
(1919) 11 PAT CK 0001
In the Patna High Court

Raghubans Narayan Singh

APPELLANT

Vs

Khub Lal Singh

RESPONDENT

Date of Decision : 24-11-1919

Acts Referred:

Citation : 80 Ind. Cas. 439

Hon'ble Judges : Foster, J; Das, J

Bench : Division Bench

Judgement

Das, J.—This is a Court-fee matter. The facts of the case will be found fully stated in the admirable order of the learned Registrar. The question for determination is, was the question of Court-fees wrongly decided by the Court in which the plaint in the suit was filed.

2. The question arises in this way: The suit was for possession of 15 annas odd Milkiat share in Tauzi No. 655, and 1-anna odd share in Tauzi No. 657, for joint possession of 108 Bighas 14 cottahs 10 Dh, of Khudkasht lands. The malkiat shares and the khudkasht lands were jointly valued at Rs. 15,000, and Court-fee was paid on ten times the Government Revenue of the Milkiat shares u/s (v)(a) of the Court Fees Act. The question is, ought the plaintiffs-appellants not have paid Court-fees on their claim in respect of the khudkasht lands?

3. I have no doubt at all that if the claim was in respect only of the Khudkasht lands, the case would fall u/s 7(v)(d) of the Court-Fees Act and not u/s 7(v)(a) of that Act, that is to say, Court fees would be payable on the market value of the land. But does it make any difference because the plaintiffs asked, in addition, for possession of the Milkiat shares within which the Khudkasht lands lie? The plaintiffs' view of the matter is contained in para. 12 of the plaint and is as follows: "As the khudkasht land, possession whereof is sought, lies within the Milkiat, the possession whereof is also asked, therefore, Court-fee for Khudkasht land is not paid separately and is included in that paid for the milkiat."

4. I am clearly of opinion that this view is not a correct one. A claim for

possession of Milkiat does not include a claim for possession of the Khudkasht. The test, in my opinion, is this: Would the plaintiffs be entitled to direct possession of Khudkasht lands in a suit for possession of Milkiat shares? Clearly they would not be so entitled, if the defendants claimed to be tenants in respect of these lands. What the plaintiffs put in issue in the suit which they filed was, not only their right to receive rent in respect of the Milkiat shares, but their right to direct possession of lands in respect of which the defendants claimed to be tenants. If the claim for possession of Milkiat shares included the claim for the possession of Khudkasht land, then clearly there was no necessity for asking for any relief in respect of the Khudkasht lands.

5. I am of opinion that the Registrar has taken an entirely correct view of the matter. The appellants must pay the deficit within one month from to-day.

Foster, J.

6. I agree.