

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5930 of 2014

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1. Reyaz Ahmed.
 2. Neyaz Ahmed Son Of Sheikh Manir Alam Village- Surahiya, P.O. + P.S.- Badhriya, District- Siwan.

.... Petitioner/s

Versus

1. Mohammad Rasul
2. Navi Rasul
3. Jannat Rasul
4. Ali Ahmed All Are Sons Of Late Basir Miyan Resident Of Village- Badhriya, P.O. + P.S.- Badhriya, District- Siwan
5. Sheikh Manir Alam Son Of Sheikh Jannat Rasaul
6. Sheikh Kamaluddin
7. Sheikh Alauddin
8. Sheikh Jalauddin
9. Sheikh Imamuddin All Are Sons Of Late Sheikh Jamiruddin Resident Of Village- Surhiya, P.O. + P.S.- Badhriya, District- Siwan
10. Mohammad Alam
11. Sabir Alam Son Of Late Sujayat Hussain Resident Of Village- Fazil Tola, P.O.- Madhopur, P.S.- Badhriya, District- Siwan

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Ranjeet Kumar
For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH
CAV ORDER

6 03-07-2015 Heard the learned counsel for the petitioners. With the consent of the learned counsel for the petitioners, this writ application has been heard on merits and is being disposed of by the present order.



Calling in question the legal acceptability of the order dated 15.02.2014 whereby and whereunder the learned court below has rejected the petition dated 11.01.2012 filed by the defendant-petitioners raising objections to the valuation of the suit and the court fee and praying to decide the said issue as preliminary issue, the present application under Article 227 of the Constitution of India has been filed by the petitioners.

The factual expose' are that the T.S. No. 300 of 1993 has been filed by the plaintiff-respondents praying for declaration of their title and confirmation of possession over the suit land. Later on by amendment, the relief for recovery of possession has been added. After giving the genealogy of their family, the case of the plaintiffs is that 12 katha 2 dhur of plot no. 1672 was mortgaged by their predecessor Most Khediya along with Kudrat Mian in favour of Anwar Khan and Chand Khan for a sum of Rs. 72. Later on the said mortgage was redeemed and the total area of 12 katha 2 dhur was partitioned to the extent of half and half between the predecessors of the plaintiffs (descendants of Most Khediya) and Altaf Mian son of Kudrat Mian, and in that partition the suit property was allotted in the share of the plaintiffs' predecessor who and after them the plaintiffs have been in exclusive possession over the same. The plaintiffs have claimed

the aforesaid reliefs on these basic facts.

The defendants appeared in the suit and filed their written statement contesting the claim and assertions of the plaintiffs. The defendant nos. 5 and 6 who were later impleaded as parties defendants in the suit, in their separate written statement, also questioned the valuation of the suit as put by the plaintiffs asserting that the valuation of the suit property on the date of the filing of the suit was more than 10 lacs and thus beyond pecuniary jurisdiction of the Court. In sequel, the defendant nos. 5 and 6 filed the petition for determination of the valuation of the suit property and the amount of court fee paid thereupon as preliminary issue. The plaintiffs filed their rejoinder to the said petition. The defendant nos. 5 and 6 adduced oral and documentary evidence in support of their plea that the valuation of the suit property was much more than Rs. 5000/- as shown in the plaint. The learned court below by the impugned order has rejected the petition filed by the defendant nos. 5 and 6 finding that in the year 1993 the valuation of the land was not fixed by the registration department and further finding, on the scrutiny of evidence, that the sale price used to be fixed by the parties to the said transaction.

The learned counsel for the petitioners has submitted

that the learned court below has committed error of jurisdiction in not determining the market value of the suit property in accordance with which the valuation of the suit is to be determined. The emphatic proponent of the learned counsel for the petitioners is that the computation of the court fee in such a suit for declaration with consequential relief is to be done in terms of Section 7 (iv) (c) of the Court Fees Act which shall have to be read with Section 7 (v) of the said Act providing that the market value of the land, house and garden shall be the value of the suit. It has been strenuously maintained by the learned counsel for the petitioners that in no case the plaintiffs in a suit for declaration of title with consequential relief of confirmation/recovery of possession with regard to the land, house or garden shall be left with the discretion to give his own valuation to the suit and in all such cases the market value of the subject matter of the suit shall be the value of the suit. The reliance has been placed by the learned counsel for the petitioners on the decision of the Apex Court in the case of **Suhrid Singh Vs. Randhir Singh 2010 (12) SCC 112**. In substance, the submission by the learned counsel for the petitioners is that the provision of Section 7 (iv) (c) of the Court Fees Act has to be read with the provision as contained in Section 7 (v) of the said Act when the suit property is land, house

or garden.

In order to appreciate the submissions on behalf of the petitioners, it would be fruitful to notice the provisions of the court fee Act in this regard:-

“7.Computation of fees payable in certain suits.- The amount of fee payable under this Act in the suits next hereinafter mentioned shall be computed as follows:

* * *

(iv)in suits-

* * *

(C) for a declaratory decree and consequential relief.- to obtain a declaratory decree or order, where consequential relief is prayed,

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according to the amount at which the relief sought is valued in the plaint or memorandum of appeal.

