
(1986) 01 PAT CK 0018

In the Patna High Court

Case No : C.R. No. 1395 of 1982 & Civil Revision No. 1395 of 1982

Dasrath Prasad and Others

APPELLANT

Vs

Shivnandan Mishra and Others

RESPONDENT

Date of Decision : 07-01-1986

Acts Referred:

Citation : (1986) 34 BLJR 705 : (1986) PLJR 344

Hon'ble Judges : S.S. Sandhawalia, C.J;Birendra Prasad Sinha, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Birendra Prasad Sinha, J.—This application in revision is directed against the latter part of the order dated 30th of April, 1982 passed in Title Suit No. 31 of 1980 by the Subordinate Judge, Khagaria calling upon the petitioners to pay ad valorem Court fee on the value of the properties said to have been purchased by them from the original plaintiff.

2. One Kunti Devi filed a suit for partition being Title Suit No. 31 of 1980 claiming 1/3rd share in the suit properties against her co-sharers. The suit was filed on 30-9-1980 On 3-10-1980 and 11-11-1980 she transferred an area of 15 bighas of land by four registered sale deeds to the petitioners. On 16-1-1981 she entered into a compromise with the original defendants and riled a petition in the suit making a prayer that the suit be disposed of in terms of the compromise. When the petitioners came to know about the said compromise they filed an application in the suit for being added as parties and on 13-1-1982 they were added as intervener defendants. On 2-2-1982 the original defendants filed an application in the Court below and prayed that the intervener defendants, namely, the petitioners should be transposed as plaintiff inasmuch as the original plaintiff Kunti Devi had already compromised the suit, by order dated 30-4-1982 the petitioners were transposed as plaintiffs and the original plaintiff Kunti Devi as defendant in the suit. Consequent upon this in the latter part of the order the Court also directed these petitioners to pay ad va orem Court fee on the

valuation of the properties purchased by them from the original plaintiff. As stated above this latter part of the order has been challenged in the present application.

3. The only question for consideration is whether in the facts and circumstances of this case the petitioners are required to pay ad valorem Court fee under the provisions of the Court Fees Act.

4. Mr. K.D. Chatterjee appearing for the petitioners mainly submitted that the Court fee having been already paid by the original plaintiff, the petitioners are not required to pay additional Court fee. According to him the devolution of interest on the petitioners will not change the position for the purpose of Court fee. This was seriously contested by Mr. Shreenath Singh appearing for the original defendant-opposite parties. According to Mr. Singh the nature of the suit has now changed and the transferees, namely, the petitioners are not sailing in the same boat as the transferor namely, the original plaintiff Mr. Chatterjee relied upon a decision of this Court in Harihar Prasad Narain Deo Vs. Maheswari Prasad Narain Deo, . In that case a partition suit had been filed by the younger brother against the elder brother. On the death of the elder brother his sons were substituted in his place. The plaintiff sold a portion of the property to other persons who were also added as plaintiffs. The Subordinate Judge had directed the plaintiff to pay ad valorem Court fee. It was argued that inasmuch as there was now added plaintiffs who had taken a transfer of part of the property, the nature of the suit had altered and the Court was entitled to consider whether the purchaser plaintiffs were in possession and if they were not, to demand ad valorem Court fee. This was negative and it was held that devolution of interest pending the suit: could make no difference in the Court fee to be paid. The added plaintiffs came in the interest of their vendor, the original plaintiff, and their position was identical with him. The facts of the present case are different. In this case the original plaintiff after the sale of the property filed a compromise petition in the suit praying therein to dispose of the suit in terms of the compromise. Later she allowed herself to be transposed as defendant in the suit. The position, therefore, is that the original plaintiff and the petitioners are not co-plaintiffs in the suit and their interest is not identical. In this connection reliance was placed by learned Counsel for the opposite party on a decision of the Madras High Court in Kollipara Nagendram v. Chundru Appayya and Ors. AIR 1947 Mad 285. There a suit was filed by a member of a joint Hindu family against other members for partition in joint property. Proper Court fee was paid. Subsequently the plaintiff conveyed his interest in the family property to a stranger who was joined as plaintiff No. 2. The original plaintiff fell out with the purchaser plaintiff No 2 and got himself transposed as defendant and consented to abide by the partition which had been set up by one of the defendants, It was held that when the original plaintiff decided not to prosecute the suit as laid and allowed himself to be transposed as a defendant the nature of the suit had altered and it ceased to be a suit for partition by one co-parcener against the other co-parcener and became a suit by a person claiming to be an alienee from a co-parcener for

partition against the other members of the family. In such a situation the purchaser who was subsequently added as plaintiff was bound to pay ad valorem Court fee on the share of properties which he was claiming. The position in the instant case is almost similar. The petitioner who are purchasers cannot be described as persons in joint possession actually or even constructively along with other members of the family. The moment the original plaintiff Kunti Devi ceased to be on record as a plaintiff, the suit must be regarded as a suit by the present petitioners as alienees. As alienees the petitioners cannot be entitled to the benefit of the special provisions of the Court Fees Act applicable to a coparcener in joint possession with other coparceners. In my opinion, therefore, the Court below was right in calling upon the petitioners to pay ad valorem Court-fee in this changed situation. The application, therefore, must fail and is dismissed but without costs.

S.S. Sandhawalia, C.J.

5. I agree.