

(1990) 04 PAT CK 0031

In the Patna High Court

Case No : Civil Revision No's. 116 and 118 of 1990 (R)

Kailash Verma @ Kailash Ram Verma

APPELLANT

Vs

Sushil Kumar Vohra and Another

RESPONDENT

Date of Decision : 18-04-1990

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 7 Rule 7

Citation : (1990) 04 PAT CK 0031

Hon'ble Judges : Satyeshwar Roy, J

Bench : Single Bench

Advocate : M.Y. Eqbal and Alok Lal, for the Appellant; K.D. Chatterjee and M.M. Banerjee, for the Respondent

Final Decision : Dismissed

Judgement

Satyeshwar Roy, J.—Heard the learned Counsel for the parties. As the points-involved in all these cases are identical, the matter is being disposed of by this common order.

2. It was submitted on behalf of the Petitioners that as an issue on the question of title has been framed by the court below, the opposite parties, plaintiffs in the court below, must pay advalorem court fee. There appears to be confusion on the question whether in a suit filed by landlord for eviction of tenant from a building, if the question of title is required to be gone into on being raised and pressed by the tenant, the landlord shall have to pay advalorem court fee even if he neither raised the question of title nor prayed for a decree on the basis of title.

3. The opposite parties filed three separate suits for eviction of three tenants-Petitioners from three tenanted buildings on the allegation that the Petitioners were tenants of the opposite party. The former in the written statements, inter-alia, stated that they have purchased the property and were in possession of the same as owners. The question of title was raised in the written statement.

4 The trial court did not frame any issue on title. The Petitioners filed C.R. Nos.

280 to 282 of 1988(R). It was ordered that as the Petitioners had raised the question of title in the written statements if they press that issue, the court below shall frame an issue on that point and decide the same. An issue on title in all the suits was framed as pressed by the Petitioners.

5. The Petitioners in the court below contended that as an issue on title has been framed and it shall be gone in to the opposite parties in all the three suits must pay advalorem court fee on the value of the property. The court below has negated the contention. That is impugned.

6. The Petitioners reiterated in this Court the contention made on their behalf in the court below. It was submitted by Mr. Eqbal, learned Counsel for the Petitioners, that when ever an issue on title is framed be it at the instance of the Defendant--tenant or at the Instance of Plaintiff--landlord. Plaintiff--landlord must pay advalorem court fee On behalf of the Opposite Parties, Mr. Chatterjee, learned Counsel, urged that If the question of title is to be gone into at the instance of the Plaintiff, further court fee is payable. He submitted that as in these cases the question of title has been raised by the Defendants, and the Plaintiffs till now have not prayed for a decree on the basis of title, no further court fee is payable. Mr. Eqbal relied in Smt. Kasturi Devi v. Shripat Singh AIR 1954 Pat 128, Ramchandra Sah v. Chotan Sah 1971 B.L.J.R. 186, Sheo Sankar Prasad v. Barhan Mistry 1985 P.L.J.R. 358 and Sardendu Ghosh v. Binayendra Nath Ghosh and Anr. S.A. No. 48 of 1976 (R) decided on 13th October 1980, and Raghubar Dayal Prasad Vs. Ramekbal Sah, .

7. The written statement of Defendant will neither change the nature of suit, nor the forum. If a landlord tiled a suit for eviction of tenant on the basis of relationship of landlord and tenant court shall go only into the question whether there is relationship of landlord and tenant. If the Plaintiff fails in proving the relationship, the suit must fail. In these suits, the Plaintiffs have prayed for a decree for eviction on the basis of relationship of landlord and tenant.

8. It is now settled that if the Plaintiff fails to prove relationship of landlord and tenant and prays for decree for eviction on the basis of title, court may give him that relief in that suit, in view of Order VII Rule 7 of the Civil procedure Code, if the parties have led evidence on the question of title and the plaintiff has not forfeited his right to seek relief on equitable ground. In that case, the Plaintiff shall be required to pay advalorem court fee on the value of the property in suit. What is the legal position regarding payment of court fee when in a suit where question of title is raised by the Defendant and the court goes into that question at the instance of the Defendant but the Plaintiff does" not pray for decree for eviction on the basis of title? Shall the plaintiff be still required to pay advalorem court fee on the value of the property?

9. In Smt. Kasturi Devi Plaintiff filed a suit for eviction of Defendant on the basis that the latter was his tenant. Defendant raised question of title. It was held that the Defendant was not in occupation as tenant. Title of Plaintiff was accepted and

decree in his favour was passed. It was held that the question of title was investigated at the instance of the Defendant. Even if the value of the property was beyond the pecuniary jurisdiction of the trial court, no prejudice was caused to the Defendant. Decree of the trial court was affirmed by a Division Bench. In Ram Chandra Sah and Sardendu Ghosh, the learned single Judge reiterated it. In Rahubar Dayal Praead, a Division Bench upheld that legal position. In none of these cases, it was held that even if the Plaintiff does not pray for a decree for eviction on the basis of title, he shall have to pay advalorem court fee as contended by Mr. Eqbal.

10. In Sheo Shankar Prasad (supra) it was observed that...before the court goes into the question of title not incidentally, but in a fullfledged manner, the Plaintiff should be asked to pay advalorem court fee". It appears from the judgment of that case that suit was tiled by landlord for eviction of tenant. The tenant raised the question of title in defence. The trial court went into it in detail, but no additional court fee was paid by the landlord--Plaintiff. He was Appellant before this Court in Second Appeal. On his behalf, prayer was made to remand the case to the trial court to enable Plaintiff to value the suit according to the value of the property and to pay advalorem court fee. The observation of the learned single Judge noted above must be read in this context i.e. prayer for decree on the basis of title. This case also does not help Mr. Eqbal. His contention cannot be accepted also in view of Abdulla Bin Ali and Others Vs. Galappa and Others, .

11. It was submitted by Mr. Eqbal and accepted, by Mr. Chatterjee that if the opposite parties pray for decree for eviction on the basis of title, the trial court shall have to value the suit for computing additional court fee payable by the opposite parties. With reference to Sheo Shankar Prasad ((supra) Mr. Eqbal submitted that in that event if value of suits are found to be beyond the pecuniary jurisdiction of the Munsif, in whose court the suits are preding, it shall have to return the plaints for presentation before the court having pecuniary jurisdiction. It is true that in Sheo Shankar Prasad (supra), the learned Single judge while remitting back the matter to fix the valuation directed the trial court to return the plaint if the valuation fixed by it was found to be beyond its pecuniary jurisdiction. This observation of the learned single Judge in Sheo Shankar Prasad (supra) is contrary to the laid down in Smt. Kasturi Devi and Raghubar Dayal Prasad (supra), the two Division Bench decisions particularly when in Sheo Shankar it was not recorded how the Defendant was going to be prejudiced if the matter was heard again by the Additional Munsif.

12. In the result, I find no merit in there revision applications and the same are dismissed.