

**(1931) 06 PAT CK 0001**

**In the Patna High Court**

Ramcharitar Panday and Others

APPELLANT

Vs

Basgit Rai and Others

RESPONDENT

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**Date of Decision :** 15-06-1931

**Acts Referred:**

Civil Procedure Code, 1908 (CPC) — Section 115  
Court Fees Act, 1870 — Section 7(c)(4)

**Citation :** AIR 1932 Patna 9

**Hon'ble Judges :** Scroope, J; Macpherson, J

**Bench :** Full Bench

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## **Judgement**

Scroope, J.—This is an application u/s 115, Civil P.C., arising in the following way: The plaintiffs brought a suit for a declaration that a certain plot No. 31 in mauza Duria is gairmazrua-am and an ahar and that they have a right to irrigate their lands in mauza Pararia from this ahar. They also sought for an injunction against the opposite party to restrain them from cutting the embankment and filling up its bed.

2. Thus the suit, it is not disputed, was a suit to obtain a declaratory decree with consequential relief in the shape of an injunction and therefore came within Section 7, Clause 4, Sub-section (c), Court-fees Act. The suit was valued at Rs. 25 only and the learned Munsif on objection by the defendants as to jurisdiction held that the valuation assigned by the plaintiffs was arbitrary and that it should be fixed proportionate to the loss of which the plaintiffs sought to be relieved; this he found to be Rs. 2,400, and as this figure was beyond his pecuniary jurisdiction he returned the plaint for presentation to the proper Court.

3. The decision was upheld on appeal by the learned District Judge of Shahabad and an application is now made u/s 115, Civil P.C., to this Court in which it is contended that the plaintiffs are entitled to put their own valuation on the relief sought and that the first Court had no jurisdiction to interfere with it.

4. The learned advocate cites in support of his contention a number of rulings of which Hari Shankar v. Kali Kumar [1905] 32 Cal 734 and Pannalal Lala Vs. Abdul

Gani and Others, are typical. There is no doubt that in some of the High Courts there is a conflict of view on this matter and in Calcutta itself we need only refer to *Umatul Batul v. Nauji Kuar* [1907] Cri.L.J. 427 and *G.M. Falkner, Official Assignee, High Court Vs. Mirza Mahammad Syed Ali and Others*, for the opposite view, that the Court is empowered under the law to revise the valuation put by the plaintiff and if on such revision it is of opinion that the valuation is insufficient or arbitrary it has jurisdiction to fix a right value.

5. However in this Court the consistent view has always been taken that when consequential relief is sought the plaintiff is bound to fix a reasonable valuation. I refer for instance to *Shama Pershad Sahi v. Sheo Pershad Singh* [1920] 5 Pat. L.J. 394, *Brij Krishna Das v. Murli Rai* [1919] 4 Pat. L.J. 703 and *Gauri Lal v. Raja Babu* AIR 1929 Pat. 626. The learned advocate for the petitioners argues however that these cases and the other cases of this Court, which have dealt with the question, are cases where the value on the face of it was arbitrary and demonstrably wrong; for instance, cases where it is sought to get rid of the effect of decrees or sale deeds and the money value is easily ascertainable, he contends that in a matter like the present, namely, a suit relating to an easement, the relief is incapable of valuation. There is however no ground for discriminating under the Court-fees Act between the two classes of cases and it seems to me perfectly clear that having regard to the fact that this case involves irrigation rights over a considerable area of land the valuation of Rs. 25 is prima facie purely arbitrary and inadequate and the learned advocate for appellant does not dispute this. In my opinion the contention of law that the Court has no right to go behind the plaintiff's valuation cannot be sustained, in view of the decisions of this Court.

6. Moreover, it must be remembered that in the present case the point was raised by the defendants: to accept the learned advocate's contention is equivalent to saying that the plaintiffs could drag the defendants to any Court they please: but in his second contention the learned advocate for the petitioners is on a stronger ground. He complains that, assuming his valuation is arbitrary, the assessment of the learned Munsif is just as arbitrary. The valuation was arrived at by the learned Munsif in the following way: The plaintiffs stated that the disputed ahar could irrigate 70 to 80 bighas of land per year and that the water rates of the Canal Department are Rs. 1-8-0 to Rs. 2 per bigha. The learned Munsif therefore concluded that if the plaintiffs did not get water from the disputed ahar they will have to spend Rs. 160 a year for getting it from the canal and he multiplied this by 15 and arrived at a total of Rs. 2,400. In my opinion this was much too arbitrary a method to adopt. There are other methods of irrigation besides canal for instance, wells; and the plaintiffs might be able to achieve their ends by digging several wells at a much smaller cost than Rs. 2,400; again they might be able to come to terms with the defendants and get from them irrigation facilities for a great deal less than Rs. 2,400. The defendants have challenged the plaintiffs valuation; it was incumbent on them to produce some evidence as to the actual value of the relief sought; there is no

reference to their evidence in either of the judgments.

7. There is another consideration: canal irrigation is more elaborate and thorough and therefore more expensive than the village system by ahar which is in question here. It may be that a less elaborate system would suit the plaintiffs needs; but what the learned Munsif has done is to take the highest rates of the most expensive system; if instead of taking 80 bighas at Rs. 2 he had taken 70 bighas at Re. 1-8-0 the value of the suit would have worked out at Rs. 1,575 and that would have been within the Munsif's pecuniary jurisdiction. Moreover it is not clear in either of the judgments of the Courts below what area the plaintiffs propose to irrigate from the ahar in question: the area of 70 to 80 bighas is the maximum the ahar is capable of irrigating, but the area of the plaintiffs land affected may be less. This point requires to be cleared up.

8. In my opinion the decision is far too arbitrary and is based on fasters which are purely speculative and about which there is no evidence; and in my opinion the learned Munsif acted with substantial irregularity in so deciding the case and equally so the learned District Judge in confirming his decision. I consider therefore that the application attracts Section 115, Civil P.C., and I would remand the case to the learned Munsif for reconsideration on these lines setting aside the order complained of and allowing the parties to produce any additional evidence they please on the question of valuation. There will be no costs in the present matter.

Macpherson, J.

9. I agree.