
(1936) 01 PAT CK 0017
In the Patna High Court

Sitaram Sinha

APPELLANT

Vs

Jogendra Narayan Sinha and Others

RESPONDENT

Date of Decision : 06-01-1936

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 13
Court Fees Act, 1870 — Section 13

Citation : AIR 1936 Patna 171

Hon'ble Judges : Varma, J; Mohammad Noor, J

Bench : Full Bench

Judgement

Mohammad Noor, J.—This is an appeal against an order of the Subordinate Judge of Pakur rejecting the plaint of the appellant for insufficiency of court-fee, an order which is a decree under the Civil Procedure Code. The plaintiff claims one-fourth share of the Maheshpur estate in the district of the Santal Parganas. During the settlement operations of that district his name as a sharer of the estate was not recorded. He instituted the present suit paying a court-fee of Rs. 15 for a declaration that the decision of the Settlement Officer on his objection for recording his name was wrong and that the entries in the Record of Rights about the proprietary shares of the estate were incorrect inasmuch as the alleged one-fourth share of the plaintiff was not recorded therein. Section 11 of Regulation 3 of 1872 bars the jurisdiction of the civil Court regarding any matter decided by the Settlement Officer whose decision has the force of a civil Court decree except as provided in Section 25-A, and subject to it the Record of Rights becomes u/s 25 of the Regulation conclusive after six months of its publication. Section 25-A of the Regulation runs thus:

Where only the rights of zamindars and other proprietors as between themselves are concerned, a suit may, unless it is barred by Section 13, Civil P.C., (relating to res judicata), be brought in a Court established under the Bengal, Agra and Assam Civil Courts Act 1887 to contest the finding or record of the Settlement Officer, within three years from the date of the publication of the Record of Rights or of the final order of the Revenue Court....

If in any such suit it is found that the finding of the Settlement Officer is erroneous, the record shall be amended accordingly.

2. The question is what is the nature of the suit contemplated by this section, what, is the court-fee payable on the plaint of such a suit, and whether the present suit is governed by this section. The learned Subordinate Judge is of opinion that as the plaintiff's name is not recorded in the Collectorate nor in the Record of Rights the suit is one for recovery of possession as the question of possession will arise in the suit. I am unable to understand what sort of suit can be instituted under this section by a man who has got his name recorded in the Collectorate and in the Settlement Department. He will have absolutely no necessity whatsoever to institute a suit. The learned Subordinate Judge seems to be of opinion that as the plaintiff's name is recorded neither in the Collectorate nor in the settlement record, he, is not "Zamindar" within the meaning of Section 25-A. If this be so a person whose claim to have his name recorded is rejected by the Settlement Officer and who claims to have share in a Zamindari will have no remedy as S.25-A is the only section under which a decision of the Settlement Officer can be questioned by a person who is aggrieved by that order. The words "Zamindars" and "proprietors" in the section mean persons who claim to be zamindars or proprietors as against another zamindar or proprietor. The section covers cases in which the Settlement Officer refuses to record the name of a claimant to a zamindari. The fact whether the plaintiff is or is not in possession and therefore is not entitled to claim declaration is a matter which has to be decided in the trial of the suit. For purposes of the court-fee the Court must look to the plaint only. Court-fee cannot be demanded from a plaintiff on the ground that question of possession will arise in the suit.

3. It has been laid down in *Narayan Singh v. Dildar Ali Khan* 1925 Pat 210, in connection with the report of the stamp reporter of the Court, that the question of court-fee must be decided on the plaint and though it is open to the Court to say that the plaintiff has really asked for a consequential relief though he has tried to conceal it by casting the reliefs in a particular form, it is not open to the Court to say that the plaintiff should have asked for a consequential relief and should have paid the proper fee as in such a suit. The learned Subordinate Judge has not held, as he could not have possibly held on the face of the plaint, that the plaintiff has sought a consequential relief in the suit. What the learned Subordinate Judge has held is that the plaintiff ought to have sought consequential relief and paid court-fee accordingly. What turn this case will eventually take is not for me to say. It is sufficient for the purpose of this appeal to hold that the plaint simply asks for a declaration that the Record of Rights is wrong as it omits the plaintiff's name and the extent of his share. Though the Specific Relief Act is not in force in the Santal Parganas, Section 25-A, Regulation 3 of 1872 contemplates a declaratory suit. The fact that the plaintiff's name has not been recorded by the Settlement Officer is no ground by itself for holding that he must sue for possession. The plaintiff claims to be a sharer of the estate as a member of a joint Hindu family. The utmost that can be said is that it is a

suit to do away with the effect of the decision of the Settlement Officer. In either view of the matter the court-fee payable is Rs. 15 under Schedule 2, Article 17(1) and (3), Court-fees Act.

4. The appeal must therefore be allowed. The learned Subordinate Judge will restore the plaintiff's suit to its original number and proceed to dispose of it according to law. The appellant will be entitled to get half costs (exclusive of court-fee on the memorandum of appeal) from the contesting respondents. He will get a certificate under-S. 13, Court-fees Act, for receiving back from the Collector the court-fee paid by him on the memorandum of appeal.

Varma, J.

5. I agree.