
(1911) 11 AHC CK 0010
In the Allahabad High Court

Tara Chand Mukerji

APPELLANT

Vs

Mirza Afzal Beg and Others

RESPONDENT

Date of Decision : 29-11-1911

Acts Referred:

Court Fees Act, 1870 — Article 17(VI)(II)

Citation : 13 Ind. Cas. 185

Hon'ble Judges : Karamat Husain, J;Chamier, J

Bench : Division Bench

Judgement

1. This was a suit by the appellant for partition of a house and its appurtenances in Dehra Dun. The appellant paid a Court-fee stamp of Rs. 10 on his plaint under the Court Fees Act, Schedule II, Article 17(VI). The respondents pleaded that the Court-fee paid was insufficient. They contended that it should be calculated on the value of the property. The Court below acceded to this contention and appointed a Commissioner to inquire into the value of the property. The Commissioner reported that the value of the whole property was Rs. 22,000 and that the value of the plaintiffs share therein was Rs. 16,500. The Court then held that the plaint should have borne a Court-fee stamp of Rs. 570 and called on the appellant to make good deficiency. The appellant having declined to do so the Court dismissed the suit. Several decisions were cited in the Court below. We think that it is unnecessary to set them out here. In the case of Reoti v. Lachhman A.W.N. (1900) 90 this Court, following decisions of the Calcutta High Court, held that a plaint in which the plaintiff being jointly in possession with the defendant of property prayed that the plaintiff's share might be partitioned was sufficiently stamped with a Court-fee stamp of Rs. 10. To the same effect is the decision of this Court in Waliullah v. Durga Prasad 28 A. 340 : 3 A.L.J. 181 : Q.W.N. (1906) 38 . These decisions are supported by a recent decision of the Calcutta High Court in Bidhata Rai v. Ram Charitra Rai 12 C.W.N. 37 : 6 C.L.J. 651 : 3 M.L.T. 33. In all these cases it has been held that where the plaintiff, as in the present case, alleges that he is in possession and merely claims partition of the property and separate possession of his share, a Court-fee stamp of Rs. 10

is sufficient. But where the plaintiff is out of possession and claims possession and partition, then he must pay a Court-fee calculated on-the value of the share claimed by him. The decision of the Court below is, in our opinion, erroneous. We allow the appeal and remand the case with directions that it be re-admitted on the file of pending cases and disposed of according to law. The respondents will pay the appellant's costs in this Court including fees on the higher scale.