
(1941) 08 PAT CK 0022
In the Patna High Court

Bhudeb Chandra Roy and Others

APPELLANT

Vs

Bhikshakar Pattanaik and Others

RESPONDENT

Date of Decision : 27-08-1941

Acts Referred:

Registration Act, 1908 — Section 17(1)(b), 2(vi)

Citation : AIR 1942 Patna 120

Hon'ble Judges : Chatterji, J

Bench : Division Bench

Judgement

Chatterji, J.—This appeal arises out of a suit for recovery of Rs. 5278-5-0 on account of rent and cess, including interest and also value of fuel coal due in respect of 444 bighas and 2 kathas of coal land in village Kusunda, Pargana Jharia. The claim is based on a registered lease dated 16th June 1894, executed by Kenaram Sarkar in favour of Gadadhar Ray and Ashutosh Ray. Kenaram Sarkar was a benamidar for Pran Krishna Pattanaik and Chintamoni Pattanaik, and on 16th Bhado 1301, (September 1894) he executed a deed of release in their favour. Both Pran Krishna Pattanaik and Chintamoni Pattanaik are dead. The plaintiffs in this suit are sons and grandsons of Pran Krishna Pattanaik, and the pro forma defendants 6 and 7 are sons of Chintamoni Pattanaik. Gadadhar Ray and Ashutosh Ray are also dead. The defendants 1 to 4 are the sons and grandsons of Ashutosh Ray, and defendant 5 is his widow. These defendants are the principal defendants in the suit. The heirs of Gadadhar Ray are not parties to this suit. The annual rent reserved by the said registered lease is Rs. 1,554-9-6 besides cess, payable in four instalments. The lease also provides for delivery of four cartloads of coal every month. The plaintiffs' case is that out of the entire jama of Rs. 1,554-9-6 a jama of Rs. 410 was transferred to some other persons and the balance of Rs. 1,144-9-6 was being realised by the plaintiffs' ancestors and afterwards by the plaintiffs. Subsequently by mutual consent this jama of Rs. 1,144-9-6 was split up as between the heirs of Gadadhar Ray and those of Ashutosh Ray, and each of these two groups of heirs was separately paying annual rent of Rs. 572-4-9, besides cess. The present suit has been brought for

recovery of the rent payable by the heirs of Ashutosh Ray at the rate of Rs. 572-4-9 per year besides cess, for the period from Asarh 1338 to chait 1348 B.S. There is also a claim for recovery of the value of fuel coal. The pro forma defendants 6 and 7 who are entitled to a half share of the rent, etc., claimed in the suit have been impleaded on the allegation that they refused to join with the plaintiffs in bringing this suit. Defendant 5 who is the widow of Ashutosh Ray was impleaded as she claimed to have acquired the interest of defendants 1 to 4 in the leasehold property by gitt.

2. The suit was contested by the defendants 1 to 5. Their substantial defence is briefly as follows: The plaintiffs' predecessor-in-interest who granted the mining lease dated 16th June 1894, had only an intermediate tenure-holder's right in village Kusunda. The late Raja Durga Prasad Singh, the then zamindar of Jharia, instituted suit No. 66 of 1906 in the Court of the Subordinate Judge at Purulia against the predecessors-in-interest of the plaintiffs and the predecessors-in-interest of the defendants and other interested persons, claiming right and title to the underground coal, mineral, etc., of the entire village Kusunda. The said suit was compromised between the plaintiff Raja and several defendants including Gadadhar Ray, Ashutosh Ray and the predecessors-in-interest of the present plaintiff's and the suit was decreed in terms of compromise. One of the terms was that out of the total jama of Rs. 1554-9-6 payable under the lease in question half, that is Rs. 777-4-9, would be paid by Gadadhar and Ashutosh to the Raja plaintiff and the remaining half would be paid by them to the predecessors-in-interest of the present plaintiffs and pro forma defendants. Subsequently the Raja transferred his interest in village Kusunda to one Mr. C.J. Smith. Since then the latter and his transferees have been realising amicably and by suit the jama of Rs. 777-4-9. The remaining jama of Rupees 777-4-9 was due to the predecessors-in-interest of the plaintiffs and pro forma defendants. Out of this they transferred a jama of Rs. 150 to one Babu Lalit Kishore Mitra and a jama of Rs. 260 to one Jadumani Gupta, now dead. Therefore, the plaintiffs and the pro forma defendants and Babu Lalit Kishore Mitra and the heirs of Jadumoni Gupta are jointly entitled to get the annual jama of Rs. 777-4-9 only. Babu Lalit Kishore Mitra and the heirs of Jadumoni Gupta are necessary parties to this suit, and they not having been impleaded the suit is bad for defect of parties. The plaintiffs and pro forma defendants never realised the jama at the rate claimed from the defendants.

