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**(1926) 06 PAT CK 0019**

**In the Patna High Court**

Pandit Dhanukdhari Tewari and Others

APPELLANT

Vs

Mani Sonar and Others

RESPONDENT

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**Date of Decision :** 09-06-1926

**Acts Referred:**

**Citation :** AIR 1927 Patna 123 : 100 Ind. Cas. 913

**Hon'ble Judges :** Jwala Prasad, J

**Bench :** Single Bench

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## **Judgement**

Jwala Prasad, J.—This is a Reference by the Taxing Officer u/s 5 of the Court Fees Act, and it arises in connection with the second appeals filed by the plaintiffs in this Court.

2. The plaintiffs are proprietors of Mauza Amehta. The defendants hold a house in khata No. 196, khasra No. 47, on land measuring 2 acres in the said village. The land has been entered in the Survey Record of Rights as gair majruha of the maliks.

3. The plaintiffs' case is that the land was given to the defendants in lieu of services to be rendered by the defendants on condition that the plaintiffs would be entitled to take khas possession of the land either when the services were no longer required or when the defendants ceased to render those services; and that the defendants refused to render services from Sawan 1328 Fasli and are not inclined to do so and that they refused to quit the land or to pay rent. The plaintiffs, therefore, seek the following reliefs:

(1) That it may be adjudicated that the land or house is the gair majruha of the proprietors and was given as jagir to the ancestor of the defendants in lieu of rendering services on the condition that they would have no right to hold possession of the land in the event of not rendering services to the plaintiffs or of not paying ground rent; that the possession of the defendants is a trespass and the plaintiffs are entitled to recover possession;

(2) that on a declaration of the plaintiffs' title and want of title of the

defendants, possession may be awarded to the plaintiffs by ousting the defendants, or in the alternative an order may be passed for recovery of ground rent at the rate of Rs. 10 per katha annually as per account given in the plaint, or any amount that may be considered proper by the Court from the defendants.

4. The plaintiffs valued the suit at Rs. 6-8 0 in the case of Mani Sonar and another, at Rs. 19-8-0 in the case of Dahin Sonar and others and at Rs. 16-4-0 in the case of Baijnath Sonar and another, and paid Court-fee thereon. The Munsif disallowed the prayer for khas possession, and allowed the prayer for assessment of rent fixing Rs. 10 per katha annually to be paid from Sawan 1328 Fasli up to the date of the suit.

5. On appeal the Subordinate Judge fixed the rate of rent at Rs. 3 per katha as a fair and equitable rent. The cross appeal of the defendants was dismissed.

6. The plaintiffs have come to this Court in second appeal and seek to have the decrees of the Munsif restored, assessing the rent at Rs. 10 per katha, and have valued the memorandum of appeal at one year's rent under Sub-section (ii) of Section 7 of the Court Fees Act, deducting there from the amount of rent decreed by the lower Appellate Court.

7. The Stamp Reporter objected to the Court-fee paid by the plaintiffs on the plaint and the memoranda of appeal in this as well as in the lower Appellate Court. He contended that the suit of the plaintiffs being for recovery of khas possession, or in the alternative for assessment of rent, the Court-fee payable is on the higher of these alternative reliefs claimed by them. The alternative relief for assessment is assessable with a Court-fee of Rs. 15 under Article 17 to Schedule 11 of the Court Fees Act. This fee being higher than the Court-fee payable for the relief for khas possession should be levied in view of the decisions in *Kashinath Narayan v. Govinda* 15 B. 82 : 8 Ind. Dec. (N.S.) 56 *Mukhlal Gir v. Ramdheyani Rai* 44 Ind. Cas. 143 and *Banambar Chhotra Vs. Nata Behra*, .

8. Accordingly, the plaint and the memorandum of appeal were not properly stamped and the plaintiffs must make the deficiency good with respect to the fee paid by them on the plaint in the trial Court and on the memorandum of appeal filed in this Court as well as in the lower Appellate Court. The defendants-respondents similarly should have paid Rs. 15 with respect to the cross-appeal filed by them in the lower Appellate Court and should be called upon to make up the deficiency in the Court-fee paid by them.

9. The Taxing Officer has accepted the report of the Stamp Reporter. The appellants dispute the view taken by the Taxing Officer, and the dispute thus raised between the Taxing Officer and the appellants has been referred to me for determination as a Taxing Judge, inasmuch as the dispute raised involves a question of principle.

10. The plaintiffs valued the relief upon one year's rent claimed by them on the

principle of Section 7, Clause (ii) of the Court Fees Act. Under that clause Court-fee is to be paid according to the amount of rent of the Immovable property to which the suit refers payable for the year next before the date of presenting the plaint. The clause relates to suits of various kinds between landlord and tenant, such as, a suit for delivery by a tenant of a counter-part of the lease, to enhance the rent of a tenant having right of occupancy, for the delivery by a landlord of a lease, for the recovery of Immovable property from a tenant holding over after the termination of tenancy, to contest a notice of ejectment, to recover occupancy of Immovable property from which a tenant has been illegally ejected by the landlord and for abatement of rent. The clause does not provide for a suit for assessment of rent which implies that no rent was paid previously by the defendant. The Court-fee payable under this clause is upon the rent "payable for the year next before the date for presenting the plaint."