In all such suits the plaintiff shall state the amount at which he values the relief sought:

(v) In suits for the possession of land, houses and gardens-according to the value of the subject-matter; and such value shall be deemed to be-

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(e) Where the subject-matter is a house or garden- according to the market-value of the house or garden;

From the anatomy of the aforesaid two provisions, it does not appear that they are to be read together for the purpose of computation of the court fee. In fact Section 7 (iv) (c) governs a suit filed for declaration with consequential relief whereas Section 7 (v) governs a suit for possession of land, houses and gardens. The ambit and scope of Section 7(iv)(c) of the Court Fee Act has been considered in detail by a Full Bench of this Court on identical facts in the case of **Md. Alam Vs. Gopal Singh, 1987 PLJR 370**. In that case also, the defendants in the suit raised the objection that the value of the disputed property was much higher and beyond the pecuniary jurisdiction of the court and the prayer was made to decide the issue with regard to valuation and jurisdiction as preliminary issue. The Full Bench has ruled as follows:

“5.....Ere one adverts to the rival contentions of the parties and the cleavage of judicial opinion, it seems apt to refer to the rational premise underlying the question. One must first highlight the meaningful distinction betwixt the valuation of the property in dispute and the valuation of the relief claimed by the plaintiff therein. Though there may be some similarity, yet these are not synonyms. Whilst



the property in respect whereof the claim is raised may be of high valuation, the plaintiff's claim of relief with regard thereto may not necessarily be identical. It is for this reason that the Legislature gave considerable liberty to the plaintiff to state the amount at which he values the relief claimed because of the absence of any precise yardstick for its determination. Whilst the value of property may be concretized, e.g., like market value etc., the value of relief claimed therein by the plaintiff may not be easily capable of precise measurement. It is significant to notice that whilst the other clauses of section 7 provide for a yardstick or a norm on the basis of which the court fee may have to be ultimately computed by the Court, under clause (iv) this is conspicuous by the absence of any such criteria. Thus the rational underlying the provision is both the difficulty of first valuing the property as such and the greater one of valuing the relief therein which is sought to be claimed by the plaintiff.

9. It is manifest from the well-matched divergent stands aforesaid that two competing principles-vie for acceptance here. The first one stems from the fact that clause (iv) of section 7 does give liberty to the plaintiff to evaluate his relief and the rationale for this has



been authoritatively elaborated in AIR 1958 SC 245 and thus needs no repetition or recapitulation. Yet another aspect which has been highlighted is that procedurally the petty and contentious disputes raised on the issue of valuation by the defendants tend to defeat the substance of the litigation by preliminary wrangles on the fiscal issue of valuation. One cannot be unmindful of the fact that unscrupulous defendants may pointlessly raise issues of valuation in order to delay the matter at the very threshold and thereby obstruct the pace of the suit, by resorting thereafter to the revisional jurisdiction. There is no gainsaying the fact that procedural misuse in this context has become rampant and this aspect should not be entirely out of ken. Equally hallowed, however, is the rule that a provision of law is not to be construed on the assumption that the same may be misused or abused. One cannot, in the thin guise of interpretation, amend or override a provision to prevent the alleged misuse and prolongation of litigation by a recalcitrant defendant.

“25.....The sufficiency or otherwise of the relief estimated by the plaintiff is now no longer the question. Finical objections about the insufficiency of such estimation should not



any longer be permitted to be raised by the trial courts. Their power herein is not to be viewed as an ordinary one to revise the valuation put by the plaintiff. It is indeed an exceptional power to be exercised in rare cases for interference where on the face of the record the valuation is arbitrary and demonstrably wrong and the plaintiff has manifestly and deliberately underestimated the same. Ordinarily this should be evident from the pleadings of the parties themselves and only if it is so the need for further consideration or evidence would arise. The broad and basic parameters now laid down by the final Court in the twin judgments aforesaid are that the estimation of the relief by the plaintiff has to be ordinarily accepted and interference therein is permissible only in exceptional and rare cases where such valuation is patently arbitrary and demonstrably undervalued and underestimated deliberately.” (*emphasis supplied*)

The aforesaid judgment by the Full Bench in Md. Alam (supra) has been affirmed by the Apex Court in the case of **Tara Devi Vs. Sri Thakur Radha Krishna Maharaj, 1987 PLJR SC 55.**

The reliance by the learned counsel for the petitioners on the decision of the Apex Court in the case of Suhrid

Singh (supra) is entirely misplaced as the said decision has been rendered with respect to the provisions of the Court Fees Act 1870 as amended in State of Panjab. It would be pertinent to mention here that there is no such amendment in the State of Bihar and the dictum as laid down in **Md.Alam (Supra)** still holds the field where the distinction between the valuation of the relief and the valuation of subject matter of the suit has been clearly spelt out.

It is nowhere the case of the defendant-petitioners that the plaintiff-respondents have deliberately under-valued and under-estimated the relief prayed in the suit nor it could be shown that “on the face of record, the valuation is arbitrary and demonstrably wrong”.

It is thus, evident that the submission on behalf of the defendant-petitioners that the market value of the subject matter of the suit is required to be given as the value of the suit, cannot be legally sustained and is overruled as misconceived. The learned court below has rightly dismissed the petition on behalf of the defendant-petitioners, though for different reasons.

For the aforesaid reasons and discussions, this Court finds no merit in this writ application, which is, accordingly, dismissed.

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(V. Nath, J)