3. At the trial the plaintiffs asserted that even assuming that the Raja of Jharia had acquired under the compromise decree in Title Suit No. 66 of 1906 a right to recover half the jama, that is Rs. 777-4-9, that right was transferred by him to C.J. Smith who in his turn made a gift of it to Pran Krishna Pattanaik and Chintamani Pattanaik predecessors of the plaintiffs and pro forma defendants by a registered deed dated 24th March 1908. This deed was produced by them and admitted in evidence as Ex. 8. The learned Subordinate Judge who tried the suit has held (1) that the compromise decree in Title Suit No. 66 of 1906 is inadmissible in evidence inasmuch as it creates a lease and, therefore, required

registration; (2) that the alteration in the jama which had been effected by the compromise decree was never given effect to; (3) that the defence in this suit regarding the amount of the jama is barred by res judicata by reason of the judgment Ex. 5 (a) given in a previous suit (No. 124 of 1913) brought by Chaintamoni Pattanaik and the present plaintiffs against the heirs of Gadadhar Ray for recovery of the half share of rent payable by them, Ashutosh Eay being impleaded in that suit as pro forma defendant 6; (4) that whatever right, title and interest the Raja of Jharia acquired by virtue of the compromise decree he settled in mukarrari with C.J. Smith, and the latter by a deed of gift Ex. 8 dated 24th March 1908 made a gift of his right to the jama of Rs. 777-4-9 to Pran Krishna Pattanaik and Chintamoni Pattanaik; (5) that even assuming that the deed of gift was invalid as asserted by the defendants, the plaintiffs have acquired a perfect title by prescription; (6) that the plaintiffs are entitled to rent at the rate claimed and (7) that Lalit Kishore Mitra and the heirs of Jadumoni Gupta are not necessary parties to this suit. The learned Subordinate Judge accordingly decreed the suit. Defendants 1 to 5 preferred this appeal.

4. During the pendency of this appeal appellant 5 Srimati Bala Devi died on 6th April 1939. She left a will in which she appointed appellant 2 Earn Krishna Roy as the sole executor. The latter obtained a probate of the will from the Calcutta High Court in 7th September 1939. Thereafter, on 9th December 1940, an application, supported by an affidavit, was made on behalf of the surviving appellants stating that appellant 2 was the sole executor to the estate of the deceased appellant 5 and as such was her sole legal representative and praying that an entry to that effect should be made on the record. At the hearing of the appeal an objection was taken on behalf of the respondents that no substitution in the place of deceased appellant 5 having been made in time, the appeal abated. I shall deal with this objection later.

5. Mr. Sushil Madhab Mullick on behalf of the appellants has challenged all the aforesaid findings of the learned Subordinate Judge. The first question for determination is whether the compromise decree EX. A in suit No. 66 of 1906 is inadmissible in evidence. In that suit there were twenty principal defendants. Pran Krishna Pattanaik was defendant 1, Chitamoni Pattanaik defendant 2, Kenaram Sarkar defendant 4, Gadadhar Ray " defendant 15 and Ashutosh Ray defendant 17. The plaintiff Raja's claim in that suit was that he was entitled to the sub-soil right in the entire village Kusunda and that the defendants 1 and 2 or the other defendants had no right to the same. The suit was compromised between the plaintiff and various defendants, and it appears from the decree that several compromise petitions were filed and that the defendants who entered into compromise made their own arrangements with the Raja regarding their respective interest in the village Kusunda. On the whole the Raja appears to have recognised the respective rights of the different compromising defendants in consideration of their either making some cash payments or agreeing to make some recurring payments in future to him. So far as Pran Krishna Pattanaik, Chintamoni Pattanaik and Kenaram Sarkar were concerned, he agreed to their

rights being maintained in consideration of their giving up in his favour the right to recover the sum of Rs. 777-4-6, half of the jama of Rs. 1554-9-0 payable under the lease in question. In this connection the following passage in the compromise decree is relevant:

