

(1938) 12 PAT CK 0022
In the Patna High Court

Rani Birja Raj Kumari

APPELLANT

Vs

Rani Bishwa Nath Kumari

RESPONDENT

Date of Decision : 19-12-1938

Acts Referred:

Court Fees Act, 1870 — Section 7(iv)(e)
Specific Relief Act, 1877 — Section 42

Citation : AIR 1939 Patna 219

Judgement

1. This is an application against an order of the Subordinate Judge of Gaya calling upon the petitioner, who is the plaintiff in a suit before him, to pay ad valorem court-fee u/s 7(iv)(e), Court-fees Act, as in his opinion the suit was not only for a declaration but also for a consequential relief. Plaintiff is one of the two widows of the late Raja of Deo. The defendant is his other widow. The dispute between them is as to the succession to the estate, that is to say, whether the senior Rani, the defendant, alone succeeded to the estate or whether the junior also was a co-owner along with her. The two Ranis fought the matter in the Revenue Courts. Though the estate was recorded in the joint names of the two widows by the order of the Deputy Collector, Collector and the Commissioner, the Board of Revenue directed that the name of the senior Rani alone should be recorded. An attempt by the plaintiff to get special leave to appeal before the Privy Council failed. Thereupon she instituted the present suit on paying a court-fee of Rs. 15 only. There are two main prayers in the suit; one for a declaration of her title to an 8 annas interest in the estate, and the other is that should the Court be of opinion that the plaintiff is not in possession of her interest, that is to say, half interest in the estate, she should get joint possession of it along with the defendant. The learned Subordinate Judge held that the two prayers taken together, made the suit one for declaration and consequential relief, and ad valorem court-fee was payable. The petitioner has therefore moved this Court.

2. Mr. P.R. Das, who appears on behalf of the petitioner, has relied upon a decision of this Court in Khiri Chand Mahton Vs. Mt. Meghni, . In that case the question came up before the High Court in a second appeal. The plaintiff had

brought the suit on a court-fee of Rs. 15 only. The suit was decreed. On defendant's appeal, the learned District Judge held that the plaintiff did not seek one declaration but two declarations and he ordered the payment of court-fees on two declarations. This was done and the appeal was dismissed. The defendant preferred a second appeal. The Taxing Officer realized ad valorem court-fee on the memorandum of the second appeal to this Court. That order of the Taxing Officer was not open to interference by the Court. But the matter was placed before a Bench for orders as to the realization of court-fees on the plaint and on the memorandum of appeal to the lower Appellate Court. Two declarations were asked in the plaint, and the third relief sought was to this effect:

If during the pendency of this suit the plaintiff he dispossessed of the disputed properties, then on court-fee being taken she may be awarded a decree for recovery of possession of the disputed properties.

3. This Court's observations in respect of this relief were as follows:

The third relief was only a contingent one depending upon the finding of the Court that the plaintiff was not in possession of the property and in that event she offered to pay court-fee forgetting the relief for recovery of possession. That contingency has not arisen and the Courts below have held that the plaintiff has been all along in possession of the property. Therefore that relief has become unnecessary and the occasion for calling for additional court-fee has not arisen.

4. It is obvious that the question for the payment of court-fee arose there in second appeal when the two Courts below had already found the plaintiff to be in possession, both before the suit and also during its pendency. That is not the case here. Here, the plaintiff asks for possession, not in case she be held to have been dispossessed after the institution of the suit, but even if she be found to be out of possession at the time of institution of the suit. Thus, there is a material difference between the relief sought in the suit referred to above and in the present suit. There the contingency mentioned was not the finding of dispossession before the institution of the suit, but after its institution. Court-fee is paid on the relief available to the plaintiff at the time of the institution of the suit. If, after its institution, circumstances change and it becomes necessary for the plaintiff to ask for any further relief, it is always open to him to apply to the Court for amendment of the plaint by adding new relief and to offer to pay court-fee thereon. In fact, the third prayer was of a nature which could have been added to the plaint of that suit after its institution. The second prayer in this suit is not of such a nature. In our opinion the plaint as it stands requires ad valorem court-fee. The order of the Court below is correct.

5. Mr. P.R. Das however intimated to us that he should be allowed leave to amend the plaint either by striking out relief No. 2 altogether or bringing it into conformity with the third prayer in the case referred to above. Mr. Manuk who appears on behalf of the opposite party, objected to such leave being granted. He pointed out a remark of the learned Subordinate Judge in which he has referred

to a petition of the plaintiff and from which he has inferred that the plaintiff was not in possession. This is however a matter which is not before us in this case. If the plaintiff was not in possession on the date of the institution of the suit and she does not ask for recovery of possession, the suit will be liable to be dismissed not on account of non-payment of court-fee but on account of the provisions of Section 42, Specific Relief Act, that is to say, no declaratory relief can be granted to a plaintiff who, being entitled to further relief, fails to ask for it. We are however to take the plaint as it stands, and we see no reason why the plaintiff should not be allowed to amend it. If after this amendment the suit becomes liable to be dismissed on other grounds, it will be open to the learned Subordinate Judge to deal with it according to law.

6. We accordingly direct the learned Sub. ordinate Judge to allow the plaintiff if she applies to amend the plaint, either by striking out prayer No. 2 altogether or by making the contingent dispossession confined to the period subsequent to the institution of the suit, as was the case in Khiri Chand Mahton Vs. Mt. Meghni, . Thereafter he will decide the case according to law. If Section 42 is applicable to the case he will apply it. As the matter stood, the order of the learned Subordinate Judge was correct. There, fore we order that the petitioner will pay to the opposite party the costs of this hearing. Hearing fee two gold mohurs.