

(2000) 12 PAT CK 0007
In the Patna High Court
Case No : C.R. No. 1180 of 2000

Ram Janam Sharma and Others

APPELLANT

Vs

Bhola Sharma and Others

RESPONDENT

Date of Decision : 21-12-2000

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 152

Citation : (2000) 12 PAT CK 0007

Hon'ble Judges : R.N. Prasad, J

Bench : Single Bench

Final Decision : Allowed

Judgement

R.N. Prasad, J.—The application in revision has been filed by the defendants against the order dated 24.4.2000 passed by Sub-Judge, III, Jehanabad in T.S.No. 17/40 of 1997/98 whereby the petitioners have been directed to pay ad valorem court-fee. The relevant facts of the case are that the plaintiffs Opposite parties filed above mentioned Title suit for partition of joint family property against the defendants-petitioners. The petitioners appeared in the suit and filed written statement stating, interlaid, therein that certain joint family property in the name of Chandesri Devi, wife of plaintiff-opposite party no.1 has been left out and as such that property be also added for partition. The plaintiffs-opposite parties, thereafter filed an application that since defendants are claiming share in the property in the name of Chandesri Devi, wife of plaintiff no.1, the defendants be directed to pay ad valorem court fee on the share claimed by them. A rejoinder to the said petition was filed by the defendants stating therein that defendants are not required to pay ad valorem court-fee. The court after hearing the parties vide order dated 18.2.2000 directed the petitioners to pay ad valorem court-fee on half valuation of the property i.e. Rs. 35000. Subsequently, the plaintiffs filed an application that ou; of sheer mistake valuation of the property in the name of Chandesri Devi was mentioned Rs. 70,000/- instead of Rs. 4,70,000/- and as such defendants-petitioners be directed to pay ad valorem

court-fee on half valuation of the property i.e. at Rs. 2,35,000/-. The petitioners objected the said petition. However, the court after hearing the parties vide order dated 24.4.2000 directed the petitioners to pay ad valorem court-fee on Rs. 2,35,000/- on the ground that it was mistake in calculation which can be rectified u/s 152 of the Code of Civil Procedure. The petitioners have thus challenged the order dated 24.4.2000 in this revision application.

2. Learned counsel for the petitioners submitted that inclusion of certain left out joint family property for partition at the instance of the petitioners would not fasten the liability to the petitioners to pay ad valorem court-fee on the share claimed by them. Whereas, learned counsel for the Opposite parties submitted that those properties were not in the name of coparceners of the family rather it was in the name of wife of plaintiff-Opposite party no.1. Petitioners are claiming share in those properties and as such they are liable to pay ad valorem court-fee on the share claimed by them.

3. To resolve the issue involved in this case it would be pertinent to mention herein that the question of payment of court-fee has to be determined upon the frame of the plaint, and it is not permissible in deciding that question to look into stand taken by the defendants in the written statement or decision of the court on the question of title. However, learned counsel for the Opposite party relied upon a decision in the case of Kaulasan Singh & others vs. Ramdutt Singh & ors; AIR 1951 Pat 633 in support of his contention. In the aforesaid case plaintiff included certain properties which were not in the name of co- parceners of the family and as such it was held that in fact the plaintiff was claiming declaration of title over those properties which were not in the name of co-parceners of the family and for partition plaintiffs were required to file ad valorem court-fee on the valuation of those properties. However, in the said judgment itself the court held that the question of payment of court-fee is to be determined upon the frame of the plaint and not on the stand taken in the written statement. In the said case the plaintiff was directed to pay advalorem court fee on the basis of averment made in the plaint and not on the stand taken by the defendant in the written statement. In the instant case the petitioners who were defendants in the suit took stand in the written statement that certain properties in the name of wife of plaintiff no.1 are joint family properties which have been left out for partition and as such prayer was made to include those properties for partition. In such a situation petitioners are not liable to pay ad-valorem court fee on the share claimed by them in the written statement. The stand in the written statement in fact does not change the nature of the suit. Therefore, the aforesaid judgment is not applicable in the facts and circumstances of the case. For proposition as indicated above reference may be made to a decision in the case of Ram Narain Prasad and Another Vs. Atul Chander Mitra and Others, In the above mentioned case the suit was filed by the plaintiff for eviction and the defendant took stand in the written statement that he has title over the suit premises and as such his title has to be decided not incidentally but in full fledged manner and as such plaintiff has to pay ad valorem court fee on the

correct value of the suit property for deciding title. The Apex Court held that for the purpose of determination of the court fee payable, what is relevant is plaint. The averment and relief sought for in the plaint determines the character of suit for the purpose of the court fees payable thereon. What is stated in the written statement is not material in this regard. The instant case is suit for partition. The stand taken in the written statement would not change the nature of the suit and as such the petitioners cannot be made liable for payment of court fee on the share claimed by them with respect to included property at their instance. Thus, on consideration as discussed above the order impugned directing the petitioners who were defendants in the suit to pay ad valorem court-fee on the share claimed by them cannot be sustained in law. Accordingly, this application is allowed. The order impugned is hereby set aside.