(1935) 08 PAT CK 0004

In the Patna High Court

Case No : First Appeal No. 86 of 1935

Panchamdeo N. Singh and others — APPELLANT

Vs

Kuldip Sahay and others — RESPONDENT

Date of Decision : 12-08-1935

Acts Referred:

Citation : (1935) 08 PAT CK 0004

Judgement

1. This matter has been placed before us for determining the deficit court fee, if any, payable on the plaint of the suit out of which the appeal presented to this Court by the plaintiffs has arisen. It appears that a mahal in which the plaintiff held a fourteen annas share was sold for arrears of Government revenue for a sum of Rs. 9,500. The plaintiff thereupon brought the suit to set aside the sale on the ground of fraud and irregularity and for confirmation of his possession in respect of his share or in the alternative to recover possession of that share. The learned Subordinate Judge before whom the suit was instituted was of the opinion that the suit ought to be valued at Es. 5,500 this sum representing the difference between the value of the entire property and the amount fetched at the sale. Belying upon the view of the Subordinate Judge when the plaintiffs preferred the present appeal he valued the appeal at the sum at which it had been valued by the Subordinate Judge. The Taxing Officer however after hearing the plaintiffs decided that the appellant should pay court-fee on Rs. 15,000 and directed the appellant to make good the deficit within a certain time. The Registrar then directed that the matter should be placed before us for determining the deficit due on the plaint of the suit.

2. Now, it is not disputed that the case is governed by S. 7 (4) (c), Court-fees Act, and an ad valorem court-fee is accordingly payable upon the plaint. Mr. Sarjoo Prasad, who appears on behalf of the appellant however contends that the plaintiffs were liable to pay court-fee only upon the loss which they had sustained as a result of the sale, such loss in the present case amounting to Rs. 5,500 only, as Es. 9,500 had already been realized by the sale of the property. In urging this view before us Mr. Sarjoo Prasad relies strongly on the decision of the Judicial

Committee in Phul Kumari v. Ghanshyam Misra, (1903) 35 Cal 202 = 35 I A 22 = 7 C L J 36 = 12 C W N 169 (PC) This decision has been rightly distinguished by the Registrar and it is enough to point out that in the suit before the Privy Council there was no question of obtaining any relief similar to what is claimed in the present suit, but the plaintiffs in that suit sued for setting aside a summary order passed upon a claim which had been preferred in the course of an execution proceeding and for an injunction to restrain the decree-holders from executing their decree. In course of the judgment which was delivered by the Judicial Committee their Lordships observed:

Their Lordships are not satisfied that even if the value of the action determined the fee, the respondents have rightly ascertained the value. What they have done is simply to take the sum in the execution decree. This is plainly a fallacious proceeding. The value of the action must mean the value to the plaintiff, but the value of the property might quite well be Rupees 1,000 while the execution debt was Es. 10,000. It is only if the execution debt is less than the value of the property that its amount affects the value of the suit.

3. Relying upon this observation it is contended by Mr. Sarjoo Prasad that the value of the suit has been rightly stated by the plaintiffs to be Rs. 5,500, but it appears to me that the argument is not correct. The plaintiffs had instituted the present suit to recover possession of their property and so the sum of Rupees 9,500 which the property fetched at the sale cannot be taken into account. That might have been taken into account if the suit had been instituted to recover the difference between the value of the property and the amount fetched at the sale. In these circumstances it is quite clear that the plaintiffs ought to pay court-fee upon 14/16 the of the value of the property in which only they are interested. The Government Pleader contends that in law the appellants are liable to pay the court-fee upon the value of the entire property but upon the view which is deducible from the decision of the Calcutta High Court in Ganesh Bhagat Vs. Sarada Prasad Mukerjee, and numerous other decisions on the point it appears to us that the plaintiffs can be required to pay the court fee only upon their share of the property and the value of the share is the measure of their loss in the present case. We therefore hold that the subject-matter of the suit should be valued at 14/16ths of Rs. 15,000 and the court-fee in the plaint should be assessed upon that sum and the deficit court-fee should be paid by the plaintiffs within six months from this date.

