

(1982) 01 GAU CK 0004
In the Gauhati High Court
Case No : Civil Revision No. 103 of 1972

Rakesh Chandra Das (deceased by LR) and Others	APPELLANT
Vs	
Khan Bahadur Abdul Majid Choudhury (deceased by LR) and Others	RESPONDENT

Date of Decision : 25-01-1982

Acts Referred:

Citation : AIR 1982 Guw 82

Hon'ble Judges : B.L. Hansaria, J

Bench : Single Bench

Advocate : B.K. Das and S.R. Bhattacharjee, for the Appellant;

Final Decision : Allowed

Judgement

B.L. Hansaria, J.—This is a civil revision of 1972. It has shaken its dust and has reached, after having passed through various vicissitudes, the stage of final hearing. It is a pity that a matter which is otherwise not very complicated, should have taken so long. Partly it seems it is due to the fact that there are a number of opposite parties and it took the petitioner a long time to get the notices duly served on all of them.

2. A suit for partition was filed by the petitioner claiming himself to be an assignee of 1/6th share in the property in question. He valued the suit for the purpose of jurisdiction at a total sum of Rs. 3,000/-, of which the value for the suit land and houses was fixed at Rupees 2,500/-. The learned trial court had before it a Kabala showing sale of about 900 square cubits of land at Rupees 18,000/-. At this rate the value of the entire property came to around Rs. 50,000/-. The learned Munsiff felt that for the purpose of jurisdiction the suit must have been valued at that figure because of which he would cease to have jurisdiction. This has been upheld by the learned Assistant District Judge in appeal. The plaintiff has therefore filed this revision.

3. Shri Das, learned counsel for the petitioners, first refers to Section 8 of the

Suits Valuation Act as per which the value as determinable for the computation of court fees and the value for the purpose of jurisdiction shall be the same except those cases which are covered by paragraphs (v), (vi), (ix) and (x)(d) of Section 7 of the Court Fees Act, 1870. The contention is that in the present suit paragraph (iv) of Section 7 of the Court Fees Act is attracted and as such because of the provision in Section 8 of the Suits Valuation Act, the value for the purpose of court fee and jurisdiction has to be the same.

4. So far as Section 7(iv) is concerned, it is urged that that provision has left valuation for the purpose of court fee to be determined by the plaintiff in accordance with the amount at which the relief sought is valued in the plaint, Shri Das has referred me to a Division Bench decision of this Court in A.B. Singh v. State Bank of India AIR 1979 Gau 27 , which has dealt with this question in the context of Section 7(iv)(c) whereas we are concerned with Section 7(iv)(b). The Division Bench held that in a suit u/s 7(iv)(c) the plaintiff is at liberty to value the suit at the amount at which he values the relief sought and the court has no power to interfere with the valuation of relief put by the plaintiff for the purpose of court fee. It is submitted by Shri Das that the same analogy or reasoning would apply to the valuation of the suits covered by Section 7(iv)(b). In this context, the decision of their Lordships in the Supreme Court in S.Rm.Ar.S.Sp. Sathappa Chettiar Vs. S.Rm.Ar.Rm. Ramanathan Chettiar, is very apposite as that had dealt with this question in the context of suit covered by Section 7(iv)(b). It was pointed out that the theoretical basis for allowing court fee to be determined as per the relief valued by the plaintiff is that in such cases it is really difficult to value the claim with any precision or definiteness. This was illustrated by their Lordships by pointing out that in a suit for partition the conversion of the plaintiff's alleged undivided share in the joint family property into his separate property cannot be easily valued in terms of rupees. It was therefore pointed out that in suits falling u/s 7(iv)(b) the amount stated by the plaintiff as the value of his claim for partition has ordinarily to be accepted by the court in computing the court fee payable in respect of the said relief.

5. My attention is rightly invited by Sabastian Antonio Texeira and Others Vs. Rodolf Minguel Texeira and Others, wherein it was held by a learned single Judge that in a suit for partition it is the value of the share which the plaintiff claims in the joint family property which determines the pecuniary jurisdiction of the court and not the value of the entire property. In coming to this conclusion, reference was made to AIR 1944 65 (Privy Council) That was a case in which an assignee of a share in the joint family property sued for partition of the family property, as is the case at hand. It was held by the privy Council that the value of the share of the joint family property in respect of which the plaintiff was claiming must be taken to be the subject matter in dispute of appeal to His Majesty in Council. It was pointed out by the learned single Judge that although that decision did not directly refer to a suit for partition, but had examined the point with reference to the appeal, that did not make the slightest difference.

6. From the above it appears that in suit for partition, court fee has to be determined as per the share claimed by the plaintiff and not qua the entire property in question. This apart, when the suit attracts Section 7(iv) of the Court Fees Act the valuation as put by the plaintiff is normally to be accepted. Even if the same be somewhat arbitrary, the court has no jurisdiction to interfere with the same as held by the Division Bench of this court in the case referred above.

7. Keeping in view all the above, I would hold that the suit as filed was enter-
tamable by the learned Munsiff, Karimganj and I would therefore direct the learned Munsiff to accept the plaint and to proceed in accordance with law. As the suit is of the year 1970, it merits expeditious disposal and to enable the learned Munsiff to do so, let the records be sent back expeditiously.

8. The petition stands allowed as aforesaid.