

KAMALESHWAR KISHORE SINGH

A

v.

PARAS NATH SINGH AND ORS.

NOVEMBER 22, 2001

[R.C. LAHOTI AND BRIJESH KUMAR, JJ.]

B

Code of Civil Procedure, 1908 : Sec. 115.

Revisional jurisdiction, exercise of—Order as to payment of Court fees, subsequently modified substantially by Trial Court—Subsequent Order challenged by Plaintiff in revision before High Court—Revision Petition dismissed by High Court holding that the subsequent order was only an order of correction and revision should have been preferred against earlier order—Held, the subsequent order substantially modified the earlier order and was in departure from the earlier order—High Court not justified in dismissing the revision petition—The real question before High Court was whether suit property was properly valued and proper court fees was paid—Matter remitted to High Court.

C

D

Court Fees Act, 1870 :

Court fee—Determination of—Court fee to be paid on the plaint as framed—Not on the plaint as ought to have been framed unless there was an attempt to evade by astute drafting—Court to assume that the averments in the plaint are correct—It is the substance of the relief sought and not the form which is determinative of the court fee.

E

A suit for partition of joint family properties was valued at Rs. 16 lakhs for the purpose of jurisdiction. Appellants affixed a court fee of Rs. 29.25 on the plaint on the presumption that it was a simple suit for partition. On an objection petition filed by defendant No. 20 trial court passed an order directing the appellant to pay ad-valorem court fee above 10% of the sale deed of property standing in name of defendant No. 20. Thereafter defendant No. 20 filed another petition contending that there was a typing mistake in the order of trial court wherein the direction should have been to pay court fee on '10 times' of the value of the properties in the sale deeds instead of '10%'. Consequently, trial court by a subsequent order modified its earlier order by directing the appellants to

F

G

H

- A pay *ad valorem* court fee on the value of Rs. 29,39,760. High Court dismissed the revision petition holding that the subsequent order was an order correcting a clerical error and the court was empowered to pass such an order. Hence the present appeal.
- B Allowing the appeal and remitting the matter to the High Court, the Court

HELD : 1. The High Court was not justified in dismissing the revision petition on the ground that the subsequent order was an order correcting a clerical or typing error only. The subsequent order was in substantial departure from the earlier order. By subsequent order the trial court directed the plaintiffs to value the suit at 10 time of the value given in the sale deeds of the properties. Thus, it substantially modified the earlier order and in effect it was the real order causing grievance to the plaintiffs. The subsequent order is not to be read in isolation. The revision filed by the plaintiff/appellant before the High Court could not have been disposed of without testing the correctness of both the orders. The real question arising before the High Court was to find out whether the suit was properly valued and proper court fee was paid thereon in accordance with law. While doing so if the High Court was required to examine the correctness or otherwise of the earlier order it should not have felt inhibited from doing so. [322-B; 321-B-C; 322-A]

2. Court fee has to be paid on the plaint as framed and not on the plaint as it ought to have been framed unless by astuteness employed in drafting the plaint the plaintiff has attempted at evading payment of court fee or unless there be a provision of law requiring the plaintiff to value the suit and pay the court fee in a manner other than the one adopted by the plaintiff. The court shall begin with an assumption, for the purpose of determining the court fees payable on plaint, that the averments made therein by the plaintiff are correct. It is the substance of the relief sought for and not the form which will be determinative of the valuation and payment of court fee. The defence taken in the written statement may not be relevant for the purpose of deciding the payment of court fee by the plaintiff. If the plaintiff is ultimately found to have omitted to seek an essential relief which he ought to have prayed for, and without which the relief sought for in the plaint as framed and filed H cannot be allowed to him, the plaintiff shall have to suffer the dismissal of

the suit. These principles of law were overlooked by the trial court in passing the impugned order which was put in issue before the High Court. [321-E-H] A

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 7952 of 2001.

From the Judgment and Order dated 20.8.97 of the Patna High Court in C.R. No. 901 of 1997. B

Debasis Misra (NP) for the Appellant.

Amitesh Kumar for Lakshmi Raman Singh for the Respondents. C

The following Judgment of the Court was delivered :

Leave granted.

Kamaleshwar Kishore Singh, the appellant and his two minor sons suing through the appellant as next friend, have filed a suit for partition of movable and immovable properties registered as T.P. Suit No. 489 of 1993 in the Court of Sub-Judge-I, Patna. A perusal of the plaint shows that the parties are alleged to be members of joint Hindu Mitakshara family and the properties forming subject matter of the suit, set out in the two schedules annexed with the plaint (Schedule-I listing the immovable properties and Schedule II listing the movable properties) are alleged to be joint family properties of the parties. The source of acquisition of properties is alleged to be joint family funds. The share claimed by the plaintiffs is '25/3 paise out of 100 paise'. The remaining shares belong to the defendants. The reliefs sought for are: (i) a preliminary decree defining plaintiffs' share at '25/3 paise' in the suit properties described in Schedule I & II of the plaint, (ii) appointment of a commissioner to divide the properties by metes and bounds, and (iii) placing the plaintiffs in exclusive possession over the property falling in their share. The suit is valued at Rs.16 lakhs for the purpose of jurisdiction but according to the plaintiffs it being a simple suit for partition a fixed court fee of Rs. 29.25 p. only is liable to be paid which has been affixed on the plaint. D

It appears that the defendant No. 20 moved an application on 3.10.96 submitting that the properties exclusively belonging to her, being her self-acquired properties, as evidenced by the documents filed by her with the written statement, have been included in the suit for partition and so either the defendant No. 20 be deleted from the array of the parties or in the alternative E

F

G

H

A the plaintiffs be directed to pay *ad-valorem* court fee on the market value of the properties standing in the name of this defendant amounting to Rs. 30,50,000. By order dated 17.12.96 the trial court allowed the objection petition filed by the defendant No.20 and directed as under:-

B "...the petition of defendant no.20 dt. 3.10.96 is allowed and the plaintiffs directed to first pay *ad-valorem* court fee over the properties standing in the name of defendant no.20 which were included in the suit property on the value of 10% above as given in the sale deeds of these properties the photo copy of which has been filed on behalf of the defendant no.20. Put up on 9.1.97."

