

**(1991) 09 PAT CK 0053**

**In the Patna High Court**

**Case No : Civil Revision No. 317 of 1989 (R)**

Akshay Lal Sah and Others

APPELLANT

Vs

Ayodhya Prasad Sah and Others

RESPONDENT

**Date of Decision : 04-09-1991**

**Acts Referred:**

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

**Citation : (1993) 1 PLJR 581**

**Hon'ble Judges : S.B. Sinha, J**

**Bench : Single Bench**

**Advocate : N.K. Prasad, P.K. Prasad and M. Sahay, for the Appellant; V. Shivnath, for the Respondent**

**Final Decision : Dismissed**

## **Judgement**

S.B. Sinha, J.—This application is directed against an order dated 5.4.1989 passed by Shri Uma Shanker 1st Additional District Judge, Hazaribagh in Title Appeal No. 18/1987, whereby and where under the said learned court directed the petitioners to pay deficit court fee on the Memorandum of Appeal on the amended value of the suit property in the plaint, pursuant to its judgment dated 16.2.1989 passed in Title Appeal No. 18 of 1987. The fact of the matter lies in a very narrow compass.

2. The plaintiff-opp-parties filed two suits being Title suit No. 2 of 1985 and 6 of 1985 against the predecessor-in-interest of the defendant-petitioners from the building premises under their occupation on the grounds of default and personal necessity and also for arrears of rent amounting to Rs. 5400/-.

3. The petitioners in the written statement contended that there was no relationship of landlord and tenant by and between the plaintiff and the defendant. The petitioner also disputed the title of the plaintiff in or over the suit premises.

4. The learned trial court in terms of its judgment decree dated 5.8.1987 decreed

the suit holding in that there existed relationship of landlord and tenant by and between the parties. It was further held that the defendants were defaulters and the plaintiffs reasonably and in good faith required the suit premises for their own personal use and occupation.

5. The defendants being aggrieved by and dissatisfied with the said judgment preferred two title appeals, being Title Appeal No. 17 of 1987 and 18 of 1987.

6. The learned court below by a judgment dated 16.2.89 set aside the findings of the trial court regarding the existence of relationship of landlord and tenants, as also the ground of default and personal necessity, but dismissed the appeal holding that the plaintiffs respondents were entitled to a decree on the basis of their title to the suit properties. The learned court below accordingly directed the plaintiff to value the suit properties according to the market value and to pay ad valorem court fees within a period of 15 (fifteen) days from the date of judgment. Pursuant to the said judgment, the plaintiffs valued the suit properties at Rs. 20,000/- and amended the plaint accordingly. The plaintiffs also paid the ad valorem court fees within the time granted by the appellate court.

7. Thereafter the office reported that in view of the amendment in the plaint, the defendant-petitioners are also required to pay the ad valorem court fees on the value of the suit i.e. Rs. 20,000/- and thus by reason of the impugned order the learned court below directed the petitioners to pay the deficit court fee.

8. Mr. N.K. Prasad, Learned Counsel appearing on behalf of the petitioners raised a short question in support of this application; The Learned Counsel submitted that the learned court of appeal below committed an illegality in directing the petitioners to pay ad valorem court fee of Rs. 20,000/- inasmuch as, the defendant valued the mammo of appeal on the basis of valuation of the suit as it then existed.

9. The Learned Counsel next contended that in any event the defendant should have been granted an opportunity to contest the quantum of market value of the suit properties as stated by the plaintiff.

10. Mr. V. Shivnath, the Learned Counsel appearing on behalf of the Opp. parties, on the other hand, submitted that the petitioners have at no points of time challenged the valuation of the suit properties.

11. According to the Learned Counsel the plaintiffs were asked to amend the plaint by valuing the suit on the market value of the suit properties and the valuation put forth by the plaintiff has been found to be sufficient by the Office; the defendant-petitioners cannot be permitted to question the order passed by the learned court of appeal below in this Civil revision application.

12. In this case, admittedly the plaintiffs have not been able to prove the existence of relationship of landlord and tenant, they have also not been able to prove their case of default and personal necessity

13. In this situation, the learned court of appeal below was entitled to invoke his jurisdiction under Order 7 rule 7 of the CPC for the purpose of granting a decree on the general title of the plaintiff.

