
(1972) 03 PAT CK 0001

In the Patna High Court

Case No : Civil Revision No. 1473 of 1969

Dulhin Suraj Mukhi Devi and Others

APPELLANT

Vs

Jokhu Raj and Others

RESPONDENT

Date of Decision : 21-03-1972

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 43 Rule 1, 115

Citation : AIR 1972 Patna 313

Hon'ble Judges : N.L. Untwalia, J

Bench : Single Bench

Advocate : Binod Kumar Roy and Kamla Prasad Roy, for the Appellant; Ramji Sharan, Vijoy Nandan Sahay and Shyam Kishore Pd., for the Respondent

Final Decision : Allowed

Judgement

N.L. Untwalia, J.—The three plaintiff-petitioners in this civil revision application are full sisters. They are daughters of Awadh Behari Singh, from his first wife. They filed a suit, in respect of some properties of their maternal-grand-father, and sought permission to sue in forma pauperis. The learned Subordinate Judge, by his order dated the 27th September, 1969, has rejected their application for permission to sue in forma pauperis. They have come up in revision.

2. It has not been found by the court below that the petitioners were possessed of any property or had means to pay the requisite court-fee on the date of their application, which was filed in the year 1968. What happened, however, at the time of the hearing of the application was that the petitioners' father Awadh Behari Singh was dead. He died a few days before the commencement of the hearing. According to the evidence. Awadh Behari Singh left a few bighas of land, in which the petitioners also would have some share. The learned Subordinate Judge did not go into the disputed question of the share of the petitioners in the land left by their father, but, on their admission, he came to take the view that all the three daughters would get at least 15 Kathas. And, since, according to the evidence of A.W. 4, a cousin of the petitioners, the value of the land would be

between Rs. 2,000/- to Rs. 6,000/- per Bigha, the learned Subordinate Judge came to hold that on the date when he was making the order, "the applicants are certainly possessed of property which they have inherited from their father and by no stretch of imagination they can be called paupers."

3. I am of the view that the property to which the petitioners became entitled on the death of their father, at the time of the hearing of the pauper application, could be taken into consideration. To that extent the learned Subordinate Judge is right. But, he has committed a sad mistake of another kind and that makes his order an order in which there is obviously an error of jurisdiction. It has been repeatedly pointed out that when the case comes under the first part of the explanation appended to Rule 1 of Order XXXIII of the CPC then what is necessary to find out is whether the applicant is possessed of sufficient means to enable him to pay the fee prescribed by law for the plaint, and, not whether he is possessed of sufficient property. On the surface of the evidence of A.W. 4, the learned Subordinate Judge took the view that the value of the property, which must be deemed to be in possession of the applicants on the date when the application for permission to sue in forma pauperis was being disposed of, could not be less than Rs. 1,500/-. The court-fee payable in this case was of an amount less than that. But, in my opinion, the learned Subordinate Judge has missed the other piece of evidence of A.W. 4 in this connection.

4. On a consideration of many cases, including the one in *Mt. Jainatun Nissa Bibi and Another Vs. Mt. Idrakun Nissa, , Reuben, J. (as he then was)*, delivering the judgment of the Division Bench, in the case of *Dhananjai Prasad Singh Vs. Rajkeshwar Singh and Others*, has pointed out.

"..... .the question for enquiry being not the possession of property but the possession of sufficient means for the payment of the necessary court-fee, the Court has to apply its mind to the consideration of whether the applicant's right to the particular property is such as to enable him to raise money thereon."

5. According to the evidence of A.W. 4, Awadh Behari Singh had three daughters from his first wife and three daughters and two sons from his second wife. He had about 8 or 10 Bighas of land, but he had incurred debts also. According to his evidence, Awadh Behari died in jointness with A.W. 4, who is a son of Awadh Behari's brother. He further stated that his father stood mutated over all the lands. The value of the land, according to him, will be Rs. 2,000/- per Bigha and land is sold at Rs. 6,000/- per Bigha also in the village where the land is situate. He denied the suggestion given to him that his father was separate from Awadh Behari. On the evidence of A. W. 4, upon which reliance has been placed by the court below, it is clear that, in all probability, no purchaser would be available to pay the requisite amount for purchase of the shares of the petitioners in the land said to be inherited from Awadh Behari Singh. The question as to whether an applicant is not possessed of sufficient means to enable him to pay the fee prescribed by law is not a purely theoretical or notional question. It has to be approached, from a practical point of view as to whether, on the facts of a

particular case, in all probability, the applicant would be able to raise money by alienating the property which the applicant may be possessed of (possession either actual or legal). If the applicant, from a practical point of view, is not able to raise the requisite money for the payment of the court-fee then he is not possessed of sufficient means to enable him to pay it. Here, on the facts of this case, the learned Subordinate Judge committed an error in resting content by Binding that the applicants art possessed of sufficient property. Instead of sending the case back to the court below, on an appraisal of the evidence, I have come to the conclusion that, in all probability, no person will be available to be an alienee of the shares of the petitioners in their father's property for a sum of money which would be sufficient and enable the petitioners to pay the prescribed court-fee on the plaint proposed to be instituted by them. I, therefore, hold that the applicants are not possessed of sufficient means, within, the meaning of the first part of the explanation to Rule 1 of Order XXXIII of the Code of Civil Procedure, and, hence, the required permission should be granted to them. The court below committed an error of jurisdiction, on an erroneous view of the matter, in refusing the permission.

6. In the result, the application in revision is allowed, the order of the court below is set aside and the petitioner's application for permission to sue in forma pauperis is allowed. There will be no order as to costs.