11. In a suit for assessment of rent there being no rent payable previously the clause does not apply. So far the Taxing Officer seems to be correct.

12. He, however, thinks that the prayer for assessment of rent amounts to a declaration, but this is not so. It is obvious from the reliefs quoted above that the plaintiffs, firstly, seek a declaration of their right to recover possession of the property and of the absence of any right in the defendants to hold possession thereof and then upon such declaration they want to eject the defendants or to have rent assessed in the alternative. The terms of the second relief make it quite clear. It is in two parts, namely, (1) to eject the defendants and (2) to have ground rent fixed in the alternative. Both these prayers in the alternative follow from the adjudication of the plaintiffs' title. Therefore, both these prayers are consequential reliefs sought by the plaintiffs upon a declaration of their title and of want of the defendants' title to the land in question. Therefore, it would be wrong to say that the prayer for ejectment is a consequential relief after adjudication of the plaintiffs' title, whereas the prayer for assessment of rent in the alternative is not a prayer for consequential relief but is only in the nature of a declaration. No rent was payable previous to the institution of the suit and the assessment of rent implies that the rent payable is uncertain and depends upon a determination by the Court., The rent of Rs. 10 per katha stated by the plaintiffs is only a suggestion of what they consider to be a fair and equitable rent.

13. Therefore, a suit for recovery of possession with mesne profits, and in the alternative for assessment of fair and equitable rent, is a suit for a declaration of the plaintiffs' title to the land and for consequential relief. In the case of *Kali Charan Roy v. Kesho Prasad Singh* 51 Ind. Cas. 15 : 4 P.L.J. 561 the landlord sued for assessment of rent and for recovery of specific sums as damages for use and occupation of the land. It was held that the suit was to obtain a declaratory decree where consequential relief was prayed and that it came within Section 7, Clause (iv)(c), and not u/s 7, Clause (ii) of the Court Fees Act. The latter clause applies to suits for "maintenance or annuities or other sums payable

periodically" and the Court-fee payable is according to the value of the subject-matter of the suit which is deemed to be ten times the amount claimed to be payable for one year. It was held that "other sums payable periodically," in the section must be construed as implying sums payable of the nature of maintenance and annuities upon the rule of ejusdem generis. This ruling indicates that a suit for assessment of rent comes u/s 7, Clause (iv) (c).

14. The case of Hemnalini Debi v. Maharaja Chandra Mouleshwar Prasad Singh Bahadur, S.A. No. 288 of 1924, seems to be on all fours with the present one. In that case the suit was for khas possession and mesne profits and in the alternative for assessment of a fair and equitable rent. The question of Court-fee came before a Bench of this Court presided over by Das and Ross, JJ., the Stamp Reporter having taken the same view as in the present case. The order of the Bench was as follows:

We regret that in this case we are unable to agree with the Stamp Reporter. We have carefully read the plaint and, in our opinion, the suit is for khas possession and mesne profits, and in the alternative for assessment of fair and equitable rent. If the plaintiff succeeds in his appeal and if this Court refuses to give him khas possession, he would be entitled to a decree assessing fair and equitable rent payable by the defendant to him. We do not treat the alternative relief claimed by the plaintiff as a prayer for a declaration of title. It is clearly a prayer asking the Court to determine the fair and equitable rent payable by the defendant to the plaintiff.

15. In the present case the plaintiffs have been refused khas possession. Their claim is now confined to a decree assessing fair and equitable rent payable to them by the defendants. They also claim a decree at that rate from the date the cause of action arose up to the date of the suit. The prayer for determining a fair and equitable rent was treated in the aforesaid suit to be in the nature of a consequential relief in the same way as the prayer for obtaining khas possession. Both the prayers are consequential reliefs.

16. Therefore, following this decision the prayer for assessment of rent is not in the nature of a declaratory relief and it does not come under Article 17, Schedule II of the Court Fees Act.

17. The plaintiffs' prayer is now for assessment of rent at Rs. 7, he having already received Rs. 3 out of his claim for Rs. 10 per katha. This reduces the value of the plaintiffs' claim in the second appeal and the Court-fee is payable upon the reduced claim: vide, Lukhun Chunder Ash v. Khoda Buksh 19 C. 272 : 9 Ind. Dec. 627.

18. The assessment of Court-fee should be in accordance with Section 7, Clause (iv) (c), as observed above. The same result is arrived at by looking at the provisions of the Court Fees Act. There is no particular provision in the Court Fees Act applicable to a suit for assessment of fair and equitable rent and, therefore, ad valorem Court-fee is to be paid under Schedule I of the Act which,

as the heading shows, provides for fee payable on a plaint or written statement, etc, in cases "not otherwise provided for in the Act."

19. I, therefore, hold that the fee payable upon the plaint and the memorandum of appeal in this Court as well as in the lower Appellate Court should be assessed in accordance with Section 7, Clause (iv) (c), treating the relief for assessment of fair and equitable rent as a consequential relief. Article 17 of Schedule II of the Court Fees Act, which applies to purely declaratory suits, does not apply to the present case.