(1926) 12 AHC CK 0027

In the Allahabad High Court

Bhagwan Puri and Others — APPELLANT

Vs

Secretary of State — RESPONDENT

Date of Decision : 17-12-1926

Acts Referred:

Court Fees Act, 1870 — Section 5
Court Fees Act, 1870 — Section 5
Court Fees Act, 1870 — Section 5

Citation : AIR 1927 All 308 : (1927) ILR (All) 398

Hon'ble Judges : Ashworth, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Ashworth, J.—The question referred to me by the Taxing Officer u/s 5 of the Court Fees Act, 1870, is as follows: The Secretary of State brought a suit for possession of certain land against the defendants-appellants. The plaint was valued for Court-fee according to the estimated market value of land, i.e., Rs. 3,00,000. The suit was decreed. The defendants in their appeal stated the value of the land to be Rs. 3,00,000 but paid a Court-fee of Rs. 1,425 instead of Rs. 2,425 which was the proper Court fee on the said valuation. Before the Taxing Officer the appellants'' contention was that the land not being subject to revenue should have been valued u/s 7, Clause V at 15 times the net profits arising from the land during the year next before the date of presenting the plaint and not according to the market value, and that the plaintiff had paid an excessive Court-fee. The Taxing Officer, while apparently admitting that the appellant is correct as to the valuation required by law has stated that the plaintiff could put his own valuation on the suit and so pay the necessary Court-fee to entitle him to bring that suit before the highest forum available, It seems to me, however, that the plaintiff''s estimate of the value of the land if contrary to the market value according to rule, cannot be allowed to operate to the prejudice of the defendant at any stage of the suit. It appears plain, there-fore, to me that the defendant can object to the valuation since it is now in his interest to do so.

2. It is, however, suggested by the Taxing Officer that the defendant-appellant is estopped from objecting to that valuation because he availed himself of the highest forum when the original suit was tried. I know of no rule of law that would create such estoppel and it is difficult to hold that the decision of the suit against him by a higher forum was any advantage to him. I hold that the defendant-appellant was entitled to stamp his appeal with a stamp based on the valuation of the land arrived at by correct application of the rule.

3. Another question, however, arises. The defendant-appellant in his petition of appeal stated that the value of the appeal was Rs. 3,00,000. Can he now be permitted to say that the value is less. I consider that he can and for the following reasons. The stated value of the appeal would not prevent his being called upon to pay a Court-fee on a higher valuation if that valuation were wrong. In the same way I do not see why he should not be allowed to correct his valuation when he is asked to pay a higher Court-fee than is due on the value correctly assessed according to law.

4. Apparently the appellant need only have paid the Court-fee of Rs. 365 according to the proper valuation of the land. He has, in fact, paid Rs. 1,425. He has not asked for any refund and, in my opinion, the Court-fee should be accepted as sufficient.