

(1959) 07 MP CK 0016

In the Madhya Pradesh High Court

Case No : Civil Revision No. 476 of 1958

Abdul Shakur Gulam Rasul and Others

APPELLANT

Vs

Abdul Sattar Gulam Rasul and Another

RESPONDENT

Date of Decision : 08-07-1959

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 33 Rule 15, Order 33 Rule 7

Citation : AIR 1960 MP 317 : (1967) JLJ 1018 : (1961) 6 MPLJ 183

Hon'ble Judges : H.R. Krishnan, J

Bench : Single Bench

Advocate : K. Gandhe, for the Appellant; M.A. Khan, for the Respondent

Judgement

H.R. Krishnan, J.

This application in revision arises out of circumstances that can be called peculiar. There are four applicants who are the plaintiffs in a partition suit, the first three being brothers and the fourth, a sister. The defendants are two other brothers. At the first instance, the plaintiffs, that is, all the four of them, filed a petition that they should be allowed to sue in forma pauperis. After the usual hearing, the Civil Judge held : "Even if the three main plaintiffs were insolvent, still, the fourth, that is the sister, was possessed of properties sufficient to enable her to pay the Court-fee".

This is a revision and I am not prepared to go behind this finding. Accordingly, the Civil Judge gave time to the plaintiffs to file the Court-fee. After all, u/s 6 of the Court-fees Act, the document, namely, the plaint, has to be taxed as a single document and not taxed with reference to one or other of the joint plaintiffs. Within the time given, the Court-fee was not paid. Now, the three plaintiffs, namely, 1, 2 and 3, prayed to the Civil Judge that their sister was unwilling to pay the Court-fee and that they might be allowed to proceed in forma pauperis because the Court had not held that they were possessed of means to enable them to pay the Court-fee.

There was no prayer either to amend the plaint or to drop out the name of plaintiff No. 4 or which would be the most proper thing in a suit for partition to transpose the name of plaintiff No. 4 to the place of a defendant. The Court refused the prayer and the plaintiffs strangely enough, all the four of them have come to this Court in revision. In revision, it is urged that though one of the joint plaintiffs is possessed of means, the others are insolvent and they must be allowed to proceed in forma pauperis. This is obviously a difficult proposition because we cannot have the plaint taxed in respect of one plaintiff and not taxed in respect of the others. Either the plaint is taxed as a whole or it is so amended or a fresh plaint is so filed as to enable the plaintiffs as a body to show that they have no means to pay the Court-fee; otherwise, the most anomalous results would follow.

On behalf of the applicants, the ruling quoted in *Lakshi Kanto Ghosh Vs. Surendra Nath Ghosh and Others*, has been cited. A perusal of the ruling would show that the plaintiff No. 4 herself can find a way out of the situation. She may either pay the court-fee or failing it, she may withdraw from the suit. Similarly, the other plaintiffs who are now embarrassed by the unwillingness of the plaintiff No. 4 to pay the Court-fee, may bring a suit in their name impleading the plaintiff No. 4 as a defendant and then pray that they may be allowed to proceed in forma pauperis.

The difficulty is that neither course is being adopted. Plaintiff No. 4 for her part, is neither prepared to pay the Court-fee, nor to withdraw from the suit by making an appropriate prayer that her name be scored off the list of the plaintiffs. The three other plaintiffs also for their part, do not pray for the amendment of the plaint in the manner already suggested and do not want the plaint to be dismissed.

In the result, nothing can be done for the plaintiff-applicants in these proceedings in revision. However, while dismissing it, I would order that the Civil Judge should give the plaintiffs one month to enable them to follow one or the other of the alternative courses suggested.

Nothing that has been said in this judgment should be taken as a pronouncement either on the fact of pauperism of any of the parties, or on the maintainability of any suit that may subsequently be filed by any of the plaintiffs separately or some of them jointly. In the special circumstances of the case, no costs are allowed to either party.