

(2004) 07 PAT CK 0046

In the Patna High Court

Case No : M.A. No. 336 and 340 of 2002

Dumraon Properties and Enterprises (P) Ltd.

APPELLANT

Vs

Bihari Lal Gupta and Others

RESPONDENT

Date of Decision : 29-07-2004

Acts Referred:

Citation : (2004) 07 PAT CK 0046

Final Decision : Allowed

Judgement

S.K. Katriar, J.—Heard Mr. Chandrashekhar Prasad Singh for the appellant and Mr. Nand Kishore Prasad Sinha for the respondents. The plaintiff is the appellant against a common order dated 21.5.2002, passed by the learned 1st Additional District Judge, Buxar, in Title Appeal Nos. 8 of 1991 and 9 of 1991, Bihari Lal Gupta and Ors. v. Dumraon Properties and Enterprises (P) Ltd., whereby he has set aside the common judgment and decree dated 23.2.1991, passed by the learned 1st, Munsif, Buxar, in Title Suit No. 31 of 1980/8 of 1990 and Title Suit No. 32 of 1980/9 of 1990. The trial Court had decreed the suits for eviction which has been set aside by the impugned judgment and the matters have been remitted back to the trial Court for a fresh judgment in accordance with law after determining the issue relating to payment of ad valorem Court fee raised by the parties before the lower appellate Court.

2. M.A. No. 336 of 2002 arises out of Title Appeal No. 8 of 1991 which in its turn, has arisen out of Title Suit No. 31 of 1980. The analogous M.A. No. 340 of 2002 has arisen out of Title Appeal No. 9 of 1991 which, in its turn, has arisen out of Title Suit No. 32 of 1980. Both the Courts below have disposed of the two matters by a common judgment/order and, therefore, the two appeals are being disposed of by a common order.

3. The plaintiff instituted the two suits for the eviction of the defendants from the suit premises. The suit was decreed. Aggrieved by the judgment and the decree, the defendants (respondents herein) preferred appeals before the learned District Judge. The defendants raised the question of payment of Ad valorem

Court fee. In that view of the matter, the learned Court of appeal below has set aside the judgment of the learned trial Court and has remitted the matter back to him for determination of the question of suit valuation.

4. While assailing the validity of the impugned order, learned counsel for the plaintiff (appellant) submits that the learned Court of appeal below has passed the impugned order completely overlooking the provisions of Section 11 of the Suits Valuation Act, 1987, the learned Court of appeal below did not apply himself to the issue whether or not the objection as to the payment of ad valorem Court-fee was raised by the defendants at the first instance, i.e. before the trial Court. He next submits that the Court will have also to satisfy itself whether or not the over-valuation or under- valuation of the suit has prejudicially affected the disposal of the suit. He relies on the judgments of the Supreme Court reported in *Kiran Singh and Others Vs. Chaman Paswan and Others*, . He lastly submits that even if the question of over-valuation or under- valuation of the suit in his estimation did arise, then the course open to him was to dispose of the matters on merits and in the process decide the question of Court-fee and, in the event of being leviable, he should have himself assessed the Court-fee. He relies on a Division Bench judgment of this Court reported in 1985 PLJR 891, *Raghubar Dayal Prasad v. Ramekbal Sah*.

5. Learned counsel for the respondents (defendants) has supported the impugned order. He has, inter alia, submitted that the question of valuation of the suit goes to the root of the matter and proper valuation thereof may change the very forum of the trial Court and the lower appellate Court. He has also made efforts to satisfy this Court that he has been prejudicially affected by improper valuation of the suit.

6. I do not wish to observe in detail about the merits of the issue, namely, proper valuation of the suit in view of the nature of the order that I am going to pass. I would only like to indicate the proper course that ought to have been followed by the learned Court of appeal below. Section 11 of the Act is the most important and the relevant provision of law in this connection which lays down to the effect that the objection as to proper valuation of the suit shall have to be taken in the Court of first instance or the memorandum of appeal in terms of Section 11(a) of the Act. Therefore, in so far as the present cases are concerned, the lower appellate Court shall, before it sustains the objection with respect to proper determination of the Court-fee raised by the defendants, will have to satisfy himself that the defendants have raised this issue before the trial Court when the issues were being framed. It has been noted in the impugned order which is now subject to verification once again of the learned Court of appeal below that the suit was initially an eviction suit and was converted into a title eviction suit by amendment of pleadings before the that Court. Therefore, in view of the provisions of Section 11(a) of the Act, it was incumbent on the defendants to raise the question of proper valuation of the suit while the issues were being framed. The question whether or not it was so raised by the defendants is

basically question of fact which I leave it to be decided by the learned Court of appeal below.

