
(1952) 02 PAT CK 0007

In the Patna High Court

Case No : Civil Revision No. 225 of 1951 (with A.F.O.O. No. 160 of 1950)

Dhirendra Nath Banerji

APPELLANT

Vs

Narhari Gir and Another

RESPONDENT

Date of Decision : 11-02-1952

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1

Citation : AIR 1952 Patna 430

Hon'ble Judges : Rai, J;Jamuar, J

Bench : Division Bench

Advocate : K.D. De, for the Appellant; S.C. Sinha, for the Respondent

Judgement

Rai, J.—This application by the plaintiff No. 2 is directed against the judgment and order of the Court below dated the 24th of February 1951, asking him to deposit ad valorem court-fee on Rs. 18000/-.

2. The plaintiffs had instituted the suit on the allegation that plaintiff No. 2 had purchased certain shares in properties mentioned in the schedule attached to the plaint by a registered sale deed, dated the 17th February 1937, from one Harballabh Narayan and others. Sometime in July 1951, plaintiff No. 2 executed a sale deed of relinquishment in favour of defendant No. 1 admitting that the properties purchased in his name really belong to defendant No. 1. This was followed by a registered deed of relinquishment, dated the 22nd of April 1942, to the same effect. Defendant No. 2 is an assignee of the interest of defendant No. 1. There had arisen several litigations with respect to the properties in suit including a suit for partition and a mortgage action which have been mentioned in some details in the plaint of the present suit in which, the following reliefs were claimed:

"(i) After declaration of the title of the plaintiffs (or of plaintiff No. 2) possession over the properties in suit may be delivered to the plaintiffs or any one of them.

(ii) The defendants be permanently restrained from appropriating any of the

issues, profit, usufructs and other compensations accruing out of the properties in suit.

(iii) Mesne profits (to be enquired hereafter) be awarded to the plaintiffs.

(iv) All costs of the suit may be awarded.

(v) Such other relief or reliefs to which the plaintiffs or any of them may be entitled may be decreed.

(vi) It be declared that the plaintiffs were entitled to their proportionate share in the sum of Rs. 4,30,000/- and odd awarded as compensation in the Defence of India Case Project No. 4 of 1942 and the defendants be permanently restrained from realising the same or any interest accruing out of it."

The trial Court has held that the plaintiffs should pay ad valorem court-fees on Rs. 18,000/- which was the consideration mentioned in the sale deed dated the 17th February 1937.

Learned Advocate for the petitioner contended that, in order to assess court-fee, the plaint as a whole should have been taken into consideration. According to him, the registered deed of relinquishment did not transfer any title to defendant No. 1. He further submitted that, though, in the relief portion of the plaint, a declaration regarding plaintiffs' title had been sought, yet this relief was a redundant one and a relief for possession only would have been sufficient. I am afraid I am not inclined to accept this argument on behalf of the petitioner. The plaint read as a whole together with the reliefs sought in it makes it abundantly clear that the relief for declaration of title was not redundant and the Court below was perfectly justified in holding that the case came within the purview of Section 7(iv)(c) of the Court-fees Act.

3. The learned Advocate for the petitioner, in support of his contention, referred to the case of "Ramkhelawan v. Bir Surendra" 16 Pat. 766 (FB) and also to the case of "Ramautar v. Ram Gobind" 20 Pat. 780. But those two cases were distinguishable from the present case. In the former case the plaintiff had claimed three reliefs: (i) possession of the properties in suit, (ii) costs, and (iii) any other relief to which the plaintiff may be entitled in the opinion of the Court. Those reliefs were held not to be sufficient to bring that case within the purview of Section 7(iv)(c) of the Court-fees Act. In the present case, however, the reliefs claimed do attract the provisions of Section 7(iv)(c) of the Court-fees Act. In the case of "Ramautar v. Ram Gobind" 20 Pat. 780, it was held that the plaint in terms asked only for partition and there being no prayer for a declaration of title or for cancellation of any document, it was not proper to import those two prayers in the plaint by implication. In the present case, however, the specific reliefs claimed in the plaint themselves bring the case within the purview of Section 7(iv)(c) of the Court-fees Act.

4. In my opinion, there is no merit in this application, which is hereby dismissed with costs to the opposite party No. 2: hearing fee two gold mohurs.

MISCELLANEOUS APPEAL NO. 160 OF 1950

5. This appeal by the plaintiff No. 2 is directed against the judgment and order of the Court below disallowing the prayer of the plaintiffs for temporary injunction restraining the defendant No. 2 from withdrawing a sum of Rs. 92,000/-. The Court below has, by that order, permitted defendant No. 2 to withdraw that amount after giving security to the satisfaction of that Court.

6. The amount in question represents a portion of the compensation money which is in deposit with the District Judge of Patna in connection with some land acquisition proceedings in which some of the properties in suit were acquired by Government. The Court below has taken the view that the plaintiffs have not proved any prima facie title to the properties in suit, and that there was no justification for issuing the injunction prayed for when defendant No. 2 was prepared to give security for the entire amount to the satisfaction of that Court. In this case the plaintiffs have not yet paid full court-fee on the plaint. In my opinion, there is no justification for the plaintiffs to ask for an injunction against defendant No 2, more so, when their interest has been amply safeguarded by taking security for the full amount. The appellant has failed to point out any illegality in the order of the Court below.

7. The result is that the appeal fails, and is dismissed with costs to respondent No. 2.

Jamuar, J.

8.I agree.