendant and make the pledge effective. So long as the pledge is to remain, the transfer deed must also remain with the defendant. May be, the defendant is able to show, when the suit proceeds on merits, that in terms of the letter it was entitled to get the shares registered in its name and, therefore, ultimately it may

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succeed, but for the purposes of the controversy that the transaction was one of pledge and not of transfer to the defendant, the transfer deed must remain intact and with the defendant for it was an integral part of the pledge. The plaintiff cannot ask for cancellation of the transfer deed so long as the pledge remains. In these circumstances by asking for the destruction of the transfer deed the plaintiff would be destroying the transaction of pledge, the very transaction he is seeking to establish. It may be suggested that the plaintiff could, by way of consequential relief, ask for the cancellation of the transfer of shares in favour of the defendant, but that relief cannot be granted unless *Murphy Radio (India) Private Limited* is before me. It must, therefore, follow that the plaintiff could not, besides the relief of declaration, ask for the cancellation of the transfer deed. The suit for pure declaration, therefore, would be maintainable.

Strong reliance has been placed by the learned counsel for the parties on *Ram Chander and others v. Dalip and others* (1). Both parties say that *Ram Chander's case* supports them. Dua, J., observed—

“*Sham Chandra v. Godadhar Mandal*, (2) a decision of the Calcutta High Court, is the second decision cited in reply. This decision merely lays down that in order to determine whether a plaintiff is entitled to recover possession of the property covered by a conveyance without cancellation of the instrument it is essential to determine the true character of the transaction. If it is void and inoperative in its inception, it is not necessary for the plaintiff to seek the cancellation of the instrument. If the transaction is merely voidable and is operative, so long as it is not avoided, the plaintiff cannot recover possession till he has avoided the instrument.”

In the result, Dua, J., came to the conclusion that the prayer for cancellation of the alienation was implicit in the plaint.

Having come to the conclusion that the plaintiff could not, in the circumstances of the case, sue for the cancellation of the transfer deed, it is unnecessary to go further into the matter. Mr. Chatterjee, the learned counsel for the respondent, says that the plaintiff having

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(1) 1964 P.L.R. 234.

(2) 9 I.C. 377.

executed an effective transfer deed, he cannot ask for a declaration that the transaction was one of pledge and not of transfer unless he gets the transfer deed cancelled, which transfer deed cannot be treated as void in its inception. The answer is to be found in an earlier part of the judgment where I have already said that the transfer deed was to remain with the defendant as an integral part of the transaction, and, therefore, the question of its cancellation cannot arise.

In the result, this revision petition must be allowed and the decision of the trial Court set aside. The parties will, however, bear their own costs. The matter will now go back to the trial Court for decision on merits. The parties will appear before the trial Court on 18th May, 1966.

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R.S.

REVISIONAL CIVIL

*Before R. S. Narula, J.*

NANAK CHAND AND ANOTHER,—*Petitioners.*

*versus*

NANGA,—*Respondent.*

Civil Revision No. 85-D of 1960.

May 12, 1966.

*Punjab Gram Panchayat Act, 1952 (IV of 1953)—S. 64(3)—Decree by Panchayat transferred to Sub-Judge, Palwal, for execution—Palwal Court sending it to Small Cause Court, Delhi, for execution—Small Cause Court, Delhi—Whether competent to execute the decree.*

*Held*, that the power to transfer a decree and to send it for execution to another Court is given by section 39(1) of the Code of Civil Procedure only to the Court which passed the decree and to no other Court. Section 64(3) of the Punjab Gram Panchayat Act is equivalent to a combination of section 38, 39 and the first part of section 42 of the Code and the middle portion thereof confers power on the Panchayat alone to forward its decree to any civil or revenue Court having jurisdiction for execution. No such power is conferred on the transferee Court. In the absence of an express statutory provision for that purpose no