7. Section 11(a) and Section 11(b) are separated by a disjunctive "or". Therefore, it was open to the defendants to raise the alternative plea before the Court of appeal below that improper valuation of the suit has prejudicially affected them. The fact that the trial Court would be the Munsif or the Sub-Judge, and the first appellate Court would be the District Judge or the High Court has not at all in law been taken to cause any prejudice to the parties. These aspects have been discussed in detail in the aforesaid judgment of the Supreme Court in *Kiran Singh and Ors. v. Chaman Paswan and Ors.* (supra).

8. I must point out another relevant aspect of the matter. I am informed at the Bar that the Munsif can try suits up to the pecuniary jurisdiction of rupees thirty thousand, the first appeal whereof lies before the District Judge against which a second appeal is competent before the High Court. The sub-ordinate Judge has unlimited pecuniary jurisdiction. The pecuniary jurisdiction of the District Judge as the first appellate Court is up to rupees sixty thousand. This by necessary implication means that suits of the valuation between thirty thousand and sixty thousand will have to be decided by the sub-ordinate Judge, the first appeal of which would lie before the District Judge which, in its turn, can be challenged by way of second appeal in this Court. I observe from the impugned order that the plaintiff's case is that the suit should be valued at rupees three thousand, whereas the defendants have asserted that it should be appropriately valued at rupees fifty thousand. Therefore, in taking the defendants' case at its very best, the first appeal would in any case lie before the District Judge. Therefore, the parties in any view of the matter would not be deprived of the three forums up to the level of High Court. What then is the prejudice to the defendants?

9. Another vital aspect of the matter is the course that the learned Court of appeal below ought to have adopted if he thought that the suit was not properly valued. Learned counsel for the plaintiff (appellant) has rightly relied on the Division Bench judgment of this Court in *Raghubar Dayal Prasad v. Ramekbat Sah* (supra), wherein similar issue regarding the proper valuation of the suit had arisen. The High Court did not set aside the judgment of the Courts below and had instead disposed of the appeal on merits and thereafter remitted back the matter to the lower appellate Court with the direction on the limited question to fix appropriate market value of the property and to demand payment of ad valorem Court-fee. In other words, in the instant case, it was incumbent on the learned Court of appeal below to decide the matter on merits and in the course of that ought to have decided the question of valuation of the suit. If the defendants were able to cross the hurdle created by Section 11 of the Act, then should have fixed the proper market valuation and demand payment of ad valorem Court- fee. I would like to remind the learned Court of appeal below that the High Court after disposal of the matters on merits did not remit the matter back to the trial Court but to the lower appellate Court. In so far as the present

cases are concerned, the entire matter was before the learned Court of appeal below and, therefore, there could not have been the question of remanding the matter to the trial Court.

10. To summarise the position :

(i) The learned Court of appeal below has seriously erred in law in setting aside the judgment of the trial Court;

(ii) He has equally erred in completely overlooking the provisions of Section 11 of the Act;

(iii) Now that the impugned judgment is being set aside, the matter goes back on remand to him. He should dispose of the matter on merits and, if the defendants still insist on his plea relating to proper valuation of the suit, then the same shall be disposed of along with the disposal of the appeals before him on merits.

(iv) He should, inter alia, be governed by the provisions of Section 11 of the Act and the aforesaid reported judgments.

11. In the result, both the appeals are allowed, the impugned order dated 21.5.2002, passed in Title appeal No. 8 of 1991 and 9 of 1991 is set aside. The . matter goes back to the learned Court of appeal below for a fresh judgment in accordance with law and the observations made hereinabove. These being suits of 1980, the lower appellate Court is hereby directed to dispose of the appeals on or before the last date of December, 2004. All the parties are hereby directed to appear before the lower appellate Court along with a certified copy of the order on 6.9.2004. The parties before me have agreed to dispense with notice from the lower appellate Court.