

(1916) 08 CAL CK 0026
In the Calcutta High Court

Sarat Chandra Basu

APPELLANT

Vs

Sreemati Swarnomoye Ghose and Others

RESPONDENT

Date of Decision : 22-08-1916

Acts Referred:

Citation : 36 Ind. Cas. 615

Hon'ble Judges : Teunon, J;Smither, J

Bench : Division Bench

Judgement

1. In the suit out of which this rule arises the plaintiff, as the owner in possession sued for declaration of title, damages in respect of certain acts of trespass and an injunction. He valued the reliefs sought at Rs.160, namely Rs.95 in respect of the injunction and Rs. 65 by way of damages.
2. Both Courts below have held that the valuation of the suit should be the market value of the land to which it relates and as they have found this value to be Us, 4,000, they have held that the suit is not triable in the Court of the Munsif.
3. It appears that the plaintiff's immediate predecessor was a lady. According to the plaintiff she had a limited interest while the defendants apparently resist plaintiff's claim on the strength of a miraspatla executed by her.
4. Both the Courts below appear to have supposed that the decision in this suit would have the effect of setting aside the miras patta as a whole and in valuing the suit have therefore, taken the value of the whole area comprised in the patta while the suit in fact relates to but a small portion thereof. The plaintiff who is the petitioner before us contends that for the purpose of jurisdiction he has correctly valued the suit in accordance with the provisions of the Court Fees Act, Section 4 paragraph IV, Clauses (c) and (d, and in support of his contention cites I he case reported as Hari Shankar Dutt v. Kali Kumar Paint 32 C. 734 : 9 C. W.N. 690, also the cases reported as ianesh Bhagat v. Sarada Prasad Mttkerjee 30 Ind. Cas. 111 : 42 C. 37 : 19 C.W.N. 895 and Phul Kumari v. Ohanshyam Misra 35 C. 202 (P.C.): 12 C.W.N. 169 : 35 I.A. 22 : 7 C.L.J. 36 : 5 A.L.J. 10 : 17

M.L.J. 618 : 2 M.L.T. 506 : 10 BL.R. 1 : 14 BL.R. 41.

5. In support of the view taken by the Courts below the opposite parties have cited a number of cases of which the case of Musammat Bibi Umatul Battel v. Musammat Nanji Koer 11 C.W.N. 705 : 6 C.L.J. 427, may be taken as an example.

6. It is difficult to reconcile the two sets of authorities but it is unnecessary in the present case to do so or to say which in our opinion should be followed. Here the land actually in suit has not been valued and there is no reason to suppose that the value thereof exceeds Rs. 1,000.

7. We therefore set aside the order of the Munsif and of the Subordinate Judge now in question and return the plaint to the Munsif to be admitted and the suit heard and determined on the merits.

8. The Rule is accordingly made absolute. The costs hearing-fee two gold mohurs to be costs in the case.