
(1924) 02 PAT CK 0023
In the Patna High Court
Case No : S.A. No. 262 of 1924

Dasarate Meshy and others

APPELLANT

Vs

Jay Chand Sutradhar and others

RESPONDENT

Date of Decision : 15-02-1924

Acts Referred:

Citation : (1924) 02 PAT CK 0023

Final Decision : Dismissed

Judgement

1. This was a suit for certain reliefs in the alternative. One relief sought was for possession of schedule IV land and the alternative to this relief was a declaration that defendant No. 5 was a tenant under the plaintiffs for the said land. As an alternative to the above reliefs a prayer for partition of schedule I land minus the schedule II land was made. The suit was valued at Rs. 49 and a Court-fee of Rs. 3-120 was paid on the plaint. The suit was dismissed. The plaintiffs appealed and valued their appeal to the lower appellate Court at Rs. 49 and paid a Court-fee of Rs. 312 0 in the lower appellate Court. The appeal having been dismissed, they have preferred this second appeal valued at Rs. 49 and stamped with a Court-fee of Rs. 3-12-0. The Court-fee paid in each of the three Courts is insufficient. It is a settled law that where the plaintiff sues in the alternative for one of two reliefs, the larger of the two reliefs sought determines the amount of the stamp : Kashinath Narayan v. Govinda (1891) 15 Bom. 82 and Mukhlal Gir v. Ramdheyani Rai (1918) 44 I.C. 143 a Patna case. The stamp for the relief for possession in the present suit is Rs. 3-12 0 only. The stamp for the relief for the declaration or the partition is Rs. 15. Therefore, the relief for the declaration or for the partition is larger than the relief for possession. Therefore, the Court-fee leviable in each Court is Rs. 15. Rs. 3-120 having been paid, the plaint, the memo, of appeal to the lower appellate Court and this memo of second appeal are insufficiently stamped by Rs. 11-4-0 each, total Rs. 33-12-0. This is due from the plaintiffs-appellants.

2. If the appellants can show that the plaint was filed before 24th August, 1922,

the deficit on the plaint will be Rs. 6-40 only and the total deficit due from them will be Rs. 28-12-0.

Order of Registrar.--This is a Court-fee matter.

3. The learned Vakil disputes the Stamp Reporter's note arguing that, because the value of the relief for partition cannot anyhow exceed the value of the relief for exclusive possession, the relief for partition is not the higher of the two reliefs and that, therefore, the principle that Court-fee is payable on the higher of two reliefs does not apply in this case. If this were so, then the appellant would escape paying Court-fee on the relief for partition and I cannot interpret *Kashinath Narayan v. Govinda* (1891) 15 Bom. 82 in this way. I prefer to interpret it as implying that where two reliefs are identical in actual money value, but different in respect of the Court-fee leviable on each, then Court-fee is payable on the relief carrying the higher Court-fee; this is in accordance with the practice of this Court and with Desai's Court Fees Act, page 95, 5th edition, and the cases cited there.

4. I, therefore, hold that Rs. 15 is the Court-fee leviable on this memorandum of second appeal. Rs. 3-12-0 having been deposited, the memorandum of appeal is insufficiently stamped by Rs. 11-4 0. There is a similar deficiency on the memorandum of appeal to the lower appellate Court as also on the plaint.

5. If the deficit Court-fees be not paid in on or before the 23rd instant, place before the Bench for orders.

Order of Court:--The view taken by the learned Registrar is perfectly right. The deficit Court-fee must be made good within a fortnight from to-day, failing which the appeal will stand dismissed without further reference to the Bench.