

(1930) 01 PAT CK 0016
In the Patna High Court

Badrinath

APPELLANT

Vs

Jagdip Sahay and Others

RESPONDENT

Date of Decision : 21-01-1930

Acts Referred:

Citation : AIR 1930 Patna 353(1)

Judgement

1. This is an application under Order 33, Rule 12 by the Crown to the Court to make an order under Order 33, Rule 10 or Section 11 for payment of court-fee of Rs. 105. The plaintiff in the suit sued in forma pauperis with regard to a property which was valued at Rs. 1,100. The court-fee of Rs. 105, for the reason which I have indicated, was not paid by the plaintiff. He succeeded in the trial Court, but on appeal by the defendant the plaintiff's suit was dismissed by the appellate Court and then there was a second appeal to this Court in which there was a compromise decree. The terms of the compromise being that the defendant would hand over the property to the plaintiff on payment of Es. 900. There was an omission as regards an order to pay court-fee and for that reason this application is made.

2. In the circumstances of the case it is somewhat difficult to decide whether the case comes under Rule 10 or Rule 11, Order 33. But this much may be said that the plaintiff has succeeded to the extent of 2/11ths of the claim having regard to the fact that the value of the property was Rs. 1,100 and he is to get back his property on payment of Rs. 900. In my judgment the course to be adopted in this case will be the course which was adopted in the case of Ganga Dahal Rai v. Gaura [1916] 38 All. 469, where it was decided that in similar circumstances the court-fee should be apportioned and, in my judgment, that is the course which the Court should pursue in this case.

3. I think the equities of the case demand that the plaintiff should bear 9/11ths of the court-fee and the defendant 2/11ths and we order accordingly.