It is hereby ordered and decreed that defendants. 1, 2 and 4 Prankrishna Patnayek, Chintamoni Patnayek and Kenaram Sarkar would get and take year after year from the Rai defendants 15 and 17 the sum of Rs. 777-4-6, half of the annual rental of Rs. 1554-9-0, which they get from the Rai defendants; and from Baisakh 1314 B.S. the Rai defendants would pay the remaining half Rs. 777-4-6 to the plaintiff. The plaintiff would get the said Rs. 777-4-6 from the Rai defendants year after year from 1314 B. Section The plaintiff and his heirs and successors-in-interest and defendants 1, 2 and 4 and their heirs and successors-in-interest remain bound by the said order. The plaintiff would get the said rental of Rs. 777-4-6 only from the dues of defendants 1, 2 and 4.

6. As regards the lessees, Gadadhar Ray and Ashutosh Ray, defendants 15 and 17, there is the following provision in the decree:

It is hereby further ordered and decreed that with regard to the sub-soil and surface rights of the land of the disputed Mauza Kusunda which the two defendants 15 and 17 have acquired by separate pattas and sale-deeds from Kenaram Sarkar and Meghlal Pande and others, the said right is settled between the plaintiff and the said defendants 15 and 17 to this effect that for the underground coal etc. the said two defendants remain bound to pay to the plaintiff commission or royalty at the rate of 4½ pice (four and half pice), i.e., 13½ pies per ton. The said two defendants 15 and 17 as well as their heirs and successors-in-interest will continue to pay to the plaintiff as well as his heirs and successors-in-interest commission or royalty at the rate of 4½ pice per ton of those sorts of coal for which they are entitled to get and have been getting royalty at the rate of 4 annas per ton according to the kabuliyat executed by J. Chater, deceased, tenant under them.

7. At first sight this last provision would seem to suggest that a fresh mining lease was created by the Raja in favour of the Rays. If taken by itself, it might be construed in that way. But the compromise decree must be read as a whole. Considering both the provisions quoted above, the true position seems to be that the Raja recognised the rights both of the lessor and the lessees created by the lease in question, subject to this condition that out of the jama of Rupees 1554-9-0 he was to get half, that is Rs. 777-4-6, and further the lessees would pay him com-c mission or royalty at the rate of is pice per ton of certain coal indicated in the compromise decree. In other words, the possession of the lessees over the lease-hold property was maintained subject to their taking the additional burden of paying commission of royalty at the aforesaid rate to the Raja. As regards the jama the lessees were bound under the lease to pay Rs. 1554-9-0. The effect of the compromise decree was that half of this was transferred by the lessor to the Raja. In these circumstances, I do not think it

will be reasonable to hold that any fresh lease was created by the Raja in favour, of the Rays. That being so, the compromise decree did not require registration. So far as the transfer of the jama of Rs. 777-4-6 to the Raja is concerned, it will come u/s 17(1)(b), Registration Act. Consequently the decree would be exempted from registration under Sub-section (2)(vi) of the same section of the Registration Act. I am, therefore, of opinion that the learned Subordinate Judge was wrong in holding that the compromise decree is inadmissible in evidence.

8. The next finding of the learned Subordinate Judge is that the compromise decree remained inoperative in so far as it effected a transfer of a portion of the jama in favour of the Raja. It is unnecessary to consider the reasons given by him for this finding, because it is sufficient to state that a decree passed by a competent Court, unless it is set aside by appropriate proceedings, is always binding and operative against the parties thereto. Of course an executable decree would become ineffective after its execution is barred by time. But that is not the case here.

