
(1969) 02 OHC CK 0007
In the Orissa High Court
Case No : First Appeal No. 173 of 1966

Tutika Lakshminarayana and Others	Vs	APPELLANT
Patharla Saraswati and Another		RESPONDENT

Date of Decision : 25-02-1969

Acts Referred:

Court Fees Act, 1870 — Article 17A

Citation : AIR 1969 Ori 265 : (1969) 35 CLT 461

Hon'ble Judges : A. Misra, J

Bench : Single Bench

Advocate : N.V. Ramdas and N.B.K. Murty, for the Appellant; B.K. Pal and A. Mohanty, for the Respondent

Judgement

A. Misra, J.—This is a reference by the taxing Officer on the objection raised by the Stamp Reporter that the memo of Appeal has not been properly valued and court-fee paid is insufficient.

2. Plaintiff and defendants Nos. 1 to 3 are the successors to the deceased Sreeramulu. A previous partition suit filed by a cosharer of deceased Sreeramulu was decreed in which the latter was allotted 1/4th share. In the said partition proceeding, plaintiff sought to get her share separated from the other heirs of the deceased Sreeramulu, but ultimately she was directed to file a separate partition suit. Accordingly, she filed the partition suit, out of which, this appeal has arisen for allotment of 1/4th share in the properties described in Schedules A & B belonging to deceased Sreeramulu including the share which had been allotted to him in the previous partition suit.

The trial court decreed the plaintiff's suit allotting 1/8th share in the A Schedule properties and 1/4th share in the B Schedule properties. Defendants Nos. 1 to 3 have preferred this appeal challenging the trial court decree, so far as the allotment of 1/4th share in the B schedule properties is concerned, besides the mesne profits allowed from the date of death of Sreeramulu. Plaintiff valued the partition suit for purposes of jurisdiction at Rs. 40,000.00 and paid a fixed court-

fee of Rs. 150/- under Article 17-A, Schedule II of the Court-fees Act as amended in Orissa. Defendants Nos. 1 to 9 who have challenged only the 1/4th share in the B Schedule properties have valued the same for the purpose of appeal at Rs. 200.00 which is said to be the market value and the mesne profits at Rs. 100.00 and have paid a total court-fee of Rs. 33.00. The objection raised by the Stamp Reporter is that it is not open to any of the parties to reduce the jurisdictional value in appeal in partition suits governed by Article 17-A, and therefore, the proper court-fee payable is the fixed court-fee of Rs. 150.00.

3. Mr. N.V. Ramdas, learned counsel appearing for appellants has raised two-fold contentions. Firstly, it is urged by him that the relief claimed in appeal being confined to 10 decimals appertaining to Schedule B, it is open to appellants to value the appeal according to the subject-matter in respect of which relief is claimed. Secondly, it is urged by him that in the trial court itself the suit was not properly valued and adequate court-fee paid, because the allegations in the plaint disclose that plaintiff had been excluded from possession, and as such, Article 17-A, Schedule II was not the appropriate provision applicable. I am unable to agree with either of the contentions.

4. So far as the first point is concerned, it is covered by the decision of this Court reported in Chaitan Senapati Vs. Mani Bewa and Others, , wherein it has been held that for the assessment of court-fee on a memorandum of appeal arising out of a suit for partition, the jurisdictional value of the subject-matter in dispute in the suit is the criterion and not the value of the subject-matter in dispute in appeal. As such, it is not available to appellants to alter the said valuation in appeal and pay the lesser fixed court-fee.

5. Regarding the second point, no doubt, in paragraph 9 of the plaint, it is alleged that the properties, out of which, plaintiff is entitled to a share are continuing in possession and enjoyment of defendants exclusively. The averments in para 11, however, show that the frame of the suit is one for partition of properties alleging them to be in joint possession of plaintiff and defendants. To attract the application of Article 17-A, Schedule II of the Court-fees Act as amended in Orissa, possession need not be actual as claim of constructive possession also bring the suit within the ambit of that provision. There are no allegations nor does the frame of the suit show that plaintiff has been ousted from his share. For the purpose of determining the appropriate provision of the Court-fees Act applicable to a suit, the frame of the suit is the criterion. In the present case, when the frame of the suit is for partition and separate allotment of properties alleged to be in joint possession, even though possession may be constructive, the application of Article 17-A is attracted. Therefore, I do not find any merit in the contention of learned counsel for appellants that the suit was not properly valued, proper court- fee assessed in the trial court or that the suit as framed is not governed by Article 17-A.

6. Hence, I reject the contentions advanced for appellants, uphold the Stamp Reporter's objection and direct the appellants to pay the deficit court fee, as

indicated in the stamp-report within two months.