14. In a suit for eviction under the provisions of the said Act, the plaintiff is bound to prove the relationship of landlord and plaintiff. In other words, the plaintiff must prove that he is "landlord" in respect of the premises in suit which is being occupied by the defendant as a "tenant".

In a suit for eviction, however, the defendant is entitled in law to take defences other than qua tenant.

15. In a suit, therefore, where the plaintiff has failed to prove the relationship of landlord and tenant normally his suit is to be dismissed. However, courts sometime on the equitable considerations by invoking the provisions of Order 7 Rule 7 of the CPC may grant a decree for eviction as against the tenant on the basis of the general title of the plaintiff.

16. Instance, where such a decree can be passed, will be a case where the plaintiff may fail to prove the relationship of landlord and tenant but the evidence brought on record might show that the defendant was a licensee of the plaintiff being in permissive possession thereof.

17. In respect of such a case, this Court in Gauri Sao and others vs. Ramkishun Sao @ Ram Kishun Das and others reported in 1968 B.L.J.R. 167 held that despite failure of the plaintiff to prove the relationship of landlord and tenant, a suit for eviction may be decided in favour of the plaintiff on the basis of his general title. Again, in Ramchandra Sah and others vs. Chotan Sah reported in 1971 B.L.J.R. 186 this Court held that in such an event, the plaintiff will have to pay ad valorem court fee on the valuation of the property and such a decree may be passed on payment of such court fee by the plaintiff, by the court irrespective of the fact as to whether it would have pecuniary jurisdiction to try the suit or not.

18. The aforementioned decisions were followed by this Court in Sheo Shankar Prasad vs. Barhan Mistry and others reported in 1985 P.L.J.R. 358 and a Division Bench of this Court in Raghubar Dayal Prasad vs. Ramekbal Sah reported in 1985 P.L.J.R. 891.

19. However it is up to the plaintiff to obtain a decree on the basis of his general title and the court cannot force him to pay ad valorem court fee. (See Kailash Verma and others vs. Sushil Kumar Vohara reported in 1991 (1) PLJR 136).

20. As noticed hereinbefore, in this case, admittedly the learned court of appeal below directed the plaintiff to pay ad valorem court fee as it found that the plaintiff has been able to prove his title over the suit premises and was thus entitled to obtain a decree for eviction as against the defendant on the basis of his general title.

21. According to the plaintiff, the market value of the suit properties was Rs. 20,000/-. The plaintiff admittedly filed an application for amendment of the plaint before the learned court of appeal below, and the said application for amendment of plaint was heard in the presence of the petitioners.

22. It is now well known that an amendment of the plaint relates back from the date of the institution of the suit. The defendants petitioners were aware of the judgment of the learned court of appeal below to the effect that the plaintiff-opponents were required to pay ad volorem court fee on the basis of the market value of the suit properties. Not only in terms of the aforementioned judgment, the plaintiff amended the plaint but also paid the deficit court fee. Even the office has found the valuation of the suit properties as stated by the plaintiffs to be sufficient.

23. It, therefore, does not lie in the mouth of the petitioners to contend that no opportunity was given to them to oppose the valuation of the suit properties as put forth by the plaintiff as at the time of an application for amendment at subsequent stages, the petitioners could have objected with regard to the valuation of the suit properties. Even before me Mr. N.K. Prasad, when questioned, could not state as to what should be the market value of the suit properties according to the petitioners.

24. It is accepted at the bar that the petitioners have filed a second appeal being Second Appeal No. 94 of 1989 (R) against the judgment and decree passed by the learned court of appeal below dated 16.2.1989.

25. The petitioners, therefore, have questioned the findings of the learned court of appeal below to the effect that the plaintiff are entitled to obtain a decree in respect of the suit premises on the basis of their general title.

In this situation, the petitioners are liable to pay ad valorem court fee on the market value of the suit properties, namely Rs. 20,000/-.

26. There is thus, no merit in this application which is accordingly dismissed. However, in the facts and circumstances of the case, the parties shall pay and bear their own costs.