9. Next comes the question of res judicata. The judgment Ex. 5 (a), which in the opinion of the learned Subordinate Judge operates as res judicata was passed in a suit for rent brought by Chintamoni Pattanaik and the present plaintiffs against the heirs of Gadadhar Ray, impleading Ashutosh Ray as pro forma defendant 6. Rent was claimed for the period from Asarh 1316 to Pous 1318 at the rate of Rs. 572-4-9, that is to say, at the rate claimed in the present suit. It was alleged in the plaint that the jama of Rs. 1144-9-6, which remained after the transfer of the jama of Rs. 410 from the total jama of Rs. 1554-9-6, used to be realised jointly from defendants 1 to 5, that is, the heirs of Gadadhar Ray and from pro forma defendant 6 Ashutosh Ray up to 1315 B.S., but thereafter defendant 6 paid his share of the rent separately. The claim was for half share of the rent payable by defendants 1 to 5. No relief was asked for against pro forma defendant 6. He, however, gave evidence for the plaintiffs in support of their case of separate collection. But the evidence on that point was apparently quite unsatisfactory. After the close of the argument the plaintiffs' pleader filed a petition praying that a joint decree might be passed against defendants 1 to 5 and 6. The Court accordingly passed a joint decree against defendants 1 to 6, but the plaint does not appear to have been amended nor was defendant 6 given an opportunity to be heard. The decree was passed on 10th March 1913. Subsequently on 1st April 1915 the plaintiffs and defendants 1 to 5 filed a petition of compromise (EX. 6) in which the last clause was as follows:

That the plaintiffs having amicably realised from Ashutosh Rai, defendant 6, the rent etc., payable in his half share for the years in suit by giving separate receipt, this suit will be dismissed as against the said defendant 6. Hence on filing the solenama, it is prayed that the said suit be disposed of in terms of the solenama and this solenama be treated as a part of the decree.

10. The learned Subordinate Judge considers that the judgment Ex. 5 (a) operates as res judicata by reason of Expl. 4 to Section 11, Civil P.C. But when

there was no relief, sought against Ashutosh Ray and a decree was asked for only against the heirs of Gadadhar Ray for their half share of the rent, it was not at all necessary for Ashutosh to raise any defence in the suit. The joint decree was passed without amending the plaint or without giving any opportunity to defendant 6 to be heard with regard to the application that was filed after the close of the argument praying for a joint decree. In the circumstances, the decree could not be effective against defendant 6. The learned Subordinate Judge assumes that he must have been present when the decree was passed, and therefore the decree can be taken to have been passed on admission as against him. Such assumption cannot be justified. The very fact that subsequently the plaintiffs and the principal defendants filed the petition of compromise (EX. 6) would suggest that the decree was passed behind the back of defendant 6. Even assuming that the decree could be regarded as having been passed on admission as against defendant 6, the subsequent petition of compromise had the effect of superseding that consent decree. In any view, the decree cannot operate as *res judicata* against Ashutosh Ray or his heirs.

11. The next question that arises is whether the plaintiffs can base any claim on the deed of gift Ex. 8. By this deed Mr. C.J. Smith who had acquired from the Raja of Jharia the right to receive the jama of Rs. 777-4-6 from the Rays made a gift of this right to Pran Krishna Pattanaik and Chintamani Pattanaik. The deed on the face of it appears to have been attested by only one witness. If it was a gift of immovable property, the deed would be invalid because Section 123, T.P. Act, requires that a gift of immovable property must be effected by a registered instrument attested by at least two witnesses. The learned Subordinate Judge has held that "the gift was a gift of the royalty jama of Rs. 777-4-9 and of nothing else," and as such it was a gift of moveable property. This is entirely wrong. Immovable property is defined in Section 3(25), General Clauses Act (10 of 1897) as follows:

Immovable property shall include land, benefits to arise out of land and things attached to the earth or permanently fastened to anything attached to the earth.

12. In Section 3, T.P. Act, it is simply stated that "immovable property does not include standing timber, growing crops, or grass." Therefore; we must take the definition of immovable property as given in the General Clauses Act. According to this definition a. benefit to arise out of land is immovable property. Future rent is a benefit to arise out of land. The point is settled by the decision of the Judicial Committee in AIR 1936 230 (Privy Council) The right to receive the jama of Rs. 777-4-9 which was gifted by the deed Ex. 8 must be held to be immovable property. The deed Ex. 8 not being attested by at least two witnesses as required by Section 123, T.P. Act, is therefore invalid. Consequently the plaintiffs cannot base any claim on this deed of gift. It is also to be observed that no such claim was made in the plaint.

