
(1988) 11 PAT CK 0023
In the Patna High Court
Case No : C.R. No. 122 of 1986

Shanti Kumar Jain

APPELLANT

Vs

M/s Debchand Hansraj of Kishanganj and Others

RESPONDENT

Date of Decision : 25-11-1988

Acts Referred:

Citation : (1989) PLJR 793

Hon'ble Judges : S. Roy, J

Bench : Single Bench

Advocate : T.N. Maitin and Ramesh Kumar Agrawal, for the Appellant;

Final Decision : Allowed

Judgement

Satyeshwar Roy, J.—In this application, the petitioner has challenged the validity of the order dt. 3.1.86, by which the court below has directed him to pay ad valorem court-fee holding that ad valorem court fee was payable. It directed eviction suit of the petitioner to be converted into a regular Title Suit to decide the question of title for adjudicating the relationship of landlord and tenant between the parties. Initially Eviction Suit No. 2 of 1984 was filed by the petitioner for the eviction of defendant no. 1 a firm and its partners defendants 2 to 4 from his building on account of default in paying rent. The Court fee was paid on the annual rent. In the written statements, inter alia, the relationship of landlord and tenant was denied and the property was claimed by opposite parties. After hearing the parties, court below held that in view of the written statement it was required to go into the question of the title.

2. The finding recorded by the court below cannot be sustained in law. The defendant's written statement cannot decide the nature of the suit nor the forum. The nature of the suit as well as forum is required to be decided on the basis of the statement made in the plaint. If the petitioner succeeds on the basis of existence of the relationship of the landlord and tenant, there will be no occasion for the court below to go into the question of title, although question of

title has been raised in the written statement. But if question of title is required to be gone into and the suit can be decreed in favour of the petitioner only on the basis of title at that stage the court below should, call upon the petitioner to pay ad valorem court fee on the suit property. The civil revision application is therefore allowed. As there is no appearance on behalf of other side, there will be no order as to costs.