C After the passing of the above order, the defendant no. 20 moved yet another petition submitting that the plaintiffs should have been directed to pay *ad-valorem* court fee on Rs. 29,39,760, the value of the land and the houses standing thereon, included in the suit property and that there was a typing mistake in the order dated 17.12.96 wherein the direction should have been to pay court fee on '10 times' of the value of the properties given in the sale deeds (filed by the defendant no. 20) and not '10%' as typed in the said order. By order dated 1.3.97 the trial court directed as under:-

E "... the petition of the defendant no.20 dated 9.1.97 is allowed and the order passed by this court dated 17.12.96 is also corrected and modified and the plaintiff is directed to pay *ad valorem* court fee over the value of Rs. 29,39,760. Put up on 10.5.97 for filing the same."

F A perusal of the above order shows the trial court having been persuaded to hold that 10 times of the value of the properties calculated on the basis of deeds filed by defendant No. 20 with her written statement comes to Rs. 10,39,760 to which should be added value of 4 storeyed constructed pucca house which is Rs. 19 lacs and thus the suit should have been valued at Rs. 29,39,760 and *ad-valorem* court fee paid thereon by the plaintiffs.

G H Feeling aggrieved by the order dated 1.3.97 the plaintiff No.1 filed a civil revision under Section 115 of the C.P.C. before the High Court of Patna. The principal grievance raised by the appellant before the High Court was that the order dated 1.3.1997 was passed without affording him any opportunity of hearing and hence was liable to be set aside. By the impugned order dated 20.8.97 the High Court has dismissed the revision forming an opinion that the order dated 1.3.97 was an order directing only a clerical error to be

corrected which the court was empowered to do and hence no fault could be found with the impugned order. The plaintiff has filed this petition seeking special leave to appeal.

In our opinion the appeal deserves to be allowed and the matter deserves to be remitted back to the High Court for decision afresh. Without going into the question whether the order dated 17.12.96 suffered from only a clerical error it is clear that the order dated 1.3.97 was in substantial departure from the order dated 17.12.96. By order dated 1.3.97 the trial court directed the plaintiffs to value the suit at 10 times of the value given in the sale deeds of the properties, the photocopies whereof were filed by the defendant no.20 with the written statement. A reading of the order dated 1.3.97 shows that this order could not have been construed as the one correcting a clerical/typing error only; it substantially modified the earlier order dated 17.12.96 and in effect was the real order causing grievance to the plaintiffs. The order dated 1.3.1997 is not to be read in isolation. The revision filed by the plaintiff/appellant before the High Court could not have been disposed of without testing correctness of both the orders dated 17.12.1996 and 1.3.1997.

It is well settled that the court fee has to be paid on the plaint as framed and not on the plaint as it ought to have been framed unless by astuteness employed in drafting the plaint the plaintiff has attempted at evading payment of court fee or unless there be a provision of law requiring the plaintiff to value the suit and pay the court fee in a manner other than the one adopted by the plaintiff. The court shall begin with an assumption, for the purpose of determining the court fees payable on plaint, that the averments made therein by the plaintiff are correct. Yet, an arbitrary valuation of the suit property having no basis at all for such valuation and made so as to evade payment of court fees and fixed for the purpose of conferring jurisdiction on some court which it does not have, or depriving the court of jurisdiction which it would otherwise have, can also be interfered with by the court. It is the substance of the relief sought for and not the form which will be determinative of the valuation and payment of court fee. The defence taken in the written statement may not be relevant for the purpose of deciding the payment of court fee by the plaintiff. If the plaintiff is ultimately found to have omitted to seek an essential relief which he ought to have prayed for, and without which the relief sought for in the plaint as framed and filed cannot be allowed to him, the plaintiff shall have to suffer the dismissal of the suit. These principles of law were over-looked by the trial court in passing the impugned order which was put in issue before the High Court. We are further of the opinion that though

- A the revision preferred by the plaintiff was directed against the order dated 1.3.97, the real question arising before the High Court was to find out whether the suit was properly valued and proper court fee was paid thereon in accordance with law. While doing so if the High Court was required to examine the correctness or otherwise of the order dated 17.12.96 it should not have felt inhibited from doing so. In the facts of the present case we are clearly of the opinion that the High Court was not justified in dismissing the revision on the ground that the order dated 1.3.97 was an order correcting a clerical or typing error only.

The two orders of the trial court do not refer to any relevant provision

- C of law or a binding precedent based on which the trial court was persuaded to take the view which it did.

The learned counsel for the defendant-respondent pointed out that during the course of arguments, on 17.12.1996, the plaintiff had agreed to pay the *ad-valorem* court fees on the properties and asked the defendant-applicant

- D to file the deeds of the said properties in order to ascertain the valuation of the said property. What is the effect of such concession shall also be taken into consideration by the High Court and we express no opinion thereon.

The appeal is allowed. The impugned order of the High Court dated 20.8.97 is set aside. The Civil Revision No.901 of 1997 shall stand restored

- E on the file of the High Court. The High Court shall after affording the contesting parties an opportunity of hearing decide the revision afresh and expeditiously, consistently with the observation made hereinabove. A short point is arising for decision and much time has already been lost. Further the pendency of the revision has stalled progress of the suit pending before the trial Court.

F

S.V.K.

Appeal allowed.