

(1947) 10 PAT CK 0013
In the Patna High Court

Sakal Narain Pandey

APPELLANT

Vs

Jageshwar Nath Pandey and Others

RESPONDENT

Date of Decision : 14-10-1947

Acts Referred:

Citation : AIR 1949 Patna 176

Hon'ble Judges : Agarwala, Acting C.J.;Shearer, J

Bench : Full Bench

Judgement

Agarwala, A.C.J.

1. Civil Revision No. 956 of 1946 is an application by defendant 3 against the order of the Court below. Civil Revision No. 6 of 1947 is an application for stay of execution of that order. The facts are that in a partition suit the Court, while decreeing the suit, directed the costs of the entire suit to be borne by defendant 3, and ordered that pleader's fee would be at 5 per cent. When the decree was drawn up, the pleader's fee was calculated on the total value of the property in dispute, which was Rs. 1,59,000. Defendant 3 then applied to the Court to amend the decree, saying that it was not the intention of the Court to award 5 per cent, as pleader's fee on the value of the entire property. Unfortunately, by the time this application was made, the presiding officer of the Court had changed, and the successor of the original Judge rejected the application.

2. The only question we have to determine is what was meant in directing pleader's fee to be calculated at 5 per cent. Rule 28 of chap. V, General Rules and Circular Orders of this Court, Vol. I. p. 142, prescribes a scale of advocate's and pleader's fee, which will ordinarily be allowed to a successful party. This is a sliding scale. The amount of fee for the first five thousand is 5 per cent, and on anything from five thousand to twenty thousand, 2 to 3 per cent. Above twenty thousand the amount prescribed is 1 to 2 per cent., and above fifty thousand the amount is ? to 1 per cent. The subordinate Courts usually, when awarding the lower scale permitted by this rule, merely say: "Pleader's fee at 5 per cent", as was done in this case. When the Court fixes the lower scale in making the order,

pleader's fee is to be calculated in the manner provided by the rule for each state of the value of the entire subject-matter of the dispute. The decree of the Court below must, therefore be amended in accordance with the lower scale permitted by Rule 28, General Rules and Circular Orders. The petitioner is entitled to his costs; hearing fee, one gold mobur. Civil Revision No. 6 of 1947 is dismissed without costs.

Shearer J

3. I agree.