13. The learned Subordinate Judge has further held that even if the deed of gift was invalid, the Pattanaiks acquired a perfect title by adverse possession. In the

first place, no case of adverse possession was pleaded in the plaint. In the second place, Mr. C.J. Smith against whom adverse possession could be claimed is not a party to this suit. In the last place, the mere fact, assuming that the fact has been established as supposed by the learned Subordinate Judge, that the Rays continued to pay rent to the Pattanaiks on the basis of the original lease does not prove that the Pattanaiks acquired a title by adverse possession as against Smith. On the other hand, the defendants produced certain decrees to show that in spite of the deed of gift Mr. Smith and his mortgagees continued to realise the jama of Rs. 777-4-9. In these circumstances, it is idle for the plaintiffs to base any claim on a title by adverse possession.

14. It therefore follows that in view of the compromise decree Ex. A the plaintiffs and the pro forma defendants would be entitled to receive the jama of Rs. 777-4-9 only from the heirs of both Gadadhar Ray and Ashutosh Ray. But the predecessors-in-interest of the plaintiffs and the pro forma defendants transferred a jama of Rs. 260 to Jadumoni Gupta and a jama of Rs. 150 to Lalit Kishore Mitra; therefore they will be entitled to recover the remaining jama of Rs. 367-4-9 from the heirs of both Gadadhar Ray and Ashutosh Ray. The plaintiffs' own case is that the heirs of these two persons have been separately paying the rent in equal shares. The result, therefore, is that the plaintiffs and pro forma defendants are entitled to a decree for rent at the rate of Rs. 187-10-4J against the principal defendants in this suit. The next question is whether the suit is bad for defect of parties inasmuch as Lalit Kishore Mitra and the heirs of Jadumoni Gupta have not been impleaded. Mr. Sushil Madhab Mullick contends that they are in the position of joint lessors and, therefore, they should have joined in this suit, and that in their absence the suit can-not be maintained. If they had been joint lessors under the original lease, there might perhaps be something to be said in favour of this argument. But they are transferees and Section 109. T.P. Act, makes specific provision for the case of transfers. The last paragraph of that section which is relevant is as follows:

The lessor, the transferee and the lessee may determine, what proportion of the premium or rent reserved by the lease is payable in respect of the part so transferred, and, in case they disagree, such determination may be made by any Court having jurisdiction to entertain a suit for the possession of the property leased.

15. If, therefore, it is found that the lessor, the transferee and the lessee have agreed as to the amount of rent payable to the transferee, there is no reason why the lessor or the transferee will not be entitled to sue for the rent payable to him. In the present case the plaintiffs allege that there was a transfer of a jama of Rs. 410 out of the entire jama of Rs. 1554-9-6. The defendants in their written statement also admit this transfer, and they further make it clear that Rs. 150 was transferred to Lalit Kishore Mitra and Rs. 260 to Jadumoni Gupta. Thus both the parties admit the transfer and agree as to the amount of rent payable to the transferees. No doubt the defendants in the written statement say that the

plaintiffs, the pro forma defendants and Babu Lalit Kishore Mitra and the heirs of Jadumoni Gupta are jointly entitled to get the jama of Rs. 777-4-9. But the amount of the jama transferred to Lalit Kishore Mitra and Jadumoni Gupta being known, the lessees are liable to pay that amount to the transferees and the balance to the plaintiffs and the pro forma defendants. The plaintiffs are, therefore, entitled to sue for the rent payable to them and the pro forma defendants without impleading Lalit Kishore Mitra and the heirs of Jadumoni Gupta. It has been brought to our notice that the transfer to Jadumoni Gupta was effected in September 1894, that is to say, long before the compromise decree. The deed of transfer is not on the record but the date has been supplied to us by the learned advocates of both sides. Apparently the transfer of the jama to Jadumoni Gupta was made on the footing that the transferors had the right to the entire jama of Rs. 1554-9-6. But Jadumoni was not a party to the compromise decree and, therefore, could not be affected by its terms. The transfer must in any event take effect on the transferors' interest, whatever it might be. However, that is a matter between the plaintiffs and the heirs of Jadumoni Gupta. So far as this suit is concerned, the matters in controversy as between the parties to the suit can easily be decided in the absence of Jadumoni Gupta's heirs or of Lalit Kishore Mitra. The appellants' objection regarding defect of parties must, therefore, be overruled. Now, I come to the question of abatement raised on behalf of the respondents. It is not disputed that of the deceased appellants, appellant 2 was the sole executor and that the latter obtained a probate of the will from the Calcutta High Court on 7th September 1989. On 9th December 1940, the surviving appellants filed an application praying that an entry be made on the record to the effect that on the death of appellant 5 her right to sue survived to appellant 2 alone. This application was apparently made under Order 22, Rule 2, Civil P.C. That rule runs as follows:9

Where there are more plaintiffs or defendants than one, and any of them dies, and where the right to sue survives to the surviving plaintiff or plaintiffs alone, or against the surviving defendant or defendants alone, the Court shall cause an entry to that effect to be made on the record, and the suit shall proceed at the instance of the surviving plaintiff or plaintiffs, or against the surviving defendant or defendants.

