
(1924) 10 PAT CK 0002
In the Patna High Court

Sheikh Abdul Gani

APPELLANT

Vs

Sito Singh @ Sitabi Singh and Others

RESPONDENT

Date of Decision : 31-10-1924

Acts Referred:

Court Fees Act, 1870 — Article 5 Sch. I

Citation : 86 Ind. Cas. 143

Hon'ble Judges : Ross, J; Das, J

Bench : Division Bench

Judgement

Ross, J.—The first question that arises on this application for review of judgment is the amount of Court-fee payable on the application.. The contention of the learned Counsel for the petitioner is that in the original suit there were two several causes of action, one relating to possession of the land and the other to mesne profits. In my opinion the causes of action were not separate. The suit was a suit for possession of land and mesne profits to which the plaintiff was entitled by reason of his dispossession. Then it is contended that the appeal was in substance directed against the decree for mesne profits only. I am unable to accept this view. The whole decree was appealed against and, although the appellant having seen the weakness of the case on the question of possession did not argue with any vigour on this part of the case, still this was part of the appeal as much as the question of mesne profits. In my opinion, therefore, there is no reason for not enforcing the plain terms of Article 5 of Sch. I to the Court Fees Act, 1870 which requires that in an application for review of judgment presented before the ninetieth day from the date of the decree, as in the present case, the fee payable is one-half the fee leviable on the plaint or the memorandum of appeal. I, therefore, accept the stamp report made in this case.

2. The principal question is whether this application for review falls within that portion of Order XLVII, r. I which provides for cases where there is some mistake or error apparent on the face of the record or any other sufficient reasons. Now in Chhajju Ram v. Neki 72 Ind. Cas. 566 : 3 P.L.T. 435 : 33 M.L.T. 295 : 26

C.W.N. 697 : 41 P.L.R. (P.C.) 1922 A.I.R.1922 P.C.112 : 16 L.W. 37 : 17 P.W.R. 1922 : 3 L.j 127 : 43 M.L.J. 332 : 24 Bom. L.R. 1238 : 4 U.P.L.R. (P.C.) 99 : 35 C.L.J. 459 : 49 I.A. 144 (P.C.) the Judicial Committee have laid it down that the words "any other sufficient reason" in Order XLVII, Rule 1 mean sufficient reason of a kind analogous to those specified immediately before. The real question, therefore, is whether there is some mistake or error apparent on the face of the record. The question was as to the amount of mesne profits to be awarded for the year 1327. The learned Subordinate Judge had observed in his judgment that the parties had not adduced any evidence but as cash security amounting to Rs. 3,000 had been furnished, he adopted this as the basis of his judgment.. It was pointed out by this Court for the reasons given in the judgment that the figure Rs. 3,000 afforded no criterion for the amount of mesne profits due for the years 1327 and as there was no evidence on the point the claim was dismissed. It is now argued that as the opposite party was admittedly in possession the burden of proving the value of the crops was on them and that this Court made an error of law in deciding as it did. Whether the decision was right or wrong may be a matter for argument, but it does not seem to me that there is any mistake or error apparent on the face of the record within the meaning of these words as they are used in Order XLVII, Rule 1. It does not seem to me that on a mere reading of the judgment it could be said that there was such error or mistake. It may be that as the result of certain decisions a different conclusion might have been arrived at, but such a conclusion does not seem to have been inevitable or to be apparent on the face of the record.

3. I, would, therefore dismiss the application with costs. Hearing fee three gold mohurs.

Das, J.

4. I agree.