

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.327 of 2016**

Mostt. Gupteshwari Devi & Ors

.... Appellant/s

Versus

Tej Narayan Yadav @ Gauri Shankar Yadav & Ors

.... Respondent/s

Appearance :

For the Appellant/s : Mr. Pravin Chandra Prasad

For the Respondent/s : Mr.

**CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO**

ORAL ORDER

3 31-08-2016

Heard learned counsel for the petitioners.

Perused the order dated 19.02.2016 passed by the learned Subordinate Judge-II, Katihar in Title (Partition) Suit No.21 of 2004 whereby the court below rejected the application filed by the defendants-petitioners for directing the plaintiff to pay ad valorem court fee on the valuation of the suit.

The Hon'ble Supreme Court in the case of **Sri Rathnavarmaraja Vs. Smt. Vimla, A.I.R. 1961 Supreme Court 1299** has held that the act provides that for the purpose of deciding whether the subject matter of the suit or other proceedings has been properly valued or whether the fee paid is sufficient, the Court may hold such enquiry as it considers proper and issue a commission to any other person directing him to make such local or other investigation as may be necessary and report thereon. The anxiety of the legislature to collect court fee due from the litigant

is manifest from the detailed provision made in Chapter III of the Court Fee Act, but those provisions do not arm the defendant with a weapon of technicality to obstruct the progress of the suit by approaching the High Court in revision against an order determining the court fee payable.

A Full Bench of this Patna High Court in **1987 PLJR 370 (Md. Alam Vs. Gopal Singh)** relying on the aforesaid decision of the Supreme Court held that we fail to appreciate what grievance the defendant can make by seeking to invoke the revisional jurisdiction of the High Court on the question whether the plaintiff has paid adequate court fee on his plaint. Whether proper court fee is paid on a plaint is primarily a question between the plaintiff and the State. How by an order relating to adequacy of the court fee paid by the plaintiff, the defendant may feel aggrieved, it is difficult to appreciate.

In view of the above settled propositions of law, it appears that the petitioners are filing frivolous application before the court below and the intention appears to be causing delay in disposal of the suit. Therefore, this civil miscellaneous application is dismissed.

(Mungeshwar Sahoo, J)

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