16. Mr. Section C. Mazumdar contends that appellant 2 was on the record in his individual capacity and not as the legal representative of the deceased appellant, and, therefore, an application for substitution was necessary under Order 22, Rule 3, Civil P.C. That rule provides:

(1) Where one of two or more plaintiffs dies and the right to sue does not survive to the surviving plaintiff or plaintiffs alone, or a sole plaintiff or sole surviving plaintiff dies and the right to sue survives, the Court, on an application made in that behalf, shall cause the legal representative of the deceased plaintiff to be made a party and shall proceed with the suit.

17. Upon the plain language of this rule it obviously applies to a case where the

right to sue does not survive to the surviving plaintiff or plaintiffs alone; in other words, where the legal representative to whom the right to sue survives is not on the record. In order to determine whether Rule 2 or Rule 3 applies, it is necessary to see whether or not, the right to sue survives to the surviving plaintiff or plaintiffs alone. There is nothing in Rule 2 to support the contention that it does not apply where the legal representative is on the record not as such but in his individual capacity. This contention is opposed to the decision of a Division Bench of this Court in Thakur Prasad and Another Vs. Emperor, . In that case it was held that:

When the representatives of a deceased party are already on the record and the right to sue and be sued survives to the remaining plaintiff or against remaining defendants, the case comes within Rule 2 and not within Rule 3 and no petition for substitution is necessary.

There also the contention was raised that: Even if the heirs of a deceased appellant be on the record, it is still necessary that an application for substitution be made so that the appellants already on the record may be shown also in their capacity as representatives of the deceased appellant.

18. But this contention was rejected by the learned Judges. They referred to several earlier decisions of this Court and explained them. The view taken by them seems to me to be quite correct. It is a decision of a Division Bench and is binding on us. Mr. S.C. Mazumdar also contends that when appellant 5 died her natural heirs should have applied for substitution in her place within the time allowed by law. But u/s 211, Succession Act (39 of 1925)

The executor or administrator, as the case may be, of a deceased person is his legal representative for all purposes, and all the property of the deceased person vests in him as such.

19. Of course u/s 213 of the same Act, no right as executor can be established in any Court of Justice, unless a Court of competent jurisdiction has granted probate of the will under which the right is claimed. This only means that no Court shall recognize the right of an executor unless he has obtained probate of the will under which he claims. But the effect of Section 211 is that the estate of the deceased testator vests in the executor by virtue of the will and from the date of his death. In the case appellant 2, having obtained probate of the will of the deceased appellant, must be recognized by the Court as the legal representative of the latter as from the time of her death. In Chandra Kishore Roy v. Prasanna Kumari Dasi 38 Cal. 327, their Lordships of the Privy Council held that the provisions of Section 187 of the old Succession Act (corresponding to Section 213 of the present Act of 1925) were complied with as the probate was obtained before the decree, though after the commencement of the suit. In my opinion, therefore, the respondents objection on the score of abatement must be overruled.

20. In the result I would allow the appeal in part and modify the decree passed

by the Court below to this extent that the plaintiffs and the pro forma defendants will recover rent at the rate of Rs. 188-10-4-9 instead of Rs. 572-4-9 per annum, besides cess which will be in proportion to the rate of rent allowed. The lower Court's decree with respect to the claim for fuel coal will stand, because the provision in the lease in that respect was not in any way affected by the compromise decree. The plaintiffs' claim for interest on rent and cess will be disallowed, because having regard to their unjust demand for much higher rate of rent, it can not be said that the defendants unjustly withheld payment of rent. The plaintiffs' will get proportionate costs in the Court below from the contesting defendants. The decretal amount will carry future interest at 6 per cent, per annum from the date of the lower Court's decree. So far as this Court is concerned, parties should bear their own costs.